

ADVISORY COMMITTEE ON RULES  
June 1, 2005

Supreme Court Conference Room  
Frank Rowe Kenison Supreme Court Building  
Concord, New Hampshire

The meeting was called to order at 12:20 p.m.

The following Committee members were present:

Hon. Linda S. Dalianis, Chair

Hon. R. Laurence Cullen

Alice Guay

Hon. Richard Hampe

Martin P. Honigberg, Esquire

Robert Lown

Hon. Philip Mangones

Emily G. Rice, Esquire

Raymond W. Taylor, Esquire

Also present were David S. Peck, Secretary to the Advisory Committee on Rules, and Margaret Haskett, staff.

On motion of Judge Hampe, seconded by Mrs. Guay, the Committee approved the minutes of the March 2, 2005 meeting.

With respect to action taken by the Supreme Court since the Committee's last meeting, David Peck reported that the Supreme Court adopted several amendments recommended by the Committee including amendments to the Judicial Conduct Rules and the adoption of the Webster Scholar Program for Franklin Pierce Law School students. These rules will become effective July 1, 2005.

The Committee next discussed the status of items pending before it and the following action was taken:

Relative to the Rules of Civil and Criminal Procedures, Judge Dalianis deferred discussion on this item until Attorney Honigberg is present.

Relative to the comments to the Professional Conduct rules, Judge Dalianis reported that the Committee is still waiting for the recommendations of the N.H. Bar's Ethics Committee.

Relative to an amendment to District Court Rule 2.7 pertaining to payment of fines by criminal defendants, following a review of correspondence from Attorney Mark Larsen and Judges Robert Lynn and Edwin Kelly, Judge Dalianis agreed to write to Judges Kelly and Lynn requesting that the Administrative Council develop a protocol for fine collection practices for approval by the Supreme Court and implementation by December 2005.

The Committee turned its discussion to new items and the following action was taken:

Relative to an amendment to Superior Court Rule 62 pertaining to pretrial procedures and pretrial settlement conferences, following a brief discussion and on motion duly made and seconded, the Committee voted to send the proposed amendment to Superior Court Rule 62, as contained in Appendix A of these minutes, to the Committee's next public hearing.

Relative to an amendment to Superior Court Rule 169 pertaining to records research fees, following discussion, the Committee asked David Peck and Attorney Raymond Taylor to further amend Superior Court Rule 169 to allow the clerks authority to waive the fee in certain instances and to report back to the Committee at its next meeting.

Relative to Superior Court Rule 97-A pertaining to video arraignments, on motion of Judge Cullen, seconded by Attorney Rice, the Committee voted to send

proposed Superior Court Rule 97-A, as contained in Appendix B of these minutes, to the Committee's next public hearing

Relative to Supreme Court Rules 48 and 48-A governing fees for appointed counsel and guardians ad litem, following a brief discussion, the Committee asked Judge Hampe to follow up with Judge Maher regarding his comments on the proposed amendments to these rules and to report back to the Committee at its next meeting.

Judge Dalianis called the members' attention to Jeannine McCoy's March 31, 2005 memo pertaining to the results of the 2005 Professional Liability Insurance Survey.

The Committee adjourned so that members could attend the public hearing scheduled for 1:00 p.m. in the courtroom. During the public hearing, the Committee heard testimony on proposed court rules changes. In addition, it received written comments during the hearing from several individuals who testified on various proposed rules changes. Attorney Martin Honigberg joined the meeting during the public hearing. The Committee took no action during the public hearing.

Following the public hearing, the Committee reconvened. It first discussed the item deferred earlier in the meeting pertaining to the Rules of Civil and Criminal Procedures. Attorney Honigberg stated that the subcommittee has not yet met but that a meeting would be scheduled in late June or early July. Judge Dalianis will call Attorney Honigberg to discuss timetables and working subcommittees.

The Committee then turned its discussion to considering what action it wished to take on the proposed rules changes discussed during the public hearing. Following discussion, and on motion duly made and seconded, the Committee voted

to recommend to the Supreme Court that the following rules be adopted as submitted to the public hearing: Supreme Court Rules 3, 5(1), 6, 7, 7-A, 10(1), 10(2), 10(3), 13, 15, 16, 17, 18, 21, 25, Rule 7 Notice of Discretionary Appeal form, Rule 7 Notice of Mandatory Appeal form and Outside front cover of cases and briefs; Superior Court Rules 93-A, 169(III) and 169(IV); Superior Court Administrative Rules 12-1, 12-2, 12-3, 12-5, 12-6 and 12-7; Probate Court Rule 169(I) and Family Division Pilot Program Rule 11.

The Committee also agreed to defer action on Supreme Court Rule 53 and on all Superior and District Courts Rules, Rules of Practice and Procedure in the Probate Courts and Rules of Professional Conduct pertaining to the provision of limited legal assistance so that members would be able to review the materials received during the public hearing.

In addition, on motion of Judge Hampe, seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that it amend, on a temporary basis, the Supreme Court rules to change landlord/tenant appeals from mandatory to discretionary appeals.

Following discussion, the Committee agreed that David Peck should file the Committee's annual report after the Committee's next meeting.

No further business to come before the Committee, the meeting adjourned at 3:23 p.m.

## APPENDIX A

Amend Superior Court Rule 62, deleting said section and replacing it with the following:

### PRETRIAL PROCEDURES AND PRETRIAL SETTLEMENT CONFERENCES

62. The Clerk shall schedule a Structuring Conference for each case entered on the civil and equity dockets unless otherwise ordered by the court. The Structuring Conference shall occur between sixty and one hundred twenty days after the return day or at such other time as the court may order.

Counsel, or parties if unrepresented, shall attend the Structuring Conference and shall be prepared and authorized to discuss the issues and set schedules for discovery and other case preparation, including additional conferences with the court, Alternative Dispute Resolution, Summary Jury Trial, and settlement or trial.

**No later than twenty days prior to the Structuring Conference counsel for all parties, or parties if unrepresented, shall either meet and confer personally or by telephone to discuss the claims, defenses and counterclaims and to attempt to reach agreement on the following matters: (1) a proposed date for trial and an estimate of the length of the trial; (2) a discovery schedule, including dates for the disclosure of each party's experts and experts' reports, and deadlines for the filing of pretrial motions of various kinds; (3) the scope of discovery, including particularly with respect to information stored electronically or in any other medium, the extent to which such information is reasonably accessible, the likely costs of obtaining access to such information and who shall bear said costs, the form in which such information is to be produced, the need for and the extent of any holds or other mechanisms that have been or should be put in place to prevent the destruction of such information, and the manner in which the parties propose to guard against the waiver of privilege claims with respect to such information; and (4) a proposed date by which the parties will be ready for Alternative Dispute Resolution (ADR), the form of ADR to be used, and an estimate of the time required for ADR.**

**Ten days prior to the Structuring Conference the parties shall either file a comprehensive written stipulation, signed by all counsel, or by parties if unrepresented, addressing all of the**

**foregoing matters; or, if the parties have been unable to reach agreement on one or more issues, each party shall submit a proposed order on those matters as to which agreement has not been reached. At the same time,** all parties shall file summary statements necessary to support their respective claims, defenses or counterclaims. This summary statement shall be comprehensive and made in good faith, but shall not be admissible at trial. The purpose of the summary statement is to appraise the court of the nature of the claims, defenses, and legal issues likely to arise.

At or immediately after the Structuring Conference the court shall, and with the approval of the Presiding Justice the Clerk may, issue a STRUCTURING CONFERENCE ORDER. **Said order may approve the stipulation(s) reached by the parties, may adopt the proposals made by one or more of the parties, or may establish such other trial and pretrial dates and schedules as the court deems appropriate.**

[The remainder of present Rule 62, starting with the paragraph that begins “If a pre-trial statement is ordered . . . ,” is unchanged.]

## **APPENDIX B**

Amend the Superior Court Rules by adding the following new section:

97-A. Arraignments and bail hearings of all defendants and such other hearings as the State and defendant may agree, may be conducted through the utilization of video tape systems installed between the superior courthouse and the correctional facility/prison without the necessity of the defendant being present in court. Such arraignments, bail hearings, and such other hearings shall ensure that the defendant is able to view the presiding justice, counsel, and any witness(es) involved in the hearing. Defense counsel, at their option, may remain with the client/defendant at the correctional facility/prison or may represent the defendant in court. If defense counsel chooses to be present in court, there must be a secure and confidential means by which they can communicate with their clients.