

NEW HAMPSHIRE SUPREME COURT  
ADVISORY COMMITTEE ON RULES

Minutes of Public Hearing and Meeting of June 7, 2013

Supreme Court Courtroom  
Frank Rowe Kenison Supreme Court Building  
One Charles Doe Drive  
Concord, NH 03301

The meeting was called to order at 12:35 pm by Martin P. Honigberg, Acting Chair. The following Committee members were present: William F.J. Ardinger, Esq., Hon. Paul S. Berch, Robert L. Chase, Hon. R. Laurence Cullen; Hon. Richard A. Hampe; Jeanne P. Herrick, Esq.; Hon. Richard B. McNamara; Patrick Ryan, Esq.; Raymond W. Taylor, Esq. and Martin P. Honigberg, Esq.

Also present were Secretary to the Committee, Carolyn Koegler, Esq., and Irene Dalbec, staff.

1. Public Hearing

The Committee received comments from the public on the following matters, as set forth in the April 11, 2013 public hearing notice.

a. 2012-025. Notice of Appeal Deadline

- (i) Supreme Court Rule 7(1)(C). See April 11, 2013 Public Hearing Notice at Appendix A.

Attorney Joshua Gordon was present at the public hearing and spoke in favor of the Committee's recommending the proposed amendments to Supreme Court Rule 7 to the Court.

b. 2008-013. Photographing, Recording and Broadcasting

- (i) Supreme Court Rule 40(11)(j). See April 11, 2013 Public Hearing Notice at Appendix B.

c. 2012- 011. Continuing Judicial Education

- (i) Supreme Court Rule 45. See April 11, 2013 Public Hearing Notice at Appendix C.

d. 2012-023. Rulemaking Procedures

- (i) Supreme Court Rule 51. See April 11, 2013 Public Hearing Notice at Appendix D.

e. 2012-008. Protocol for In-Camera Review of Documents

- (i) Supreme Court Rule 57-A. See April 11, 2013 Public Hearing Notice at Appendix E.
- (ii) Protocol for Handling *In Camera* Documents. See April 11, 2013 Public Hearing Notice at Appendix F.
- (iii) Form Order for Production of Records for *In Camera* Review. See April 11, 2013 Public Hearing Notice at Appendix G.
- (iv) Form *In Camera* Protective Order (Under Seal). See April 11, 2013 Public Hearing Notice at Appendix H.
- (v) Form Required *In Camera* Certification. See April 11, 2013 Public Hearing Notice at Appendix I.

A comment was submitted to the Committee by letter dated June 6, 2013 from Attorney Jeffrey Kaye.

f. 2007-001. Alternative Dispute Resolution

- (i) Superior Court Rule 170. See April 11, 2013 Public Hearing Notice at Appendix J.

A comment was submitted to the Committee via email by Kara Cain, Esq., Rule Attorney from Aderant on May 14, 2013.

A comment was submitted to the Committee via email by Dennis Ducharme on May 16, 2013.

A comment was submitted to the Committee by letter dated May 31, 2013 from Chief Justice Tina L. Nadeau.

g. 2012-013. Circuit Court Rules – Dismissal of Cases Pending Without Action

- (i) Circuit Court – District Division Rule 1.27. See April 11, 2013 Public Hearing Notice at Appendix K.
- (ii) Circuit Court – Probate Division Rule 48-A. See April 11, 2013 Public Hearing Notice at Appendix L.

- (iii) Circuit Court – Family Division Rule 1.32. See April 11, 2013 Public Hearing Notice at Appendix M.

h. 2011-014. Counsel Fees and Guardians ad Litem Fees Rules

- (i) Supreme Court Rule 48(2). See April 11, 2013 Public Hearing Notice at Appendix N.
- (ii) Supreme Court Rule 48-A(2). See April 11, 2013 Public Hearing Notice at Appendix O.

i. 2013-004. Performance Evaluation of Judges

- (i) Supreme Court Rule 56. See April 11, 2013 Public Hearing Notice at Appendix P.

A comment was submitted to the Committee by memorandum dated May 31, 2013 from Eileen Fox to Justice Robert J. Lynn, Chair of the Advisory Committee on Rules.

j. 2012-027. Sentence Review Division Rules

- (i) Superior Court Sentence Review Division Rules. See April 11, 2013 Public Hearing Notice at Appendix Q.

k. 2012-027. Pro Hac Vice Fees

- (i) Supreme Court Rule 33(5). See April 11, 2013 Public Hearing Notice at Appendix R.
- (ii) Supreme Court Rule 49(I). See April 11, 2013 Public Hearing Notice at Appendix S.
- (iii) Superior Court Rule 19(e). See April 11, 2013 Public Hearing Notice at Appendix T.
- (iv) Superior Court Rule 169(III). See April 11, 2013 Public Hearing Notice at Appendix U.
- (v) Circuit Court- District Division Rule 1.3(C)(5). See April 11, 2013 Public Hearing Notice at Appendix V.
- (vi) Circuit Court – District Division Rule 3.3(I). See April 11, 2013 Public Hearing Notice at Appendix W.

- (vii) Circuit Court - Probate Division Rule 19(E). See April 11, 2013 Public Hearing Notice at Appendix X.
- (viii) Circuit Court – Probate Division Rule 169(IV). See April 11, 2013 Public Hearing Notice at Appendix Y.
- (ix) Circuit Court – Family Division Rule 1.21(D). See April 11, 2013 Public Hearing Notice at Appendix Z.
- (x) Circuit Court – Family Division Rule 1.3(M). See April 11, 2013 Public Hearing Notice at Appendix AA.

A comment was submitted to the Committee by email from A. Witkus on June 4, 2013.

## 2. Discussion and Vote on Public Hearing Items

### a. 2012-025. Notice of Appeal Deadline

The Committee was reminded that this proposal would resolve an ambiguity in Supreme Court Rule 7(1)(C) regarding the notice of appeal deadline when a trial court grants a motion for reconsideration, and would clarify that a trial court’s ruling on an untimely filed post-decision motion does not impliedly waive the untimeliness of the post-decision motion and, therefore, does not change the calculation of the appeal period.

Upon motion made by Bill Ardinger and seconded by Judge Cullen, the Committee voted unanimously to recommend that the Court adopt the proposed amendment.

### b. 2008-013. Photographing, Recording and Broadcasting

The Committee was reminded that this proposal would adopt, on a temporary basis, an amendment to the procedural rules of the Committee on Judicial Conduct. The proposal would adopt the same amendment recently adopted on a temporary basis to govern media access to proceedings in the trial courts. The amendment would clarify the presumption that the photographing, recording and broadcasting of Judicial Conduct Committee Proceedings that are open to the public is permissible.

It was noted that the Secretary of the Judicial Conduct Committee, Robert M. Mittelholzer, was present at the meeting. Attorney Mittelholzer accepted the Committee’s invitation to speak and stated that, as he had indicated in his December 19, 2012 letter to the Committee, the JCC’s

position is that the replacement of current Supreme Court Rule 40(11) with the proposed amended version of Superior Court Rule 78 is ultimately a policy issue for the Court. However, Attorney Mittelholzer also made clear that hearings are currently held at the Charitable Foundation. Therefore, there is currently no infrastructure to support compliance with the proposed rule. He also noted that public hearings are very infrequent.

Judge McNamara acknowledged that public hearings are very rare, but noted that it does not seem to be a good idea to proceed with public hearings without a bailiff or some security.

Representative Berch stated that the question of whether it is wise to have a rule is different from the question of whether the rule can be easily implemented. He stated that he believes that the rule is wise, and that if the rule is in place, it will give the JCC a rule to refer to when presented with the question of who can record the proceedings.

Upon motion made by Representative Berch and seconded by Judge Hampe the Committee voted unanimously to recommend that the Supreme Court adopt the proposed amendment.

c. 2012- 011. Continuing Judicial Education

The Committee was reminded that the proposal would amend Supreme Court Rule 45 to: (1) delete references to the National Judicial College; (2) consolidate two sections of the rule; (3) replace references to the “Office of General Counsel” with “Judicial Branch Educational Committee;” (4) remove references to “registers;” and (5) delete references to marital masters in section (b) and add references to marital masters in the new section (c).

Upon motion made by Judge Cullen and seconded by Judge McNamara, the Committee voted to recommend that the Supreme Court adopt the proposed amendment.

d. 2012-023. Rulemaking Procedures

The Committee was reminded that the proposal would amend Supreme Court Rule 51(B) to allow the Speaker of the House and the Senate President some flexibility to appoint a designee for some, or all, of the Advisory Committee on Rules meetings.

Upon motion made by Attorney Ardinger, and seconded by Attorney Taylor, the Committee voted to recommend that the Supreme Court adopt the proposed amendment.

e. 2012-008. Protocol for In-Camera Review of Documents

The Committee was reminded that the proposal would amend Supreme Court Rule 57-A to change the rule regarding custody and return of documents and materials filed in camera in trial courts. The Committee was also reminded that it had invited comment on a protocol and a number of proposed forms related to in camera review of documents for use in the superior court, and that it had received a letter regarding the protocol from Attorney Jeffrey Kaye.

Judge McNamara stated that he was disinclined to suggest that the Committee hold off on recommending the protocol for adoption because he recognizes how much work went into drafting, seeking comment on, and amending the protocol. However, he stated that Attorney Kaye makes a good point in his letter when he asserts that defense counsel in criminal cases should have the opportunity to determine whether documents submitted to the court for in camera review to determine whether they might be exculpatory. Attorney Kaye stated in his letter, in relevant part:

I firmly believe that there must be a new protocol for In Camera documents review, especially in criminal cases. There is no reason that defense counsel cannot review these documents in Camera with the Court and the Prosecution present. These documents would be "Under Seal" and even redacted, if necessary. Clearly, the Prosecution, nor the Judge does not know the defense's case and the strategy for that defense.

Judge McNamara noted that under the existing protocol, the Court would review documents submitted in camera by the State and determine whether the documents might be exculpatory. He notes that because the Court cannot be as familiar with the case as defense counsel, it is possible that the court could miss something. One Committee member noted that in other states, there are procedures which allow defense counsel to review the materials to decide if they are exculpatory.

Representative Berch stated that he believes that the issue Attorney Kaye raises is one that warrants further review by the Committee. He agreed to research the issue raised by Attorney Kaye. In particular, he would like to explore the question of how other jurisdictions have addressed the argument that a defendant should not have to rely on judicial review of in camera documents and that defense counsel should be permitted to review, with the court, the documents submitted for in camera review.

One Committee member noted that because the proposed change to Supreme Court Rule 57-A relates only to the issue of retention of in-camera documents, it would be possible to vote to recommend the change to Rule 57-A, and also undertake further consideration of Attorney Kaye's concerns at the September meeting.

Upon motion made and seconded, the Committee voted to recommend that the Supreme Court adopt the proposed amendments to Supreme Court Rule 57-A. Committee members directed Carolyn Koegler to assign a new docket number to Attorney Kaye's submission, and to include it on the agenda for the September meeting.

Carolyn Koegler reminded Committee members that at the March meeting, the Committee had directed her to forward the proposed protocol and forms to Judges Kelly and King to inquire whether they believe that the protocol and forms should also be adopted in the Circuit Court. She reported that she had done so, and that Judge King had informed her that he and Judge Kelly had reviewed the in-camera protocol and had agreed that it should be the same for the Circuit Court.

Committee members expressed the view that the protocol should be uniform throughout the court system. However, some concerns were expressed about whether the protocol would supersede other practices for example, with respect to confidential juvenile documents. Others noted that there appear to be some existing circuit court rules related to confidential records, such as circuit court- district division rule 1.26 ("Access to Confidential Records – Fees and Notice") and circuit court-family division rule 1.30 ("Access to Confidential Records – Fees and Notice"), and that some consideration should be given to what impact (if any) adopting the protocol would have on existing rules.

f. 2007-001. Alternative Dispute Resolution

The Committee was reminded that it had put out for public hearing a proposal to amend Superior Court Rule 170 by deleting the rule and replacing it in its entirety, and that the Committee had received a number of comments about the proposal, including one from Chief Justice Nadeau requesting that the proposal be amended.

Judge McNamara stated that he was surprised by the letter from Chief Justice Nadeau, and that he had not had the opportunity to speak with her about it. It was noted by several Committee members that the amendments Judge Nadeau recommends would make substantive changes to the rule that are inconsistent with decisions that had been made by the subcommittee chaired by Judge McNamara.

Attorney Honigberg and Carolyn Koegler noted that there are some timing concerns related to the proposal. Carolyn Koegler reminded the Committee that the Court had recently adopted the New Superior Court Civil Rules, effective October 1, 2013. Because the Court was aware that there was a proposal to substantially amend Superior Court Rule 170 pending before the Advisory Committee on Rules, the Court had inserted a placeholder in place of an Alternative Dispute Resolution Rule, intending to adopt a new rule prior to the October 1 effective date of the new Superior Court Civil Rules.

Judge McNamara stated that he would not be able to speak with Judge Nadeau about the issues she raised in her letter until the end of the month. Therefore, he was unable to state when he might be able to make a recommendation to the Committee about whether the proposal should be amended. The Committee generally agreed that it would be unwise to recommend that the Court adopt the proposal put out for public hearing, because many substantive issues still need to be addressed. It was agreed that Judge McNamara would speak with Justice Nadeau and would report back to the Committee in September.

The Committee took no action on this item.

g. 2012-013. Circuit Court Rules – Dismissal of Cases Pending Without Action

The Committee was reminded that the proposal would adopt new rules, applicable in the Circuit Court, providing for the dismissal by the Court of certain cases if they have seen no activity for a period of two years.

Upon motion made and seconded, the Committee voted to recommend that the Supreme Court amend the Circuit Court Rules as set forth in the proposal.

h. 2011-014. Counsel Fees and Guardians ad Litem Fees Rules

The Committee was reminded that the proposals to amend Supreme Court Rules 48 and 48-A to adopt on a permanent basis temporary amendments to the Counsel Fees and Guardians ad Litem Fees Rules.

Upon motion made and seconded, the Committee voted to recommend that the Supreme Court adopt the temporary amendments on a permanent basis.



i. 2013-004. Performance Evaluation of Judges

The Committee was reminded that this proposal would adopt on a permanent basis temporary amendments to Supreme Court Rule 56, relating to the performance evaluation of judges.

Upon motion made and seconded, the Committee voted to recommend that the Supreme Court adopt the temporary amendments on a permanent basis.

j. 2012-027. Sentence Review Division Rules

The Committee was reminded that this proposal would adopt a permanent basis temporary amendments the Court had made to the Superior Court Sentence Review Division Rules.

Upon motion made and seconded Judge McNamara, the Committee voted to recommend that the Supreme Court adopt the temporary amendments on a permanent basis.

k. 2012-027. Pro Hac Vice Fees

The Committee was reminded that these proposals would adopt on a permanent basis temporary amendments to Court rules increasing the fee charged to applicants seeking permission to appear pro hac vice from \$225.00 to \$250.00.

It was noted that the Committee had received the following comment regarding Appendix U:

Appendix U refers to the superior court but includes fees in divorce actions.

I receive a lot of complaints from litigants in family law cases when they have to spend money to start an action for non-payment of support. One client was deemed to make too much money to have her fee waived, but her rent was based on a percentage that included the support she was supposed to receive but was not receiving. She had to prove she was not receiving the support for her landlord to lower her rent so that she could afford to file to have her support order enforced.

Committee members agreed that this comment did not speak directly to the proposal at issue.

Upon motion made and seconded the Committee voted to recommend that the Supreme Court adopt the temporary amendments on a permanent basis.

3. Approval of Minutes of March 15, 2013 Meeting

Upon motion made and seconded, the Committee voted to approve the March 15, 2013 minutes, as amended to strike “2012” and replace it with “2013” in the title.

4. Status of Pending Items

a. 2011-002 Admission to the Bar of Foreign Law School Graduates

Carolyn Koegler reminded the Committee that a proposed rule had been put out for public hearing in December and that the Committee had received comments regarding the proposal, along with suggested amendments to the proposed rule from Attorney John Sullivan. The Committee requested that Carolyn Koegler work with Attorney Sullivan and to present a revised proposal to the Committee.

Carolyn Koegler reported that she had met with Attorneys John Sullivan, Sherry Hieber and Fred Coolbroth to discuss Attorney Sullivan’s proposals. She referred Committee members to her memorandum to the Committee dated June 6, 2013, which summarizes: (1) what the Court had requested that the Committee consider regarding the Foreign Law School Graduate provision; (2) what issues were considered when the rule was first drafted; (3) why she, Sherry Hieber, Fred Coolbroth, and John Sullivan recommend the changes they do; and (4) what issues the Committee might consider over the course of the next year.

Carolyn Koegler directed the Committee’s attention to page 7 of the memorandum, where the text of the proposed new rule which was put out for public hearing is set out. She noted that she, Sherry Hieber, Fred Coolbroth and John Sullivan recommend the following three changes to the proposal: (1) to add language regarding distance and online study to 42(V)(c)(1); (2) to delete the language, “as part of the law school education,” from 42(V)(c)(3); and (3) to eliminate the numbering in the first paragraph of Rule 42(V)(c). She also noted that there is one issue that the group was unable to reach consensus on – that is, the question of whether to adopt Attorney Sullivan’s proposal to allow graduates of foreign law schools situated in countries with civil law traditions to sit for the bar examination. As is noted in the memorandum,

. . . . John Sullivan felt very strongly that New Hampshire should follow the lead of Massachusetts and New York and foreign law school graduates educated in countries with civil law traditions to sit for the bar examination after completing supplemental coursework. Fred Coolbroth and Sherry Hieber expressed some reservations about liberalizing the rule right now. Sherry Hieber noted that it is far simpler to assess whether a course of study is “substantially equivalent in substance” to the education provided at an ABA accredited law school when that course of study follows the English common law tradition. It is much harder to make that determination when the course of study follows a civil law tradition. Because the group was unable to reach consensus on this issue, it is submitting two proposals to the Committee, the second of which allows foreign law school graduates educated in countries with civil law traditions to sit for the bar examination after completing supplemental coursework for the Committee’s consideration.

Following some discussion of the issue, the Committee agreed that it would not recommend that the Court adopt the proposal to add a provision which would allow graduates of law schools situated in countries with civil law traditions to sit for the bar examination. Attorney Ardinger noted that he had some reservations about adding the language restricting online coursework, stating that the general trend in education is toward allowing more coursework to be completed online. Judge Cullen noted that he disagreed with the decision to eliminate the requirement that the law school be located in an English-speaking country.

Upon motion made by Judge McNamara and seconded by Representative Berch, the Committee voted to recommend that the Court adopt the proposed new Supreme Court Rule 42(V)(c) that was put out for public hearing in December, as amended to : (1) add language regarding distance and online study to 42(V)(c)(1); (2) delete the language “as part of the law school education from 42(V)(c)(3) and (3) eliminate the numbering in the first paragraph of 42(V)(c). The Committee agreed not to recommend that the Court adopt the proposal to allow graduates of foreign law schools situated in countries with civil law traditions to sit for the bar examination.

- b. District Court Rules of Civil Procedure and Probate Court Rules of Civil Procedure and Probate Administration.

Judge Cullen and Judge Hampe reported that, given all of the

changes being made with the transition to the Circuit Court that it is not practical to recommend the adoption of rules for the district or probate division at this time. Committee members generally agreed.

c. 2011-021. Superior Court Pilot Rules—PAD

Carolyn Koegler reminded the Committee that the Court had adopted a temporary amendment to expand the PAD Rules statewide on March 1, 2013. Shortly thereafter, the Court adopted the new Superior Court Civil Rules, effective October 1, 2013. The New Superior Court Civil Rules integrate the PAD rules into the new civil rules. Carolyn Koegler also reminded the Committee that the PAD rules had never been put out for public hearing by the Committee, and suggested that a public hearing might be appropriate.

One Committee member inquired whether a public hearing was necessary, given that the Court had adopted the PAD rules as a part of the New Superior Court Civil Rules. Carolyn Koegler reminded the Committee that all of the other New Superior Court Civil Rules had been put out for comment, but that the PAD Rules had not. While the rules had been integrated into the New Superior Court Civil Rules, it might make some sense to afford the bar, the bench and the public an opportunity to offer comment on the rules.

Upon motion made Judge Hampe and seconded by Judge Cullen, the Committee voted to put the relevant sections of the New Superior Court Civil Rules incorporating the PAD Rules out for public hearing in December.

d. 2012-004. IOLTA.

The Committee was reminded that it had formed a subcommittee to consider whether title companies should be included in the mandatory IOLTA program. The Committee was also reminded that it had received a March 21 letter from Attorney Herbert Cooper, Co-Chair of the IOLTA and Title Companies subcommittee. The subcommittee concluded that “the activities surrounding the purchase or refinance of New Hampshire real estate. . . do, in our opinion, constitute the practice of law,” and proposed that Supreme Court Rules 50 and 50-A be amended to include title companies in the mandatory IOLTA program.

Upon motion made by Judge McNamara and seconded by Attorney Taylor, the Committee voted to put the proposed amendments out for public hearing in December.

e. 2012-010. District Court Rules.

Pat Ryan reminded the Committee that at issue is the need for a procedure to insure that counsel is available for indigent defendants at their arraignments in the district court. He reported that the subcommittee was working on the implementation of the rule and is doing it in phases. Phase 1, which starts with the notification to arrestees, is to start July 15.

f. 2012-021. Superior Court Administrative Rules. “Rules Clean-up.”

Ray Taylor reminded the Committee that it had formed a subcommittee, with him as Chair, to undertake a review of the Superior Court Administrative Rules and submit a proposal to the Committee to amend the rules. He suggested that it may make sense for the subcommittee to review all of the Superior Court Administrative rules, and that this issue be deferred until December.

g. 2012-026. Trial Court Rules – Personal Jurisdiction.

At the December meeting, Attorney Ardinger and Judge McNamara agreed to serve on a subcommittee to consider the question of whether the trial court rules should be changed to overrule current practice with respect to challenging personal jurisdiction. Under current New Hampshire case law, if a litigant is sued in New Hampshire and wishes to challenge the jurisdiction of New Hampshire Courts over him, he must file a special appearance and a motion to dismiss and can do nothing more than this, such as raising other defenses, because his doing so will be treated as a waiver of the challenge to jurisdiction.

Attorney Ardinger stated that his subcommittee had begun to research this issue, but was not yet ready to report. He noted that when the Court adopted the new Superior Court Civil Rules, it adopted Rule 9(f), which changed the rule on the personal jurisdiction issue.

Attorney Honigberg stated that one of the new submissions (#2013-007) is a memorandum from Carolyn Koegler regarding the New Superior Court Civil Rules. The memorandum notes that there are some issues regarding the new rules that the Court would like the Committee to consider. Among other things, the Court has requested that the Committee review New Superior Court Rule 9 and make any recommendations for amendments it feels are necessary. It was suggested that the issue Attorney Ardinger’s subcommittee had been asked to address should be consolidated with # 2013-007, and it was agreed that the subcommittee formed to address the issues raised in the memorandum should address this issue as well.

h. 2013-002. Interlocutory Appeals.

The Committee was reminded that this issue was raised in a January 8, 2013 memorandum to Carolyn Koegler from David Peck. The Court would like the Committee to consider whether a rule amendment should be adopted that provides a mechanism for the trial court to certify (either on its own, or on motion, or both) that an order that would otherwise be interlocutory is final and immediately appealable.

Carolyn Koegler reminded the Committee that the minutes from the March meeting reflect that the Ardinger subcommittee considering the personal jurisdiction issue. Attorney Ardinger stated that his subcommittee had not yet considered this issue.

i. 2013-003. Supreme Court Rules 37 and 37A. Attorney Discipline

Jeanne Herrick reminded the Committee that at the meeting in March she was asked to Chair a subcommittee to address the issues raised in the February 4, 2013 letter and enclosure from Justice Conboy to Justice Lynn regarding the recommendations made by the American Bar Association's Standing Committee on Professional Discipline. She stated that the subcommittee has been formed and includes representatives from the Bar Association, the Professional Conduct Committee, the Attorney Discipline Office, the Bar Association IOLTA Committee and two attorneys who practice in the area. Given the scope of the work, the subcommittee may not be prepared to report to the Committee until the December meeting.

5. NEW SUBMISSIONS

a. 2013-007. New Superior Court Civil Rules.

Attorney Honigberg directed the Committee's attention to the May 28, 2013 memorandum from Carolyn Koegler to the Committee. The memorandum states that the New Hampshire Supreme Court has adopted, effective October 1, 2013, new "Rules of the Superior Court of the State of New Hampshire Applicable in Civil Actions" and has retitled the existing Superior Court Rules "Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases Filed in Superior Court and in Domestic Relations Cases filed in the Cheshire County Superior Court."

The memorandum also states that the PAD rules were integrated into the body of the New Superior Court Civil Rules before they were

adopted by the Court. In the process of incorporating the PAD rules into the New Civil Rules, it became clear that some of the New Civil Rules that did not appear to be directly relevant to the PAD Rules were actually inconsistent with the PAD Rules. It also became clear that there were some problems with the civil rules that were unrelated to the integration of the PAD rules. The memorandum identifies issues regarding the New Superior Court Civil Rules the Court is referring to the Committee.

Attorney Honigberg and the Committee generally agreed that it would make sense to refer this memorandum to the subcommittee that worked on the new Superior Court Civil Rules comprised of Attorney Honigberg, and Attorneys Kimberly Kirkland and David Slawsky. Attorney Honigberg stated that the subcommittee would work with Carolyn Kogler to address the issues raised in her memorandum, and would report back to the Committee at the September meeting. Attorney Taylor noted that it would be important to include Chief Justice Nadeau in this process.

b. 2013-008. Withdrawal of Appointed Counsel in Criminal and Juvenile Matters.

The Committee next considered an April 8, 2013 letter and attachments from Judge Kelly proposing amendments to court rules and the adoption of new rules relating to the withdrawal of appointed counsel in criminal and juvenile matters. The letter states, in relevant part:

The proposed amendments relate to the withdrawal of appointed counsel in criminal and juvenile matters. The proposed amendments would permit a notification of withdrawal in certain instances rather than a request to withdraw requiring court approval. These amendments are designed to expedite the appointment of new counsel in those instances where previously appointed counsel must withdraw due to a conflict of interest as defined in the Rules of Professional Conduct.

Following brief discussion, and upon motion made by Judge Hampe and seconded by Attorney Taylor, the Committee voted to put the proposed rule amendments and new rules out for public hearing in December.

c. 2013-009. Filing Motions Under Seal

The Committee considered a May 31, 2013 memorandum from Carolyn Kogler to the Advisory Committee on Rules asking the Committee to consider whether there should be a system-wide rule

similar to Supreme Court Rule 12(2)(b), which addresses how a party may go about requesting that the court seal a case record or a portion of a case record.

Following some discussion of the procedure followed in federal court and the procedure that is currently being followed in the state courts, the Committee generally agreed that it would make sense to adopt a rule for the superior court and the circuit court that is similar to Supreme Court Rule 12(2)(b). The Committee directed Carolyn Koegler to draft the proposed rules and to submit them to the Committee for consideration at the September meeting.

d. 2013-010. ABA Commission on Ethics

The Committee next considered a March 1, 2013 letter from the ABA Center on Professional Responsibility to Chief Justice Dalianis. The letter, which Chief Justice Dalianis forwarded to the Committee, “encourage[s] Supreme Courts and State Bar Associations to review their rules of professional conduct, regulation and admission to the bar as a result of the recent revisions to the ABA Model Rules.”

Following some discussion, the Committee directed Carolyn Koegler to forward the letter to the Ethics Committee of the NH Bar Association.

e. 2013-011. Superior Court Rule 14. Proposed Continuity of Counsel Rule.

The Committee considered a proposal from Chief Justice Nadeau to change the rules regarding appointment of counsel in the superior court to provide that once an appointment has been made in the circuit court, that appointment should continue throughout any appeal to the superior court.

Following brief discussion, the Committee requested that Carolyn Koegler forward the proposed amendment to Attorney Christopher Keating and request comment on the proposal.

4. Miscellaneous

The next meeting date is Friday, September 20, 2013. The remaining meeting dates for 2013 are as follows:

Friday, December 13, 2013

The meeting adjourned.