

NEW HAMPSHIRE SUPREME COURT
ADVISORY COMMITTEE ON RULES

Minutes of Public Meeting of June 3, 2016

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 p.m. by Justice Robert J. Lynn, Committee Chair. The following Committee members were present: Abigail Albee, Karen M. Anderson, Hon. Paul S. Berch, Hon. R. Laurence Cullen, John A. Curran, Esq., Hon. N. William Delker, Hon. Daniel J. Feltes, Joshua L. Gordon, Esq., Jeanne P. Herrick, Esq., Derek Lick, Esq. Maureen Raiche Manning, Esq., Ari Richter, Patrick W. Ryan, Esq., Frederick H. Stephens, Jr. and Hon. Robert J. Lynn.

Also present were the Secretary to the Committee, Carolyn Koegler, Esq., and Charlene Desrochers and Claire Mackinaw, Staff.

Justice Lynn began the meeting by welcoming Ari Richter, a new member of the Committee, who replaces Ralph Gault as a non-attorney member of the Committee

1. Public Hearing

Justice Lynn noted that there are many people present at the public hearing and that, according to the sign-in sheet, most people want to talk about district division Rule 2.7 (now New Hampshire Criminal Rule of Procedure 29(e)), so it would make sense to take this up as the first item on the agenda. The public hearing items are listed below in the order in which testimony was taken on them. The names of the speakers who testified are listed beneath the public hearing item title. Due to the length of the public hearing, no details are provided in these minutes regarding the testimony offered. A CD recording of the hearing is available upon request at the Supreme Court.

(a) 2015-021. Payment of Fines. New Hampshire Rule of Criminal Procedure 29(e)

Senator Feltes reported on his discussions with Senate leadership.

Justice Lynn reported on his discussions with Representative Kurk.

Attorney Elliott Berry, Managing Attorney, Manchester Office, New Hampshire Legal Assistance, spoke in support of the ACLU proposal to amend Circuit Court – District Division Rule 2.7 (now Criminal Rule of Procedure 29(e)) and responded to questions from Committee members.

Attorney Alan Cronheim, President of the New Hampshire Association of Criminal Defense Lawyers, spoke in support of the ACLU proposal to amend Circuit Court – District Division Rule 2.7 (now Criminal Rule of Procedure 29(e)) and responded to questions from Committee members.

Judge King, Deputy Administrative Judge of the Circuit Court spoke in support of the ACLU proposal to amend Circuit Court – District Division Rule 2.7 (now Criminal Rule of Procedure 29(e)) and responded to questions from Committee members.

Professor Albert E. Scherr, Chair of the Board of Directors, ACLU-NH and Professor of Law, UNH School of Law, spoke in support of the ACLU proposal to amend Circuit Court – District Division Rule 2.7 (now Criminal Rule of Procedure 29(e)) and responded to questions from Committee members.

(b) 2015-022. New Hampshire Rules of Evidence - Update

Professor John B. Garvey spoke in support of, and answered questions about, the New Hampshire Rules of Evidence Committee’s proposal to amend the New Hampshire Rules of Evidence.

Judge David Garfunkel spoke in support of, and answered questions about, the New Hampshire Rules of Evidence Committee’s proposal to amend the New Hampshire Rules of Evidence.

Melissa E. Fales, Assistant County Attorney, Grafton, who was present to testify about Criminal Rule of Procedure 12(a) also offered a brief comment on Rule 803(5) of the Rules of Evidence.

(c) 2015-020. Circuit Court – District Division Rules 5.4, 5.7 and 5.9. Landlord and Tenant.

David Peck, staff attorney at the New Hampshire Supreme Court, addressed the Committee regarding why he drafted the proposed amendments to the landlord tenant rules, and what he hopes will come out of them.

Attorney Elliott Berry, Managing Attorney, Manchester Office, New Hampshire Legal Assistance, spoke in support of the proposal to amend the landlord tenant rules.

(d) 2015-023. New Hampshire Rule of Criminal Procedure 12(a) - Discovery

Stephen Enders, prosecutor for the Concord City Prosecutor's Office expressed concerns about the proposal.

Shawn Mulholland, Town Administrator for the town of Allenstown expressed concerns about the proposal.

Melissa E. Fales, Assistant County Attorney, Grafton, expressed concerns about the proposal.

Justice Lynn proposed that the Committee hold a special meeting to decide what to do with the items that were the subject of the public hearing. It was decided that the Committee would meet Tuesday, July 5 at 12:30 p.m. to discuss and vote on the proposal to amend Criminal Rule of Procedure 29(e), the proposal to amend the landlord tenant rules, the proposal to amend New Hampshire Rule of Criminal Procedure 12(a), and then if there is time remaining, to take up the other items on the agenda. It was agreed that Committee members would not vote on the proposal to amend the Rules of Evidence.

Professor Scherr agreed to put together a proposal that constitutes a new ACLU-NH proposal based on some of the issues that were discussed at the public hearing. He agreed to put the proposal into the context of Criminal Rule of Procedure 29(e)(formerly District Division Rule 2.7).

Senator Feltes volunteered to provide a comment regarding a pilot program for the appointment of counsel piece of the proposal to amend Criminal Rule of Procedure 29(e).

Justice Lynn stated that he has had discussions with Representative Kurk from the House. The idea of a pilot is not something that arose during those discussions. Representative Kurk's general view was that if this is going to be done, it should be the legislature that should do it. Senator Feltes stated that he does not think there is any doubt that there will be legislation on this. The Senate's position is not that the Court doesn't have the authority to do this, but that it is more appropriate for the legislature to weigh in, and that it would be better to weigh in after the pilot program has been in place for six months, so that the legislature has information. Justice Lynn stated that it might be that the speaker does not have any issue with that either.

Judge Delker noted that the issue that arose with respect to recorded recollections is an important issue, and he wants to make sure that that thread is not lost.

The public hearing adjourned at 4:54 pm.