

ADVISORY COMMITTEE ON RULES
March 31, 2004

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

The meeting was called to order at 12:26 p.m.

The following Committee members were present:

Robert L. Chase
Hon. Linda S. Dalianis
Hon. Robert L. Cullinane
Alice Guay
Hon. Richard Hampe
Martin P. Honigberg, Esquire
Hon. Philip Mangones
Raymond W. Taylor, Esquire

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

David Peck was nominated to act as Chair until Judge Dalianis could join the meeting.

On motion of Judge Cullinane, seconded by Mr. Chase, the Committee approved the minutes of the December 17, 2003 meeting, as submitted.

With respect to action taken by the Supreme Court since the Committee's last meeting, David Peck reported that the Supreme Court adopted the Committee's recommendation relative to Supreme Court Rule 42. Other rules approved by the Committee following its December public hearing will be presented to the Court in June as part of the Committee's 2004 annual report.

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

Relative to administrative orders prepared by administrative judges and various guidelines, protocols and procedures, in Attorney Rice's absence, Judge Cullinane reported that the subcommittee's report recommends that the guidelines for the processing and disposition of abuse and neglect cases in the district courts be repealed. Following discussion and on motion of Judge Mangones, seconded by Judge Cullinane, the Committee voted to recommend that the guidelines for the processing and disposition of abuse and neglect cases in the district courts be repealed and further that repeal of said guidelines be sent to the Committee's next public hearing.

Relative to adoption of plain error rules, following discussion and on motion of Judge Mangones, seconded by Judge Cullinane, the Committee voted to send Superior Court Rule 102-A, District and Municipal Court Rule 2.10-A and Rule of Evidence Rule 103, as contained in Appendices A, B and C respectively of these minutes, to the Committee's next public hearing. With reference to Superior Court Rule 72, the Committee agreed to defer action until a later date.

Relative to comments to professional conduct rules, Attorney Honigberg reported that the N.H. Bar Association's Ethics Committee expects to have its report to this Committee by its June meeting.

Relative to amendments to Supreme Court Rules 47, 48 and 48-A pertaining to fees paid to appointed counsel and guardians ad litem in cases involving indigent clients, following discussion and on motion of Judge Cullinane, seconded by Judge Mangones, the Committee voted to further amend Supreme Court Rules 48 and 48-A, and to send said proposed amendments to Supreme Court Rules 47, 48 and 48-A, as

contained in Appendices D, E and F respectively of these minutes, to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 42(5)(m) pertaining to the character and fitness standards, David Peck reported that the Committee is still waiting for a response from the character and fitness committee.

Relative to amendments to Supreme Court Rules 12-D(2), 16(11), 21(1) & (10), and 26(1), following discussion and on motion of Judge Cullinane, seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that the amendments to Supreme Court Rule 26(1) be adopted, as contained in Appendix G of these minutes, and further that it be considered as a technical amendment. David Peck reported that the Court has already adopted similar changes to Supreme Court Rules 21(1) & (10). Consideration of Supreme Court Rules 12-D(2) and 16(11) was deferred until the next meeting.

Relative to amendments to court rules pertaining to entry of judgment and appeal bonds, the Committee agreed to defer action on this item until its next meeting.

Judge Dalianis joined the meeting.

Relative to the ABA Report on Multijurisdictional practice, following discussion and on motion of Attorney Honigberg, seconded by Judge Hampe, the Committee voted to send the report and amendments to the following rules to the Committee's next public hearing: Rules of Professional Conduct, Rules 5.5 and 8.5 pertaining to disciplinary authority, as contained in Appendices H and I of these minutes; Supreme Court Rule 37(1)(b) pertaining to the attorney discipline system, as contained in Appendix J of these minutes; and Superior Court Rule 19 pertaining to appearances

by attorneys who are not members of the N.H. Bar, as contained in Appendix K of these minutes. In addition, amendments to the District Court Rules and Probate Court Rules modeled upon the amendments to Superior Court Rule 19 will be drafted and sent to the next public hearing. The subcommittee will continue to meet to address the foreign consultant issue.

Relative to amendments to Supreme Court Rule 38 pertaining to the judicial code of conduct, following a brief discussion and on motion of Judge Mangones, seconded by Judge Cullinane, the Committee voted to send the proposed amendments to Supreme Court Rule 38, as contained in Appendix L of these minutes, to the Committee's next public hearing.

Relative to amendments to Superior Court Rules 12, 21 and new Superior Court Rule 57-B pertaining to the delivery of motions to opposing counsel, Attorney Honigberg distributed proposed amendments for the Committee's consideration. Following discussion, the Committee asked David Peck to send the proposals to the administrative judges for their comments and suggestions and to report back to the Committee at its next meeting.

Relative to amendments to Supreme Court Rule 19, Superior Court Rule 78, District and Municipal Court Rule 1.4 and Probate Court Rules 78 and 78-A, the Committee reviewed the amendments to Superior Court Rule 78 made by the subcommittee. Following discussion and on motion of Judge Cullinane, seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that Superior Court Rule 78 be adopted as amended by the subcommittee, and contained in Appendix M of these minutes, and further to ask David Peck to prepare similar

amendments to Supreme Court Rule 19, District and Municipal Court Rule 1.4 and Probate Court Rules 78 and 78-A which the Committee recommends be adopted.

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

Relative to the rules of civil procedure, the Committee discussed whether it should establish a subcommittee to consider adopting rules of civil procedure. The following subcommittee was established: Attorney Martin Honigberg, Chair; Attorney Raymond Taylor; and Judge Philip Mangones.

Relative to amendments to Supreme Court Rule 45 pertaining to judicial education, on motion of Judge Dalianis, seconded by Judge Hampe, the Committee voted to send said amendments to Supreme Court Rule 45, as contained in Appendix N of these minutes, to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 13 pertaining to the record, following discussion and on motion of Judge Hampe, seconded by Attorney Taylor, the Committee voted to send the proposed amendments to Supreme Court Rule 13, adopted by the Supreme Court on a temporary basis, and contained in Appendix O of these minutes, to the Committee's next public hearing to determine whether said amendments should be adopted on a permanent basis.

Relative to Supreme Court Rule 42(10)(c) pertaining to the practice of law, following discussion and on motion of Judge Hampe, seconded by Attorney Taylor, the Committee voted to send the proposed amendments to Supreme Court Rule 42(10)(c), adopted by the Supreme Court on a temporary basis, and contained in Appendix P of these minutes, to the Committee's next public hearing to determine whether said amendments should be adopted on a permanent basis.

Relative to amendments to Professional Conduct Rule 1.6 pertaining to attorney/client privilege, following a brief discussion, David Peck agreed to contact Judge Maher to see if he would like to submit an amendment to Professional Conduct Rule 1.6 for the Committee's consideration at its next meeting.

Relative to Committee membership, David Peck reported that the Supreme Court is taking steps to fill the vacancy created by Amanda Merrill's resignation.

Relative to filings in court by facsimile transmission, the Committee discussed whether it should recommend adopting any rules to govern the filing of pleadings by facsimile transmission. Following discussion, the Committee agreed to recommend no changes to the rules at this time.

Relative to amendments to Probate Court Rule 169 pertaining to fees, on motion of Judge Hampe, seconded by Attorney Taylor, the Committee voted to reconsider its recommendation to amend the rule as proposed at the December public hearing. Following discussion and on motion of Judge Hampe, seconded by Judge Cullinane, the Committee voted to further amend Probate Court Rule 169 and to recommend to the Supreme Court that it be adopted as amended, and contained in Appendix Q of these minutes.

Relative to amendments to the family division rules pertaining to fees, following discussion and on motion of Judge Dalianis, seconded by Attorney Taylor, the Committee voted to send the proposed amendments adopted by the Supreme Court on a temporary basis, and contained in Appendix R of these minutes, to the Committee's next public hearing to determine whether said amendments should be adopted on a permanent basis.

Relative to amendments to Supreme Court Rule 42 pertaining to admission to the bar, following discussion and on motion of Judge Hampe, seconded by Attorney Honigberg, the Committee voted to send said amendments to Supreme Court Rule 42(10)(a)(iv), adopted by the Supreme Court on a temporary basis, and contained in Appendix S of these minutes, to the Committee's next public hearing to determine whether said amendments should be adopted on a permanent basis.

Relative to amendments to the rules of professional conduct pertaining to limited scope of legal assistance, following a brief discussion and on motion of Judge Dalianis, seconded by Judge Hampe, the Committee voted to ask Justice Dalianis to draft proposed amendments.

Relative to amendments to the Supreme Court rules pertaining to fee for late bar applications, following discussion and on motion of Judge Hampe, seconded by Judge Cullinane, the Committee voted to send said amendments to Supreme Court Rule 49, as contained in Appendix T of these minutes, to the Committee's next public hearing.

Relative to Supreme Court Rule 55 pertaining to the public protection fund, following a brief discussion, the Committee agreed to table this item for another six months.

Relative to Supreme Court Rules 54(2) and 54(5)(c) pertaining to administrative judges and orders, following discussion and on motion of Judge Dalianis, seconded by Judge Hampe, the Committee voted to defer any decision on whether Supreme Court Rules 54(2) and 54(5)(c) should be adopted on a permanent basis until after the future of the family division has been determined.

Relative to Supreme Court Rule 50-A pertaining to payment by check, following discussion and on motion of Judge Hampe, seconded by Attorney Taylor, the Committee voted to send Supreme Court Rule 50-A, as contained in Appendix U of these minutes, to the Committee's next public hearing.

Relative to amendments to Probate Court Rule 91 pertaining to adoption of foreign born child, following discussion and on motion of Judge Hampe, seconded by Judge Dalianis, the Committee voted to recommend to the Supreme Court that Probate Court Rule 91 be adopted on a temporary basis, as contained in Appendix V of these minutes, and further to send said amendments to the Committee's next public hearing to determine whether said amendments should be adopted on a permanent basis.

Relative to amendments to Superior Court Rule 169 and District and Municipal Court Rule 3.3 pertaining to criminal docket records research fee, the Committee voted to further amend Superior Court Rule 169 and to send said amendments to Superior Court Rule 169 and the amendments to District and Municipal Court Rule 3.3, as contained in Appendices W and X of these minutes, to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 54(4) pertaining to the Administrative Council, following discussion and on motion of Judge Dalianis, seconded by Judge Cullinane, the Committee voted to send the amendments to Supreme Court Rule 54(4), as contained in Appendix Y of these minutes, to the Committee's next public hearing.

The Committee scheduled its next meeting for June 2, 2004 at 12:00 p.m., to be followed by a public hearing at 1:00 p.m.

No further business to come before the Committee, the meeting adjourned at
2:55 p.m.

APPENDIX A

Adopt new Superior Court Rule 102-A as follows:

PLAIN ERROR

102-A. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

APPENDIX B

Adopt new District and Municipal Court Rule 2.10-A as follows:

Rule 2.10-A. Plain Error

A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

APPENDIX C

Amend Rule of Evidence 103 by adopting a new section (f), so that said rule as amended shall state as follows:

Rule 103. Rulings On Evidence

(a) *Specific objection.* A general objection shall not be sufficient to raise or preserve an issue for appeal.

(b) *Effect of erroneous ruling.* Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence, a contemporaneous objection appears of record, stating explicitly the specific ground of objection; all other grounds for objection shall be deemed waived; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the record indicates that the substance of the evidence was contemporaneously made known to the court by offer of proof.

(c) *Record of offer and ruling.* The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(d) *Hearing of jury.* In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(e) *Exceptions unnecessary.* Taking of exceptions is no longer necessary in matters of evidence.

(f) *Plain error.* Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

APPENDIX D

Amend Supreme Court Rule 47(2)(c), (2)(d), (2)(e), (2)(f), (3)(g) and (3)(i), so that Rule 47 as amended shall state as follows:

RULE 47. COUNSEL FEES AND EXPENSES -- INDIGENT CRIMINAL CASES

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which assigned counsel is appointed to represent indigent criminal defendants.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead.

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: \$60 per hour. The paralegal hourly rate shall not exceed \$35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee per day (for all cases): \$400.

(c) Maximum fee for misdemeanors: \$1,250.

(d) Maximum fee for felonies: \$3,750.

(e) Maximum fee for homicides under RSA 630:1-2: \$18,750.

(f) Maximum fee for Supreme Court appeal: \$1,875.

Only upon an express, written finding of good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

When assigned counsel is appointed in district or municipal courts, that counsel shall continue as counsel of record for all purposes (such as motions to reduce bail, waiver of indictments, etc.) until and unless new counsel is appointed by superior court. The appointment of counsel shall occur in accordance with RSA 604-A:2, II. The public defender shall be appointed if that office is available. In the event that the public defender program is not available, the appointment of a contract attorney shall occur, if such an attorney is available. Lastly, in the event that neither the public defender nor a contract attorney is available, the appointment of a qualified attorney under RSA 604-A:2, I, shall occur.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court in accordance with RSA 604-A:6, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the rate currently paid to state employees.

(g) The expense of telephone service shall not be reimbursed; provided, however, that the specific expense of individual calls, including collect calls, shall be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including postage, fax and secretarial services; provided, however, that reimbursement will be paid for the actual reasonable costs (not including labor) of photocopies.

APPENDIX E

Amend Supreme Court Rule 48(2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (3)(g) and (3)(i), so that Rule 48 as amended shall state as follows:

RULE 48. COUNSEL FEES AND EXPENSES -- OTHER INDIGENT CASES

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which counsel is appointed to represent indigent persons, other than criminal defendants, and indigent witnesses in appropriate circumstances. This rule refers to, but is not limited to, juvenile cases in the district court, guardianships under RSA chapter 464-A, termination of parental rights (TPR) under RSA chapter 170-C, and involuntary admissions under RSA chapter 135-C in the probate court and district court.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead.

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: \$60 per hour. The paralegal hourly rate shall not exceed \$35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee per day (for all cases): \$400.

(c) Maximum fee for all juvenile cases pursuant to RSA chapters 169-B, C, and D: \$1,500.

(d) De novo appeal of juvenile cases pursuant to RSA chapter 169-C: \$1,250.

(e) Maximum fee for guardianships under RSA chapter 464-A: \$750.

(f) Maximum fee for annual review hearings for guardianships: \$250.

(g) Maximum fee for TPR cases pursuant to RSA chapter 170-C: \$1,500.

(h) Maximum fee for involuntary admissions under RSA chapter 135-C: \$500.

(i) Appeals to the supreme court in all juvenile cases and any matters within the subject matter jurisdiction of the probate court: \$1,875.

(j) Maximum fee for court review hearings of juvenile cases pursuant to RSA 169-B and D: \$225.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the rate currently paid to state employees.

(g) The expense of telephone service shall not be reimbursed; provided, however, that the specific expense of individual calls, including collect calls, shall be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including postage, fax and secretarial services; provided, however, that reimbursement will be paid for the actual reasonable costs (not including labor) of photocopies.

APPENDIX F

Amend Supreme Court Rule 48-A(2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (3)(f) and (3)(g), so that Rule 48-A as amended shall state as follows:

RULE 48-A. GUARDIANS AD LITEM FEES -- INDIGENT CASES

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead.

(2) *Fees.* The provisions of this rule shall only apply to proceedings within the original jurisdiction of the district and probate courts, in which guardians ad litem are appointed, and the party responsible for payment is indigent.

Maximum guardian ad litem compensation as authorized by the administrative justice shall be limited as follows:

(a) Time properly chargeable to case: \$60 per hour. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee per day: \$400.

(c) Maximum fee for abuse and neglect cases through conclusion of dispositional hearing pursuant to RSA 169-C:19: \$1,250.

(d) Maximum fee for CHINS cases (169-D) or delinquency cases (169-B) through conclusion: \$750.

(e) Maximum fee for court review hearings in guardianship of minor case or abuse and neglect case: \$225.

(f) Maximum fee for TPR case (170-C): \$1,250.

(g) Maximum fee for appeals to the superior court: \$750.

(h) Maximum fee for guardianship of minor cases pursuant to RSA 463: \$1,250.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded;

provided, however, that the court may waive the requirement for prior approval when justice so requires.

When a guardian ad litem represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(c) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(d) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(e) Guardians ad litem shall be reimbursed for the mileage expenses incurred in representing their client at the rate currently paid to state employees.

(f) The expense of telephone service shall not be reimbursed; provided, however, that the specific expense of individual calls, including collect calls, shall be reimbursed.

(g) No reimbursement will be paid for overhead expenses including postage, fax and secretarial services; provided, however, that reimbursement will be paid for the actual reasonable costs (not including labor) of photocopies.

APPENDIX G

Amend Supreme Court Rule 26(1) by deleting said paragraph and replacing it with the following:

(1) Papers required or permitted to be filed in this court shall be filed with the clerk of this court and shall be upon good quality, nonclinging paper 8 1/2 by 11 inches in size. With the exception of documents attached to a filing, the type used in all filings shall consist of standard size typewriter characters or size 12 font. Filing may be accomplished by first class mail addressed to the clerk of this court, but filing shall not be timely unless the papers are received by the clerk within the time fixed by rule or law. Filings postmarked at least 2 days prior to the time fixed by rule or law shall be deemed timely.

APPENDIX H

Amend Professional Conduct Rule 5.5 by deleting said rule and replacing it with the following:

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

- (a) A lawyer shall not practice law in a United States jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this State shall not:
 - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this State for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this State.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this State that:
 - (1) are undertaken in association with a lawyer who is admitted to practice in this State and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this State or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this State or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

- (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
- (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this State that:
 - (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission, provided that if the lawyer intends to provide such services other than on a temporary basis, then the lawyer must obtain a certificate for limited admission to practice law in this State; or
 - (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.
- (e) A lawyer admitted in another United States jurisdiction who acts in this State pursuant to subparagraphs (c) or (d) shall:
 - (1) be subject to the New Hampshire Rules of Professional Conduct and the disciplinary authority of the supreme court; and
 - (2) not hold himself or herself out as being admitted to practice in this State and shall not solicit clients in New Hampshire.
- (f) A lawyer admitted in another United States jurisdiction who intends to act in this State pursuant to subparagraph (d)(1) shall before providing legal services in this State other than on a temporary basis:
 - (1) file with the clerk of the supreme court on a form provided an application for limited certificate of admission to practice law in this State;
 - (2) submit with the attorney's application for limited certificate of admission to practice law in this State an application fee and a signed sworn statement certifying that: (a) he or she is licensed and in good standing in a jurisdiction of the United States and has not been disbarred or suspended in any jurisdiction; (b) he or she provides services in this State only to his or her employer or its organizational affiliates; (c) these services are not those for which the forum requires pro hac vice admission;

and (d) his or her employer is not engaged in the practice of law or provision of legal services.

- (3) An attorney having a limited certificate of admission to practice law granted pursuant to this subparagraph shall:
 - (a) comply with the minimum continuing legal education requirements of an active member of the New Hampshire Bar Association as specified in Supreme Court Rule 53.1;
 - (b) comply with the requirements of an active member of the New Hampshire Bar Association to file an annual trust accounting certificate as set forth in Supreme Court Rule 50-A; and
 - (c) pay such fees, bar dues, and assessments, including assessments for the public protection fund, as are required of an active member of the New Hampshire Bar Association by the Constitution and By-Laws of the New Hampshire Bar Association or Supreme Court Rule.
- (4) Any limited certificate for admission to practice law granted pursuant to this subparagraph shall expire on July 31. It may be renewed annually by filing a new application for limited certificate of admission to practice law in this State pursuant to subparagraphs (g)(1) and (g)(2).
- (5) A lawyer shall not provide legal services in this State pursuant to subparagraph (d)(1):
 - (a) following denial of the lawyer's application for limited certificate of admission to practice law in this State;
 - (b) while the lawyer's application for limited certificate of admission to practice law in this State is suspended; or
 - (c) between the date that the lawyer's application for limited certificate of admission to practice law in this State expires and the date upon which the lawyer files an application to renew the limited certificate of admission to practice law in this State.

APPENDIX I

Amend Professional Conduct Rule 8.5 by deleting said rule and replacing it with the following:

Rule 8.5. Disciplinary Authority; Choice of Law; Application of Rules to Nonlawyer Representatives

(A) *Disciplinary Authority.* A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(B) *Choice of Law.* In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

(C) *Application of Rules to Nonlawyer Representatives.* Rules 1.2, 1.3, 1.4, 1.14, 1.15, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 4.2, 4.3, 4.4, 8.2(a), and 8.4 of the Rules of Professional Conduct shall apply to persons who, while not attorneys at law, are permitted to represent other persons before the courts of this State pursuant to RSA 311:1. The committee on professional conduct shall have jurisdiction to consider grievances alleging violations of these Rules of Professional Conduct by nonlawyer representatives.

APPENDIX J

Amend Supreme Court Rule 37(1)(b) by deleting said subparagraph and replacing it with the following:

(b) *Jurisdiction*: Any attorney admitted to practice law in this State, and any attorney specially admitted by a court of this State for a particular proceeding, and any attorney not admitted in this State who practices law or renders or offers to render any legal services in this State, and any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1, is subject to the disciplinary jurisdiction of this court and the attorney discipline system.

Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt. Suspension or disbarment of an individual subject to the attorney discipline system shall not terminate jurisdiction of this court.

APPENDIX K

Amend Superior Court Rule 19 by deleting said rule and replacing it with the following:

19. (a) An attorney, who is not a member of the Bar of this State, shall not be allowed to engage in the trial or hearing in any case, except on application to appear pro hac vice, which will not ordinarily be granted unless a member of the Bar of this State is associated with him or her and present at the trial or hearing.

(b) An attorney who is not a member of the Bar of this State seeking to appear pro hac vice shall file a verified application with the court, which shall contain the following information:

(1) the applicant's residence and business address;

(2) the name, address and phone number of each client sought to be represented;

(3) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;

(4) whether the applicant: (i) has been denied admission pro hac vice in this State; (ii) had admission pro hac vice revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this state. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;

(5) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(6) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and

the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application); and

(7) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this State within the preceding two years; the date of each application; and the outcome of the application.

(8) In addition, unless this requirement is waived by the superior court, the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at any trial or hearing.

(c) The court has discretion as to whether to grant applications for admission pro hac vice. An application ordinarily should be granted unless the court finds reason to believe that such admission:

(1) may be detrimental to the prompt, fair and efficient administration of justice;

(2) may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

APPENDIX L

Amend Supreme Court Rule 38 TERMINOLOGY by inserting the following two new definitions into the list of definitions alphabetically:

"Candidate." A candidate is a person seeking selection for judicial office by appointment, or a person who knows he or she is being considered for appointment to judicial office by an appointing authority.

.....

"Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

Amend Supreme Court Rule 38 Canon 5 by deleting said Canon and its accompanying commentary and replacing it with the following:

CANON 5

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge shall not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political

gatherings, or purchase tickets for political party dinners, or other functions.

(2) A judge shall resign from judicial office upon becoming a candidate either in a party primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or a moderator of any governmental unit, if the judge is otherwise permitted by law to do so.

(3) A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Judicial Candidates

(1) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to candidate; and

(b) shall not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or

(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or any other candidate or potential candidate.

Commentary:

Section 5B(1)(b) prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Sections 3B(9) and (10), the general rules on public comment by judges. Section 5B(1)(b) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions

charged with recommending judicial selection and executive officials and bodies charged with nominating or confirming appointment. See also Rule 8.2 of the N.H. Rules of Professional Conduct.

Amend Supreme Court Rule 38 Canon 1 by deleting the commentary that follows Canon 1 and by replacing it with the following:

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightness, and soundness of character. An independent judiciary is one free of inappropriate outside influence. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

Amend Supreme Court Rule 38 Canon 2A by deleting the commentary that follows Canon 2A and by replacing it with the following:

Commentary:

Public confidence in the judiciary is promoted by responsible and proper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Sections 3(B)(9) and (10) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code.

Actual improprieties under this standard include intentional violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in the mind of a reasonable, disinterested person fully informed of the facts a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

Amend Supreme Court Rule 38 Canon 3B by deleting paragraphs (9) through (11) and accompanying commentary, and by replacing them with the following paragraphs (9) through (12) and accompanying commentary:

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

Commentary:

Sections 3B(9) and (10) restrictions on judicial speech are essential to the maintenance of the integrity, impartiality, and independence of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section recognizes the appropriateness of public comment by judges of an informational and educational nature concerning the administration of justice, and to dispel public misconceptions and misinformation about the operation of the court system. Sections 3B(9) and (10) do not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official

capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the N.H. Rules of Professional Conduct.

(11) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary:

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(12) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

Amend Supreme Court Rule 38 Canon 3E(1) by adding a new subsection 3E(1)(e), so that Canon 3E(1) as amended would state as follows:

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary:

Under this rule, a judge should disqualify himself or herself whenever the judge's impartiality might reasonably be questioned by a disinterested person fully informed of the facts, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimus interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimus interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Commentary:

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

(e) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

APPENDIX M

Amend Superior Court Rule 78 by deleting said rule and replacing it with the following:

RULE 78. PHOTOGRAPHING, RECORDING AND BROADCASTING

(a) The presiding judge should permit the media to photograph, record and broadcast all courtroom proceedings that are open to the public. The presiding judge may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence. Except as specifically provided in this rule, or by order of the presiding judge, no person shall within the courtroom take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of any proceeding.

(b) Official court reporters and authorized recorders, are not prohibited by section (a) of this rule from making voice recordings for the sole purpose of discharging their official duties.

(c) *Proposed Limitations on Coverage by the Electronic Media.* Any party to a court proceeding – or any other interested person – shall notify the court at the inception of a matter, or as soon as practicable, if that person intends to ask the court to limit electronic media coverage of any proceeding that is open to the public. Failure to notify the court in a timely fashion may be sufficient grounds for the denial of such a request. In the event of such a request, the presiding judge shall either deny the request or issue an order notifying the parties to the proceeding and all other interested persons that such a limitation has been requested, establish deadlines for the filing of written objections by parties and interested persons, and order an evidentiary hearing during which all interested persons will be heard. The same procedure for notice and hearing shall be utilized in the event that the presiding judge *sua sponte* proposes a limitation on coverage by the electronic media. A copy of the court's order shall, in addition to being incorporated in the case docket, be sent to the Associated Press, which will disseminate the court's order to its members and inform them of upcoming deadlines/hearing.

(d) *Advance Notice of Requests for Coverage.* Any requests to bring cameras, broadcasting equipment and recording devices into a New Hampshire courtroom for coverage of any court proceedings shall be made as far in advance as practicable. If no objection to the requested electronic coverage is received by the court, coverage shall be permitted in compliance with this rule. If an objection is made, the media will be so advised and the court will conduct an evidentiary hearing during which all interested parties will be heard to determine whether, and to what extent, coverage by the

electronic media or still photography will be limited. This rule and procedures also apply to all court proceedings conducted outside the courtroom or the court facility.

(e) *Pool Coverage.* The presiding judge retains discretion to limit the number of still cameras and the amount of video equipment in the courtroom at one time and may require the media to arrange for pool coverage. The court will allow reasonable time prior to a proceeding for the media to set up pool coverage for television, radio and still photographers providing broadcast quality sound and video.

(1) It is the responsibility of the news media to contact the clerk of court in advance of a proceeding to determine if pool coverage will be required. If the presiding judge has determined that pool coverage will be required, it is the sole responsibility of the media, with assistance as needed from the court clerk, to determine which news outlet will serve as the “pool.” Disputes about pool coverage will not ordinarily be resolved by the court. Access may be curtailed if pool agreements cannot be reached.

(2) In the event of multiple requests for media coverage, because scheduling renders a pool agreement impractical, the court clerk retains the discretion to rotate media representatives into and out of the courtroom.

(f) *Live Feed.* Except for good cause shown, requests for live coverage should be made at least five (5) days in advance of a proceeding.

(g) *Exhibits.* For purposes of this rule, access to exhibits will be at the discretion of the presiding judge. The court retains the discretion to make one “media” copy of each exhibit available in the court clerk’s office.

(h) *Equipment.* Exact locations for all video and still cameras, and audio equipment within the courtroom will be determined by the presiding judge. Movement in the courtroom is prohibited, unless specifically approved by the presiding judge.

(1) Placement of microphones in the courtroom will be determined by the presiding judge. An effort should be made to facilitate broadcast quality sound. All microphones placed in the courtroom will be wireless.

(2) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash equipment and other supplemental lighting or sound equipment is prohibited unless otherwise approved by the presiding judge.

(i) *Restrictions.* Unless otherwise ordered by the presiding judge, the following standing orders shall govern:

- (1) No flash or other lighting devices will be used.
- (2) Set up and dismantling of equipment is prohibited when court is in session.
- (3) No camera movement during court session.
- (4) No cameras permitted behind the defense table.
- (5) Broadcast equipment will be positioned so that there will be no audio recording of conferences between attorney and client or among counsel and the presiding judge at the bench. Any such recording is prohibited.
- (6) During their term of jury service, jurors will not be photographed in connection with said service.
- (7) Photographers and videographers must remain a reasonable distance from parties, counsel tables, alleged victims, witnesses and families unless the trial participant voluntarily approaches the camera position.
- (8) All reporters and photographers will abide by the directions of the court officers at all times.
- (9) Broadcast or print interviews will not be permitted inside the courtroom before or after a proceeding.
- (10) Photographers, videographers and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings.
- (11) Appropriate dress is required.

Comment

As the New Hampshire Supreme Court stated in Petition of WMUR Channel 9, 148 N.H. 644 (2002), a presiding judge should permit the media to photograph, record and broadcast all courtroom proceedings that are open to the public. A judge may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence. Closure of proceedings to the electronic media, however, should occur only if four requirements are met: (1) closure advances an overriding interest that is likely to be prejudiced; (2) the closure ordered is no broader than necessary to protect that interest; (3) the judge considers reasonable

alternatives to closing the proceedings; and (4) the judge makes particularized findings to support the closure on the record.

It is the presiding judge's responsibility to ensure that trials are conducted in a fair and impartial manner, free from undue pressures and outside influences. Similarly, the presiding judge has a responsibility to the public and the press to provide reasonable access to judicial proceedings. Above all, trials must be conducted in an atmosphere of dignity and decorum.

In Petition of WMUR Channel 9, the New Hampshire Supreme Court held, among other things, that the presiding judge can limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequences. The Supreme Court required that trial court orders restricting coverage be: (1) based on clearly articulated findings of fact; (2) made after an evidentiary hearing during which all interested parties are entitled to be heard; (3) drawn narrowly to address a particular problem; and (4) imposed only when no other practical alternative is available.

APPENDIX N

Amend Supreme Court Rule 45 by deleting said rule and replacing it with the following:

RULE 45. CONTINUING JUDICIAL EDUCATION

(1) Continuing judicial training and education is essential to maintain public confidence in the judiciary and the highest level of professional standards.

Accordingly, at a minimum, the judges, masters, and clerks and registers of our respective courts and the Director of the Administrative Office of the Courts shall be required to attend continuing judicial education programs, subject to the availability of funds, as follows:

(a) Justices of the Supreme Court shall attend at least one Appellate Judges Seminar or similar program at least once a year.

(b) Justice(s) of the Superior Court shall attend the general jurisdiction program at the National Judicial College or a similar educational program as determined by the Chief Justice of the Superior Court within two years of their appointment and shall attend at least one in-state, regional, or national educational program approved by the Chief Justice of the Superior Court every year thereafter. All superior court clerks shall attend at least one in-state, regional, or national court-related educational program approved by the Chief Justice of the Superior Court each year. All marital masters shall attend at least one in-state, regional, or national educational program approved by the Chief Justice of the Superior Court each year. The Chief Justice of the Superior Court shall coordinate all educational activities within the Superior Court with the New Hampshire Supreme Court Office of General Counsel.

(c) Full-time probate judges shall attend a basic educational program at the National Judicial College or a similar educational program as determined by the Administrative Judge of the Probate Court within two years of their appointment. All probate judges shall attend at least one in-state, regional, or national educational program approved by the Administrative Judge of the Probate Court each year. All registers shall attend at least one in-state, regional, or national educational program approved by the Administrative Judge of the Probate Court each year. The Administrative Judge of the Probate Court shall coordinate all educational activities within the Probate Court with the New Hampshire Supreme Court Office of General Counsel.

(d) Full-time justices of the district courts shall attend a basic educational program at the National Judicial College or a similar educational program as determined by the Administrative Judge of the District Court within two years of their appointment, and all district court judges shall attend at least one in-state, regional, or national educational program approved by the Administrative Judge of the District Court each year. All district court clerks shall attend at least one in-state, regional, or national educational program approved by the Administrative Judge of the District Court each year. The Administrative Judge of the District Court shall coordinate all educational activities within the District Court with the New Hampshire Supreme Court Office of General Counsel.

(e) The Director of the Administrative Office of the Courts shall attend at least one in-state, regional, or national educational program approved by the Chief Justice of the Supreme Court each year.

(f) Exceptions to this rule for good cause shown may be approved by the Supreme Court.

APPENDIX O

Adopt on a permanent basis Supreme Court Rule 13, which was adopted on a temporary basis by supreme court order dated December 30, 2003, and which provides as follows:

RULE 13. THE RECORD

(1) The papers and exhibits filed and considered in the proceedings in the lower court or administrative agency from which the questions of law have been transferred, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court or administrative agency shall be the record in all cases entered in the supreme court.

(2) The moving party shall be responsible for ensuring that all or such portions of the record relevant and necessary for the court to decide the questions of law presented by the case are in fact provided to the supreme court. The supreme court may dismiss the case for failure to comply with this requirement.

(3) The supreme court will not ordinarily review any part of the record that has not been provided to it in an appendix or transmitted to it. See Rules 13(2), 17(1).

(4) If the moving party seeks to have papers or exhibits filed in the court or agency below transmitted to the supreme court for review, then on or before the date established by the supreme court for filing the opening brief, the moving party shall designate the papers and exhibits to be transferred in a letter to the clerk of the supreme court, with copies to the clerk of the court or agency below and all other parties.

If any other party seeks to have papers or exhibits filed in the court or agency below transmitted to the supreme court for review, then on or before the date established by the supreme court for filing the opposing brief, the party shall designate the papers and exhibits to be transferred in a letter to the clerk of the supreme court, with copies to the clerk of the court or agency below and all other parties.

(5) The clerk of the supreme court shall order the lower court or administrative agency to transmit the designated papers and exhibits to the supreme court. Neither the original nor a reproduction of the record nor any part of the record shall be transmitted to the supreme court by the lower court or administrative agency from which the questions of law have been transferred, unless a supreme court order, rule, or form expressly requires such a transmittal.

(6) In lieu of the record as defined in section (1) of this rule, the parties may prepare and sign an original and 12 copies of a statement of the case showing how the questions of law transferred arose and were decided, and setting forth only so many of the agreed facts as are essential to a decision of the questions presented.

(7) If more than one transfer of questions of law in a case is made to the supreme court, each moving party shall comply with the provisions of rule 14(1) and of this rule and a single record shall be transmitted.

Transition Period

The amendments to Supreme Court Rules 3, 5, 6, 7, 10, 13, 15, 16, 17, 18, 21, and 25 that take effect on January 1, 2004, shall apply to any case first docketed in the supreme court on or after January 1, 2004; that is, any case with a docket number of "2004-XXXX." Any case docketed in the supreme court prior to January 1, 2004, e.g., cases with docket numbers such as "2003-XXXX" or "2002-XXXX," shall not be governed by the aforesaid amendments.

APPENDIX P

Adopt on a permanent basis Supreme Court Rule 42(10)(c), which was adopted on a temporary basis by supreme court order dated December 30, 2003, and which provides as follows:

(c) For the purposes of Rule 42, the "active practice of law" shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located. For the purposes of Rule 42, an applicant's service as corporate counsel shall not constitute the unauthorized practice of law in New Hampshire provided that the applicant submits an affidavit certifying that:

(i) while serving as counsel, the applicant performed legal services solely for a corporation, association or other business entity, including its subsidiaries and affiliates;

(ii) while serving as counsel, the applicant received his or her entire compensation from said corporation, association or business entity; and

(iii) said corporation, association or business entity is not engaged in the practice of law or provision of legal services.

APPENDIX Q

Amend Probate Court Rule 169 by making substantive changes to paragraph (I), so that Rule 169 as amended shall state as follows:

Rule 169. Fees

(I) ENTRY FEES:

(a) Original Entry of any Equity Action	\$130.00
(b) Petition File and Record Authenticated Copy of Will, Foreign Wills; Petition Estate Administration; Petition Administration of Person Not Heard From; Petition Guardian, Foreign Guardian or Conservator (RSA 464-A)	\$105.00
(c) Petition Termination of Parental Rights; Petition Involuntary Admission; Petition Guardian Minor Estate and Person and Estate (RSA 463); Petition Guardian of Incompetent Veteran (RSA 465)	\$80.00
(d) Petition Adoption, includes one certificate (no entry fee when accompanied by a Petition for termination); Motion to Reopen (estate administration); Motion to Bring Forward	\$55.00
(e) Administration of Small Estates (Voluntary Administration); Petition Change of Name (includes one certificate); Petition Guardian Minor Person (RSA 463); Marriage Waiver (includes certificate/attested copy)	\$30.00
(f) Motion Prove Will in Common and/or Solemn Form (administration required); Motion to Re-examine Will	\$105.00
(g) Petition Appoint Trustee	\$80.00
(h) Motion successor Trustee, Administrator, Executor, or Guardian of Estate and Person and Estate (RSA 463) (RSA 464-A); All Fiduciary Accounts; Motion for Summary Administration	\$55.00
(i) Petition Change of Venue (includes authenticated copy fee); Motion Successor Guardian of Person (RSA 463)(RSA 464-A); Motion Sue on Bond; Motion Remove Fiduciary; Motion Fiduciary to	

Settle Account

\$30.00

(j) Pursuant to RSA 490:24, II, the sum of \$20.00 shall be added to the fees set forth in subsections (a), (b), (c), (d), and (e) above.

(II) ENTRY FEES INCLUDE:

Preparation and issuance of Orders of Notice, Notice, Copies of Decrees, mailing costs, certificate to discharge surety.

(III) ENTRY FEES DO NOT INCLUDE:

Notice by publication: This fee shall be paid by the Party or the Attorney for the Party from whom the notice is required. The cost of publication shall be determined by the Register of each county. The request may require that payment be made directly to the publisher of the notice.

In-hand service: If service by a law enforcement officer is required, the Party or the Attorney for the Party from whom the notice is required shall pay the cost of service to the appropriate county sheriff's department.

Additional copies: If additional copies of any document, or additional certificates are requested beyond those included in normal processing as indicated above, the Party or the Attorney for the Party requesting the additional copies shall pay the costs in advance as indicated under "Certificates & Copies."

(IV) OTHER:

Defaults (RSA 548:5-a)	\$25.00/each occurrence
Citations/show cause (RSA 548:5-a and 550:2)	\$50.00/each occurrence
Duplicate Audio Tape	\$25.00/each tape

(V) CERTIFICATES & COPIES:

Certificates	\$5.00
Certification	\$5.00 plus copy fee
Photocopy of Will	\$1.00/page
All other copied material	\$.50/page
Authenticated Copy of Probate	\$25.00/each

"Certificates & Copies" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

APPENDIX R

Adopt on a permanent basis the Family Division Pilot Program Rule regarding Adoption, Termination of Parental Rights, and Guardianships of Minors, which was adopted on a temporary basis by supreme court order dated April 21, 2004, and which provides as follows:

ADOPTION, TERMINATION OF PARENTAL RIGHTS, AND GUARDIANSHIPS OVER MINORS

Probate Court Rules applicable to adoptions, termination of parental rights, and guardianships over minors cases shall be deemed the rules of the family division and are incorporated herein by reference, with the exception that the additional filing fee of \$5.00 for each of these cases adopted pursuant to RSA 490:27, effective July 14, 2002, for probate court mediation shall not apply until such time as RSA 490:27 is amended.

APPENDIX S

Adopt on a permanent basis Supreme Court Rule 42(10)(a)(iv), which was adopted on a temporary basis by supreme court order dated February 10, 2004, and which provides as follows:

(iv) Have either:

(A) taken and passed the bar examination in another state, territory, or the District of Columbia that allows admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule, provided that the applicant is currently a member in good standing of said jurisdiction and authorized to practice law therein; or

(B) been primarily engaged in the active practice of law, for five of the seven years immediately preceding the date upon which the motion is filed, in states, territories, or the District of Columbia that allow admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule, provided that the applicant was a member in good standing of said jurisdictions and authorized to practice law therein throughout the aforesaid five-year period and is currently a member in good standing of said jurisdictions and authorized to practice law therein;

APPENDIX T

Amend Supreme Court Rule 49(D) by deleting said section and replacing it with the following:

(D) Bar Examination Fees

(1) Bar Examination Fee	\$175.00
(2) Late Filing Fee -- <u>see</u> Supreme Court Rule 42(5)(e)(ii)	\$150.00

APPENDIX U

Amend Supreme Court Rule 50-A(2) by deleting said subsection and replacing it with the following:

(2) An attorney who fails to comply with the requirements of Rule 50 with respect to the maintenance, availability, and preservation of accounts and records, who fails to file the required annual Certificate of Compliance, or the annual Authorization to Financial Institutions or a Notice of Declination, or who fails to produce trust account records as required shall be deemed to be in violation of Rule 1.15 of the Rules of Professional Conduct and the applicable Supreme Court Rule. Unless upon petition to the Supreme Court an extension has been granted, failure to file the required annual Certificate of Compliance by August 1st shall, in addition, subject the attorney to one or more of the following penalties and procedures:

A. A fine of \$100 for each month or fraction thereof after August 1st in which the Certificate of Compliance remains unfiled;

B. Audit of the attorney's trust accounts and other financial records at the expense of the attorney, if the certificate remains unfiled on December 1st; and

C. Based upon results of the audit, initiation of proceedings for further sanctions, including suspension.

Any check, draft or money order received as payment of any fine imposed pursuant to this rule, which is returned to the court as uncollectable, shall be returned to the sender and shall not constitute payment of the fine. Whenever any check, draft or money order issued in payment of any fine imposed pursuant to this rule is returned to the court as uncollectable, the court shall charge a fee of \$25, plus all protest and bank fees, in addition to the amount of the check, draft or money order to the person presenting the check, draft or money order to cover the costs of collection. The fine shall not be considered paid until the fine plus all fees have been paid.

APPENDIX V

Adopt on a permanent basis Probate Court Rule 91, which was adopted on a temporary basis by supreme court order dated April 21, 2004, and which provides as follows:

Rule 91. Adoption Of Foreign-Born Child

A. Unless the Court orders otherwise, for purposes of RSA 170-B:6, VI, any one of the following documents, which indicate that the child is a foreign adoptee (IR-3 status) or the subject of a foreign guardianship awarded for the purpose of the child's adoption in the United States (IR-4 status), will be accepted by the Court as evidence that the parental rights of the parents of the proposed adoptee have been voluntarily or involuntarily terminated by the proper authorities in a foreign country:

1. An attested or certified copy of the adoptee's Certificate of Citizenship issued by the U.S. Citizenship and Immigration Services.

2. An attested or certified copy of the proposed adoptee's alien registration card indicating either IR-3 or IR-4 status.

3. An attested or certified copy of the proposed adoptee's passport issued in his/her country of birth, with the U.S. Visa stamp affixed indicating either IR-3 or IR-4 status.

B. Unless the Court orders otherwise, for purposes of RSA 170-B:22, II, any of the documents specified in section A above, except those bearing an IR-4 status, are acceptable documentation and satisfactory evidence to establish the validity of a foreign adoption.

C. The attestation or certification of the copies deemed acceptable under the preceding sections shall be by a notary public commissioned under the laws of the jurisdiction where the act occurs and shall be substantially in the following form:

"A true copy attest

Notary Public
My Commission Expires: _____
Affix Notarial Seal Here"

or, alternatively,

"I hereby certify that I have personally examined and compared this copy against the original instrument and find this copy to be a true copy of the original in every respect save this certification.

Notary Public
My Commission Expires: _____
Affix Notarial Seal Here"

APPENDIX W

Amend Superior Court Rule 169(III) by adding a new subparagraph (L), so that said paragraph (III) as amended shall state:

(III) (A) Original Entries:

(1) Original Entry of any Action at Law or Equity except a petition for writ of habeas corpus; Original Entry of all Marital Matters, including Order of Notice and Guardian ad Litem Fee; Transfer; the filing of a foreign judgment pursuant to RSA 524-A; or any Special Writ	\$ 125.00
(2) Original Entry of a petition for writ of habeas corpus	\$ 0 (no fee)
(B) Small Claim Transfer Fee	\$ 90.00
(C) Motion to Bring Forward (post judgment)	\$ 50.00
(D) Petition to Annul Criminal Record	\$ 50.00
(E) Wage Claim Decision	\$ 25.00
(F) Marriage Waiver	\$ 25.00
(G) Motion for Periodic Payments	\$ 15.00
(H) Original Writ (form)	\$ 1.00
(I) Divorce Certificate (VSR) only Divorce Certificate, Certified Copy of Decree and if applicable, Stipulation, QDRO, USO, and other Decree-related Documents	\$ 15.00
(J) Certificates and Certified Copies	\$ 5.00
(K) All Copied Material	\$.50/page
(L) Criminal docket records research fee, per individual name	\$ 10.00

APPENDIX X

Amend District and Municipal Court Rule 3.3 by amending the subsection entitled "**General and Miscellaneous**" so that said subsection as amended shall state as follows:

General and Miscellaneous

Motion for Periodic Payments	\$ 15.00
Petition to annul criminal record	\$ 50.00
Criminal docket records research fee, per individual name	\$ 10.00
Original writ	\$ 1.00 each

APPENDIX Y

Amend Superior Court Rule 54(4) by deleting said paragraph and replacing it with the following:

(4) An administrative council is established to facilitate communications among the various courts and the administrative office of the courts. Membership on the council shall include each administrative judge and the director of the administrative office of the courts. The chief justice of the supreme court shall designate an associate justice to serve as liaison between the supreme court and the administrative council. The administrative council shall meet regularly maintaining a flexible agenda, providing the opportunity to exchange views, measure progress, resolve conflicts, receive recommendations from the policy formulation committees and make recommendations to the supreme court. The administrative council shall keep the supreme court apprised of matters being considered by the council and shall meet periodically with the supreme court to enhance the effective and efficient administration of the judicial branch.