

ADVISORY COMMITTEE ON RULES
March 22, 2006

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

The meeting was called to order at 12:22 p.m.

The following Committee members were present:

Hon. Linda S. Dalianis
William F.J. Ardinger, Esquire
Mr. Robert Chase
Hon. R. Laurence Cullen
Alice Guay
Hon. Richard Hampe
Mr. Robert G. Lown
Jennifer L. Parent, 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.

The Supreme Court justices joined the Committee for lunch. Chief Justice Broderick spoke to members about two items on the Committee's agenda: the report of the Public Access Committee and the proposed rules pertaining to the Lawyers Assistance Program.

Following lunch, the Committee turned the discussion to the minutes of the December 7, 2005 meeting. On motion of Judge Hampe, seconded by Judge Cullen, the Committee approved the minutes of the December 7, 2005 meeting.

With respect to action taken by the Supreme Court since the Committee's last meeting, David Peck reported that the Supreme Court has approved or will approve over the next couple of weeks most of the rule changes recommended by the

Committee, with the exception of the rule on the unbundling of legal services, where it limited the rule's application to civil cases.

Relative to Rules of Civil Procedure, in Attorney Honigberg's absence, Justice Dalianis reported that she attended a meeting of the Committee on Cooperation with the Courts at which they discussed the Rules of Civil Procedure. She reported that while a global review of the rules has stalled, the Committee on Cooperation is considering a lesser proposal for modifying the Rules of Civil Procedure, which will be distributed to this Committee prior to its next meeting.

Relative to comments to the Professional Conduct Rules, following a brief discussion, the Committee appointed Attorney Jennifer Parent as its liaison to the Bar Association's Ethics Committee.

Relative to Superior Court Rules 35 and 62 pertaining to proportional discovery, following discussion and on motion of Judge Mangones, seconded by Mrs. Guay, the Committee voted to send Superior Court Rules 35(b)(1), 35(g) and 62, as contained in Appendices A and B of these minutes, to the Committee's next public hearing.

Relative to joinder and severance rules for criminal cases, Judge Mangones reported that a proposed amendment will be reviewed by the subcommittee during its April meeting, and will then be distributed to this Committee prior to its next meeting.

The Committee next considered new items and the following action was taken:

Relative to rules on the Committee's December 2005 public hearing agenda, the Committee considered comments received after the public hearing from Mr. Thomas Edwards pertaining to Superior Court Rule 97-A and from Ms. Penny Dean

and Representative Jordan Ulery pertaining to District Court Rule 3.3(III). Following discussion, Judge Cullen agreed to contact Mr. Edwards about his concerns with Superior Court Rule 97-A and to report back to the Committee at its June meeting. In addition, the Committee agreed to make no further changes to District Court Rule 3.3(III).

Relative to amendments to Rules of Professional Conduct Rule 6.1 pertaining to voluntary pro bono services, the Committee agreed that this rule should be considered together with the recommendations from the Bar's Ethics Committee.

Relative to amendments to Superior Court Rules 94, 96-A and 98 pertaining to deadlines for filing motions to suppress in criminal cases, following discussion and on motion of Attorney Taylor, seconded by Judge Mangones, the Committee asked Judge Mangones to bring his concerns to the attention of Chief Justice Lynn and the other superior court judges. If they agree that a conflict exists in the rules, Judge Mangones will draft proposed rules changes for the Committee's next public hearing.

Relative to amendments to District Court Rule 2.17 pertaining to certain juvenile conditions of release, following discussion and on motion of Judge Cullen, seconded by Mrs. Guay, the Committee voted to send the amendments to District Court Rule 2.17, as contained in Appendix C of these minutes, to the Committee's next public hearing.

Relative to system-wide guardian ad litem guidelines, following discussion and on motion of Attorney Taylor, seconded by Judge Hampe, the Committee voted to send the system-wide guardian ad litem guidelines to the Committee's next public hearing to see if they should be repealed.

Relative to amendments to Supreme Court Rule 38, Canon 4(H) and (I) pertaining to compensation, reimbursement and reporting of extra-judicial activities which were adopted by the Supreme Court on a temporary basis, following discussion and on motion of Judge Hampe, seconded by Judge Cullen, the Committee voted to send the proposed amendments to Supreme Court Rule 38, Canons 4(H) and (I), contained in Appendix D of these minutes, to the Committee's next public hearing to see whether they should be adopted on a permanent basis.

Relative to amendments to Supreme Court Rule 39 pertaining to the Judicial Conduct Committee, following discussion of the Judicial Conduct Committee's suggested rule changes and on motion of Mr. Lown, seconded by Judge Hampe, the Committee voted to recommend to the Supreme Court that Supreme Court Rule 39(5)(d), (e) and (f) be amended, as suggested by the Judicial Conduct Committee and contained in Appendix E of these minutes, and that they be considered as a technical amendment. Mr. Chase acted as Chair during the discussion and vote and Justice Dalianis did not participate.

Relative to amendments to District Court Rule 2.7 and Superior Court Rule 104 pertaining to fine collection protocol, following discussion and on motion of Judge Cullen, seconded by Attorney Ardinger, the Committee voted to recommend that the proposed amendments to District Court Rule 2.7 and Superior Court Rule 104, contained in Appendices F and G of these minutes, be sent to the Committee's next public hearing. David Peck will inform Attorneys Larsen and Guerriero of the status of these items.

Relative to amendments to Supreme Court Rule 42 pertaining to the Daniel Webster Honors Program, following discussion and on motion of Judge Hampe,

seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that the proposed amendments to Supreme Court Rule 42(13), as contained in Appendix H of these minutes, be adopted and that they be considered as a technical amendment.

Relative to amendments to Superior Court Administrative Rules pertaining to stenographers, following discussion and on motion of Attorney Taylor, seconded by Judge Mangones, the Committee voted to send the proposal that Superior Court Administrative Rules 1-1, 1-2, 3-2 through 3-16 be repealed and that Superior Court Administrative Rules 3-1 be amended, as contained in Appendix I of these minutes, to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 42 pertaining to foreign law school graduates, following a brief discussion, and on motion of Judge Hampe, seconded by Attorney Taylor, the Committee voted to send the proposed amendments to Supreme Court Rules 42(4), 42(10)(a)(ii) and 42(12)(c), as contained in Appendix J of these minutes, to the Committee's next public hearing.

Relative to pro hac vice rules, following a brief discussion and on motion duly made and seconded, the Committee formed a subcommittee to review the Judicial Branch's pro hac vice rules and to report back to the Committee at a later date. The subcommittee members are: William Ardinger, Esquire, Chair, Judge Laurence Cullen, and Judge Philip Mangones.

Relative to an amendment to Supreme Court Rule 21 pertaining to automatic extension of time, which is being considered by the Supreme Court for adoption on a temporary basis, following a brief discussion and on motion of Judge Hampe, seconded by Attorney Taylor, the Committee voted to send Supreme Court Rule 21(6-

A), as contained in Appendix K of these minutes, to the Committee's December 2006 public hearing to allow adequate time for the rule to be in effect, if it is adopted on a temporary basis, before being considered for adoption on a permanent basis.

Relative to the Report of the Committee on Public Access to Court Records, Justice Dalianis reported that Chief Justice Broderick requested each administrative judge circulate the report to all clerks, staff and judges along with the Felmy Report and the Citizens Commission Report to be released later this Spring, and provide any comments and suggestions they receive to the Supreme Court at its June retreat. She stated that there would be no proposed rule changes for the Committee's consideration until the review process suggested by Judge Broderick had been completed. The Committee agreed to defer action on this item until a later date.

Relative to proposed new Supreme Court Rule 57 adopting a lawyers assistance program and to amendments to Supreme Court Rule 37 and Professional Conduct Rules 1.6 and 8.3 pertaining to said program, during discussion the Committee invited Attorney Louise Thomas to give a presentation at the Committee's next meeting. The Committee will convene at 11:00 a.m. on June 21, 2006 for that purpose. Following discussion, and on motion of Justice Dalianis, seconded by Judge Hampe, the Committee voted to send Supreme Court Rules 37(1)(e), 37(20)(j) and 57, and Professional Conduct Rules 1.6 and 8.3(c) as contained in Appendices L - O of these minutes, to its June public hearing.

The Committee briefly discussed a letter Justice Dalianis received from Attorney Douglas Chamberlain concerning Supreme Court Rule 53. Justice Dalianis requested that David Peck obtain additional information and then include the item on the Supreme Court's next clerk's agenda for its consideration.

No further business to come before the meeting, the Committee adjourned at
2:15 p.m.

APPENDIX A

Amend Superior Court Rule 35(b)(1) and adopt new subsection 35(g) as follows
(proposed new material is in **[bold and in brackets]**):

[Rule 35(b)(1)]

b. Scope of Discovery. Unless otherwise limited by order of the Court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

[When a party withholds materials or information otherwise discoverable under this rule by claiming that the same is privileged, the party shall promptly and expressly notify the opposing party of the privilege claim and, without revealing the contents or substance of the materials or information at issue, shall describe its general character with sufficient specificity as to enable other parties to assess the applicability of the privilege claim. Failure to comply with this requirement shall be deemed a waiver of any and all privileges.]

[Rule 35(g)]

[g. Discovery abuse; sanctions.

(1) The court may impose appropriate sanctions against a party or counsel for engaging in discovery abuse. Upon a finding that discovery abuse has occurred, the court should normally impose sanctions unless the offending party or counsel can demonstrate substantial justification for the conduct at issue or other circumstances that would make the imposition of sanctions unfair. Discovery abuse includes, but is not limited to, the following:

(a) employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or undue burden or expense;

(b) employing discovery methods otherwise available which result in legal expense disproportionate to the matters at issue;

(c) making, without substantial good faith justification, an unmeritorious objection to discovery;

(d) responding to discovery in a manner which the responding party knew or should have known was misleading or evasive;

(e) producing documents or other materials in a disorganized manner or in a manner other than the form in which they are regularly kept;

(f) failing to confer with an opposing party or attorney in a good faith effort to resolve informally a dispute concerning discovery.

(2) The sanctions which may be imposed for discovery abuse include, but are not limited to, the following:

(a) a monetary sanction in an amount equal to the unnecessary expenses incurred, including reasonable attorney's fees, as the result of the abusive conduct;

(b) an issue sanction that orders that designated facts be taken as established by the party who has been adversely affected by the abuse;

(c) an evidence sanction that prohibits the offending party from introducing certain matters into evidence;

(d) a terminating sanction that strikes all or part of the claims or defenses, enters full or partial judgment in favor of the plaintiff or defendant, or stays the proceeding until ordered discovery has been provided.]

APPENDIX B

Amend Superior Court Rule 62 by deleting said rule in its entirety and replacing it with the following:

62. (A) **Initial Structuring Conference**

The Clerk shall schedule a Structuring Conference for each case entered on the civil and equity dockets unless otherwise ordered by the court. The Structuring Conference shall be held within forty-five (45) days after the return date or at such other time as the court may order.

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

No later than twenty days prior to the Structuring Conference counsel for all parties, or parties if unrepresented, shall either meet and confer personally or by telephone to discuss the claims, defenses and counterclaims and to attempt to reach agreement on the following matters: (1) a proposed date for trial and an estimate of the length of the trial; (2) an election to proceed either under standard discovery or fast track discovery; (3) a discovery schedule, including dates for the disclosure of each party's experts and experts' reports, and deadlines for the filing of pretrial motions of various kinds; (4) the scope of discovery, including particularly with respect to information stored electronically or in any other medium, the extent to which such information is reasonably accessible, the likely costs of obtaining access to such information and who shall bear said costs, the form in which such information is to be produced, the need for and the extent of any holds or other mechanisms that have been or should be put in place to prevent the destruction of such information, and the manner in which the parties propose to guard against the waiver of privilege claims with respect to such information; and (5) a proposed date by which the parties will be ready for Alternative Dispute Resolution (ADR), the form of ADR to be used, and an estimate of the time required for ADR.

Ten days prior to the Structuring Conference the parties shall file a comprehensive written stipulation, signed by all counsel, or by parties if unrepresented, addressing all of the foregoing matters on which agreement was reached. If the parties have been unable to reach agreement on one or more issues, each party shall submit a proposed order on those matters as to which agreement has not been reached. At the same time, all parties shall file summary statements necessary to support their respective claims, defenses or counterclaims. This summary statement shall be

comprehensive and made in good faith, but shall not be admissible at trial. The purpose of the summary statement is to appraise the court of the nature of the claims, defenses, and legal issues likely to arise.

At the initial structuring conference, after consultation with counsel, or with parties if unrepresented, the court shall order that the case proceed under one of the following discovery options: (1) fast track; or (2) standard. In determining which discovery option shall be employed, the Court shall consider the following:

- (a) the likely amounts in dispute;
- (b) the nature and complexity of the issues presented;
- (c) the resource equality of the parties; and
- (d) the importance to a just adjudication of permitting discovery beyond that generally permitted under the fast track option.

Cases selected for standard discovery shall be governed by the Superior Court Rules other than Rule 62(B) below. Cases selected for fast track discovery shall be governed by the Superior Court Rules including Rule 62(B).

At or immediately after the initial structuring conference the court shall, and with the approval of the presiding justice the clerk may, issue a STRUCTURING CONFERENCE ORDER. Said order may approve the stipulation(s) reached by the parties, may adopt the proposals made by one or more of the parties, or may establish such other trial and pretrial dates and schedules as the court deems appropriate.

(B) Fast Track Discovery

In those cases selected for fast track discovery, the parties shall file disclosure statements with the court within ninety (90) days of the date of such selection. The disclosure statements shall contain the following:

- (a) the factual bases of the claim or defense;

(b) the legal theories upon which the claim or defense is based;

(c) identification of witnesses and other persons known to have information relevant to the action and a brief summary of their expected testimony or information;

(d) copies of any written or recorded statements made by those persons listed in response to subparagraph (c) above;

(e) the names and addresses of experts, which shall be limited to one expert per side, together with the disclosures required by RSA 516:29-b;

(f) a list of all exhibits intended to be used at trial; and

(g) a list of all documents and things known by a party to exist and which the party believes may be relevant to the case, whether or not such documents or things are in the party's possession or are intended to be offered in evidence at trial.

Interrogatories shall be limited to thirty (30) per side and each sub-part of an interrogatory shall be counted as an interrogatory.

Requests for admissions shall be limited to twenty-five (25) per side.

Requests for production of documents shall be limited to ten (10) per side.

Depositions shall be limited to the parties and their experts and no such deposition shall exceed four (4) hours.

The court may vary the requirements governing fast track discovery for good cause shown.

(C) Pretrial Statements

If a pretrial statement is ordered it shall include, by numbered paragraphs, a detailed, comprehensive, and good faith statement, setting forth, if applicable:

1. Uncontested issues of fact.
2. Contested issues of fact.
3. Applicable law.
4. Disputed issues of law.

5. Specific claims of liability by the party making the claim.
6. Defendant's specific defenses.
7. Itemized special damages.
8. Specification of injuries with a statement as to which, if any, are claimed to be permanent.
9. The status of settlement negotiations.
10. A list of all exhibits to be offered in the direct case of each party. The parties, or their counsel, shall bring exhibits, or exact copies of them, to the clerk's office on the day of the trial management conference for examination by opposing parties or their counsel.
11. A list of all depositions to be read into evidence.
12. A waiver of claims or defenses, if any.
13. A list of the names and addresses of all witnesses who may be called.
14. Whether there will be a request for a view and, if so, who shall pay the cost in the first instance.
15. The names and addresses of the trial attorneys.

Except for good cause shown, only witnesses listed in the pretrial statement will be allowed to testify and only exhibits, so listed, will be received in evidence.

(D) Trial Management Conference

In every case scheduled for trial the clerk shall schedule a trial management conference at which counsel shall have their clients present or available for contact by telephone and shall be prepared to discuss and effectuate settlement and, if necessary, conduct of the trial.

In jury cases requests for instructions shall be submitted in writing at the trial management conference provided such requests pertain to unusual or complex questions of law and are not the ordinary and usual instructions given

by the court. Such requests shall include an extra copy for the court. Requests shall not be submitted after the commencement of the trial except for good cause shown.

In non-jury cases, unless otherwise ordered for good cause shown, all requests for findings of fact and rulings of law shall be submitted in writing to the presiding justice at trial no later than the close of the evidence.

Failure to comply with this rule shall constitute grounds for sanctions, including entry of nonsuit, default or such other order as justice may require.

APPENDIX C

Amend District Court Rule 2.17 by adopting a new section D., which shall state as follows:

D. In juvenile cases, the Court may place a juvenile on conditional release under the supervision of a Juvenile Probation and Parole Officer (JPPO). The terms and conditions of release, unless otherwise prescribed by the Court, shall be as follows:

- (a) You shall comply with all orders of the Court.
- (b) You shall be of good behavior and remain arrest free, obey all laws and cooperate with your parent(s) or custodian at all times.
- (c) You shall, if under 16 years of age, attend school full-time and follow all school rules.
- (d) You shall, if 16 years of age or older, either be lawfully employed or actively engaged in an employment plan approved by your JPPO or attend school full-time and follow all school rules. If attending school only part-time, you shall also be lawfully employed or actively engaged in an employment plan approved by your JPPO.
- (e) You shall not consume or possess alcoholic beverages or controlled drugs or any substance or thing determined to be contraband by your JPPO.
- (f) You shall submit to random drug testing as ordered by the Court.
- (g) You shall attend, and meaningfully participate in, all treatment and counseling as ordered by the Court.
- (h) You shall not possess, transport, control or receive any weapon, explosive device, or firearm.
- (i) You shall report to your JPPO at such times and places as directed by your JPPO.
- (j) You shall immediately notify your JPPO of any arrest, summons, or questioning by a law enforcement officer.
- (k) You shall report any change of address, telephone number, school status, or employment to your JPPO within 24 hours.

(l) You shall submit to reasonable searches as requested by your JPPO of your person, property, possessions, vehicle(s), school locker(s), bags, containers, or any other items under your custody, care, or control.

(m) You shall submit to visits by your JPPO to your residence and to examinations and searches of your room in the enforcement of your conditions of release.

(n) You shall regularly report your earnings to your JPPO and be in compliance with your specified budget as approved by your JPPO.

(o) You shall not associate with any person or be at any place in violation of Court orders or the directives of your JPPO.

(p) You shall not leave the State of New Hampshire for longer than 24 hours without advance written permission from your parent(s) or guardian or those having legal custody of you. You shall provide your JPPO with said written permission within 24 hours of receipt of said written permission.

(q) You shall also obtain a Travel Permit when required by the Interstate Compact on Juveniles and AJCA Rules regarding out-of-state travel.

(r) You shall agree to return to the State of New Hampshire from any State in the United States or any other place voluntarily and without formality as directed by the Court or your JPPO.

(s) You shall comply with designated curfew provisions.

(t) The Court may impose all or part of the above conditions as well as other terms and conditions.

APPENDIX D

Adopt on a permanent basis amendments to Supreme Court Rule 38, Canon 4 (H) and (I), which were adopted on a temporary basis by supreme court order dated January 17, 2006, as follows:

H. Compensation, Reimbursement and Reporting

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) Public Reports.

(a) For each calendar year up to and including calendar year 2006, a judge shall report on or before April 15 of each year, with respect to the preceding calendar year, whether or not the judge has received any compensation other than judicial salary, and, if so, the nature of the activity for which the compensation was received, the name of the payor and the amount of the compensation so received. The report shall be filed as a public document in the office of the clerk of the New Hampshire Supreme Court.

(b) For calendar year 2007 and each calendar year thereafter, a judge shall file a fully-completed New Hampshire Judicial Branch Financial Disclosure Statement on or before April 15 of each year, with respect to the preceding calendar year. The New Hampshire Judicial Branch Financial Disclosure Statement shall be filed as a public document in the office of the clerk of the New Hampshire Supreme Court.

The form of the New Hampshire Judicial Branch Financial Disclosure Statement shall be approved, by order, by the New Hampshire Supreme

Court, and shall require, at a minimum, that a judge report whether or not the judge has received any compensation other than judicial salary, and, if so, the nature of the activity for which the compensation was received, the name of the payor and the amount of the compensation so received. Blank forms may be obtained by request from the clerk of the New Hampshire Supreme Court, and shall also be available on the New Hampshire Judicial Branch website.

Commentary:

See Section 4D(5) regarding reporting of gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

Financial disclosure forms, as public documents, should be filed and publicly available in a central location.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.

Commentary:

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law and by these Canons are required to safeguard the proper performance of the judge's duties and to avoid the appearance of impropriety.

APPENDIX E

Amend Supreme Court Rule 39(5)(d), (e) and (f) by deleting said subsections and replacing them with the following:

(d) The committee may employ counsel. The duties of counsel shall be determined by the committee.

(e) The committee may employ such private investigators, experts and other personnel as the committee in its discretion deems necessary for the efficient discharge of its duties.

(f) The committee shall select its own office space, which should not be in the facilities of any branch of government.

Amend District Court Rule 2.7 as follows (proposed new material is in **[bold and in brackets]**; proposed deleted material is in ~~strikethrough~~ format):

Rule 2.7. ~~Postponements for payment of fine~~ [Payment of Fines]

~~The Court may defer payment of a fine or may order periodic payment thereof; but due regard in all cases shall be given to the prompt settlement of fines. In all convictions where a return is required, the return shall be filed with the Motor Vehicle Division forthwith, and an amended return filed when the fine is paid.~~

[(A) In all cases, fines imposed by the Court shall be due and payable on the date imposed. In those cases where a defendant indicates an inability to pay forthwith, the defendant shall be required to complete an affidavit of resources, under oath, prior to leaving the courthouse. The affidavit shall be in the form set forth in Appendix _____. The Court may consider such factors as the defendant's employment, good faith attempts to seek employment, spousal, family and partner income, savings, property ownership, credit lines and expenses including child support.]

(B) In any case where the Court finds the criminal defendant indigent, the Court may defer payment of the fine or order periodic payment. Eligibility for appointed counsel shall not be conclusive on the issue of indigency for purposes of fine payment orders.

(C) In any case where a defendant is found to be indigent or otherwise proves an inability to pay a fine, the Court may allow the defendant to perform community service, pursuant to a plan submitted to and approved by the Court. Every hour of verified community service shall be applied against the fine at the rate of \$10.00 an hour.

(D) Conduct which amounts to willful failure to pay any fine or perform community service as ordered, may be punishable as contempt of court or through the provisions of RSA 618:9.]

APPENDIX G

Amend Superior Court Rule 104 as follows (proposed new material is in **bold and in brackets**]; proposed deleted material is in ~~strikethrough~~ format):

~~COUNSEL FEES—INDIGENT RESPONDENTS~~

[PAYMENT OF FINES]

~~104. Repealed, effective June 1, 1982.~~

[104. Payment of Fines.

(A) In all cases, fines imposed by the Court shall be due and payable on the date imposed. In those cases where a defendant indicates an inability to pay forthwith, the defendant shall be required to complete an affidavit of resources, under oath, prior to leaving the courthouse. The affidavit shall be in the form set forth in Appendix _____. The Court may consider such factors as the defendant's employment, good faith attempts to seek employment, spousal, family and partner income, savings, property ownership, credit lines and expenses including child support.

(B) In any case where the Court finds the criminal defendant indigent, the Court may defer payment of the fine or order periodic payment. Eligibility for appointed counsel shall not be conclusive on the issue of indigency for purposes of fine payment orders.

(C) In any case where a defendant is found to be indigent or otherwise proves an inability to pay a fine, the Court may allow the defendant to perform community service, pursuant to a plan submitted to and approved by the Court. Every hour of verified community service shall be applied against the fine at the rate of \$10.00 an hour.

(D) Conduct which amounts to willful failure to pay any fine or perform community service as ordered, may be punishable as contempt of court or through the provisions of RSA 618:9.]

APPENDIX H

Amend Supreme Court Rule 42(13) by deleting said subsection and replacing it with the following:

(13) An applicant who is domiciled in the United States, is of the age of 18 years, and meets the following requirements may, upon motion, be admitted to the practice of law after taking and passing a variant of the New Hampshire bar examination to consist of rigorous, repeated and comprehensive evaluation of legal skills and abilities, the criteria for which will be established by the supreme court, and which will amount to more than the twelve hours of testing required for the conventional bar examination. The applicant shall:

(a) Have, ~~within the year immediately preceding~~ **[prior to admission, and within one year of]** the date upon which the motion is filed, successfully completed, to the satisfaction of the board of bar examiners, the **[Daniel]** Webster Scholar **[Honors]** Program offered at the Franklin Pierce Law Center in Concord, New Hampshire, and ~~be~~ **[been]** certified by the board of bar examiners as satisfying this requirement;

[(b) Prior to admission, produce evidence that the Multistate Professional Responsibility Examination has been satisfactorily completed;]

~~(b)~~ **[(c)]** Establish that the applicant is currently a member in good standing in all jurisdictions where admitted, if any;

~~(c)~~ **[(d)]** Establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;

~~(d)~~ **[(e)]** Establish that the applicant possesses the character and fitness to practice law in New Hampshire; and

~~(e)~~ **[(f)]** Designate the clerk of the supreme court for service of process.

APPENDIX I

Repeal Superior Court Administrative Rules 1-1, 1-2, and 3-2 through 3-16 in their entirety.

Amend Superior Court Administrative Rule 3-1 by deleting said rule in its entirety and replacing it with the following:

Stenographers' Notes

3-1. Stenographers' Notes.

(a) Ownership. Any and all stenographers' notes and transcripts of the same shall be the sole property of the Superior Court. This rule does not infringe upon the rights of stenographers to be paid for transcripts they produce.

(b) Preservation of Records.

(1) Civil and Equity Cases. All stenographic notes in civil and equity cases may be destroyed six years following the date the notes were recorded.

(2) Criminal Cases. All stenographic notes in criminal cases may be destroyed ten years following the date the notes were recorded.

(3) Subsections (1) and (2) notwithstanding, stenographic notes in any civil, equity or criminal case may be destroyed three years after a complete transcription of the notes has been made and filed.

APPENDIX J

Amend Supreme Court Rule 42(4), 42(10)(a)(ii), and 42(12)(c) as follows

(proposed new material is in **[bold and in brackets]**; proposed deleted material is in ~~strikethrough~~ format):

[Rule 42(4)]

(4)(a) Every such applicant must furnish satisfactory proof that before beginning the study of law the applicant successfully completed at least three (3) years of work required for a bachelor's degree in an accredited college.

(b) Every such applicant must have graduated from a law school approved by the American Bar Association having a three (3) year course and requiring students to devote substantially all their working time to study, called a full-time law school, or from a law school approved by the American Bar Association having a course of not less than four (4) school years equivalent in the number of working hours to a three (3) year course in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school. ~~Notwithstanding the foregoing sentence, a person who has graduated from a law school in an English speaking, common law country and who has pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association shall be eligible to apply for examination provided that such person is (a) a member in good standing of the bar of that country, or (b) the holder of a master's degree from a law school approved by the American Bar Association or (c) a member of the bar of one of the States of the United States who was admitted after examination and is in good standing.~~ A combination of study in full-time and part-time law schools will be accepted only if such law schools meet the above requirements, and the applicant shall have graduated from one or the other. Study in any law school which conducts its courses by correspondence or does not require attendance of its students at its lectures or classes shall not constitute compliance with the rule.

[(c) Notwithstanding the foregoing paragraph, a person who has graduated from a law school in an English-speaking, common law country and who has pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association shall be eligible to apply for examination provided that such person is (a) a member in good standing of the bar of that country, or (b) the holder of a master's degree from a law school approved by the American Bar Association or (c) a member of the bar of one of the States of the United States who was admitted

after examination and is in good standing. Any person who seeks admission to practice law in the State of New Hampshire who is a graduate of a law school in a foreign country shall have the burden of proving that the requirements of this paragraph have been met. In addition to filing the petition and questionnaire for admission, any foreign law school graduate seeking admission must file an affidavit, signed under oath, attesting that the requirements of this paragraph have been met and submitting information sufficient for the court to determine that the requirements have been met.]

[Rule 42(10)(a)(ii)]

(ii) Have graduated from[:

(A)] a law school approved by the American Bar Association having a three (3) year course and requiring students to devote substantially all their working time to study, called a full-time law school; from a law school approved by the American Bar Association having a course of not less than four (4) school years equivalent in the number of working hours to a three (3) year course in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school; ~~or from a law school in an English-speaking, common law country having pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association.~~ A combination of study in full-time and part-time law schools will be accepted only if such law schools meet the above requirements, and the applicant shall have graduated from one or the other. Study in any law school which conducts its courses by correspondence or does not require attendance of its students at its lectures or classes shall not constitute compliance with the rule; **[or**

(B) a law school in an English-speaking, common law country and shall have pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association. Any person who seeks admission to practice law in the State of New Hampshire who is a graduate of a law school in a foreign country: (1) shall have the burden of proving that the requirements of this subparagraph (B) have been met; and (2) must file an affidavit, signed under oath, attesting that the requirements of this subparagraph (B) have been met and submitting information sufficient for the court to determine that said requirements have been met;]

[Rule 42(12)(c)]

(c) Have graduated from[:

(A)] a law school approved by the American Bar Association having a three (3) year course and requiring students to devote

substantially all their working time to study, called a full-time law school; from a law school approved by the American Bar Association having a course of not less than four (4) school years equivalent in the number of working hours to a three (3) year course in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school; ~~or from a law school in an English-speaking, common law country having pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association.~~ A combination of study in full-time and part-time law schools will be accepted only if such law schools meet the above requirements, and the applicant shall have graduated from one or the other. Study in any law school which conducts its courses by correspondence or does not require attendance of its students at its lectures or classes shall not constitute compliance with the rule; **[or**

(B) a law school in an English-speaking, common law country and shall have pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association. Any person who seeks admission to practice law in the State of New Hampshire who is a graduate of a law school in a foreign country: (1) shall have the burden of proving that the requirements of this subparagraph (B) have been met; and (2) must file an affidavit, signed under oath, attesting that the requirements of this subparagraph (B) have been met and submitting information sufficient for the court to determine that said requirements have been met;]

APPENDIX K

Amend Supreme Court Rule 21 by adding a new section (6-A) to read as follows: . .

(6-A). *Extensions of time to file briefs.*

(a) Unless the scheduling order states otherwise, any party may obtain an automatic extension of no more than fifteen days within which to file briefs or memoranda of law by filing an assented-to notice of automatic extension of time. The notice shall affirmatively state that all parties assent to the extension, and the notice MUST set forth the new dates upon which all briefs (or memoranda of law) for all parties shall be due, including the date for reply briefs. No such date shall be extended by more than fifteen days. Upon the filing of the notice, the new briefing schedule set forth therein shall become effective without further order of the court.

(b) A maximum of two assented-to notices of automatic extension of time may be filed by the parties. Thereafter, no additional extension of time will be granted by the court absent a showing of extraordinary circumstances.

(c) Extensions of time of more than fifteen days, or extensions when all parties do not consent, may be requested only by motion to the court. Extensions of more than fifteen days are not favored.

APPENDIX L

Amend Supreme Court Rules 37(1)(e) and 37(20)(j) as follows (proposed new material is in **[bold and in brackets]**; proposed deleted material is in ~~strikethrough~~ format):

[Rule 37(1)(e)]

(e) ~~Professional Continuity Committee~~ **[Lawyers Assistance Program]** *Exemption:* For the purposes of Rule 8.3 of the rules of professional conduct, information received by members of the New Hampshire Bar Association **[Lawyers Assistance Program]** during the course of their work on behalf of the ~~professional continuity committee~~ **[Lawyers Assistance Program]** which is indicative of a violation of the rules of professional conduct shall be deemed privileged to the same extent allowed by the attorney-client privilege.

[Rule 37(20)(j)]

[(j) Disclosure to Lawyers Assistance Program: The Attorney Discipline Office shall have the power to disclose otherwise confidential information to the New Hampshire Lawyers Assistance Program whenever the Attorney Discipline Office determines that such disclosure would be in the public interest.]

~~(j)~~ **[(k)]** *Duty of Participants:* All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule.

Nothing in this section prevents a grievant from disclosing publicly the conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. The immunity from civil liability provided by section (7) does not apply to such disclosures. This section does prohibit a grievant, however, from disclosing publicly the fact that a grievance or complaint against the attorney about the conduct had been filed with the attorney discipline system pending the grievance or complaint becoming public in accordance with the provisions of this section.

~~(k)~~ **[(l)]** *Violation of Duty of Confidentiality:* Any violation of the duty of confidentiality imposed by section (20) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the

proceedings earlier than would have been the case under section (20), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.

Adopt new Superior Court Rule 57 as follows:

RULE 57. NEW HAMPSHIRE LAWYERS ASSISTANCE PROGRAM

PREAMBLE

The Supreme Court recognizes that a wide range of influences can detrimentally affect the performance of a lawyer or judge. Prominent among such influences are the effects of chemical dependence or mental conditions that result from disease, disorder, trauma or other infirmity that impair the ability of a lawyer or judge to practice or serve. Lawyer or judge impairment is detrimental to the interests of clients, litigants, our legal system, and the general public. The vast majority of States have responded to the issue of lawyer impairment by creating funded lawyer assistance programs as contemplated by this Rule, acknowledging the principle that every member of the bar has an obligation to the public to participate in an appropriate response to lawyer or judge impairment. The Supreme Court finds that the New Hampshire Lawyers Assistance Program is an appropriate method for addressing the issue of lawyer or judge impairment and that the program will promote the integrity of the legal profession and will thereby directly benefit the people of New Hampshire.

RULE 57.1. ESTABLISHMENT OF THE NEW HAMPSHIRE LAWYERS ASSISTANCE PROGRAM (LAP)

- (A) Establishment: The New Hampshire Supreme Court hereby establishes a state-wide lawyer assistance program to be known as the New Hampshire Lawyers Assistance Program (LAP), which shall provide immediate and continuing help to members of the legal profession, including, without limitation, active or prospective lawyers and judges, regardless of their status, and law students (members of the legal profession) who are affected by any physical or mental health condition that affects their ability to practice their profession, quality of life, or study of law.
- (B) Purpose: LAP has four primary purposes:
 - (1) To protect the interests of clients and the general public from harm caused by impaired members of the legal profession;

(2) To assist impaired members of the legal profession to begin and continue recovery,

(3) To educate the bench, the bar, and the public to the causes of and remedies for impairments affecting members of the legal profession; and

(4) To develop programs that emphasize prevention of conditions that might negatively affect members of the legal profession.

(C) Funding and Administration:

(1) LAP shall be funded from the New Hampshire Bar Client Indemnity Fund (Client Indemnity Fund) in the approximate amount of \$125,000.

(2) LAP shall seek to establish additional private and public sources of funding.

(3) Funding for LAP may also include gifts or bequests from any source and earnings on investments of the LAP fund.

(4) The fiscal year of LAP shall run from July 1 to June 30.

(5) LAP may retain and invest its funds which may be carried over to future fiscal years.

RULE 57.2. LAP COMMISSION

(A) Members: The Supreme Court shall appoint commission members to administer and provide advice regarding the management of the LAP. Officers of the commission shall consist of a chair, vice chair and secretary/treasurer. The chair and vice chair shall be appointed by the Supreme Court. Each of the other officers shall be elected by the members of the commission annually.

(B) Composition: The commission shall consist of eight (8) members, and shall include two persons who are not members of the legal profession. The members shall have diverse experience, knowledge and demonstrated competence in the problems of chemical dependency or mental conditions that affect members of the legal profession.

(C) Terms: The Court shall appoint commission members for initial terms as follows:

- (1) One lawyer for one year;
- (2) One health care provider (active or retired) for two years;
- (3) One lawyer for two years;
- (4) One judge (active or retired) for two years;
- (5) One health care provider (active or retired) for three years;
- (6) One judge (active or retired) for three years; and
- (7) Two lawyers for three years.

Subsequent appointments shall be for a term of three years. No member may serve more than two successive three-year terms.

(D) Duties of the Commission: The members of the governing body should have the following powers and duties:

(1) Establishing LAP's policies and procedures and providing ongoing advice regarding the same. Such policies and procedures shall be established after reasonable notice to the New Hampshire bench and bar and opportunity for comment.

(2) General administrative and management responsibility to operate the program to achieve its purpose and goals.

(3) Responsibility to hire and fire the LAP director.

(4) To review the budget prepared by the LAP staff and present the budget to the Supreme Court.

(5) To make reports to the Supreme Court annually or as otherwise required.

(6) To ensure that the duties listed under Rule 57.3 are carried out in the absence of a director of the program.

(E) Meetings: The commission shall meet quarterly, upon call of the chair or upon the request of three (3) or more members. A quorum for any meeting shall be four (4) members.

RULE 57.3. DIRECTOR OF THE PROGRAM

(A) Appointment/Hire: The commission shall recruit, hire, retain, supervise and may terminate the LAP director.

(B) Qualifications: The director shall have sufficient experience and training to identify and assist members of the legal profession affected

by the conditions described in Rule 57.1(A) above, as well as sufficient administrative expertise to competently manage a human services organization. A lawyer is preferred.

(C) Duties and Responsibilities: The director's duties and responsibilities shall include but not be limited to the following:

- (1) To work with the commission to develop a vision and plan to ensure that the LAP becomes a vital and credible resource for the New Hampshire legal community;
- (2) To act as the initial contact point for all referrals to the LAP, whether voluntary or involuntary. The director should always remain accessible to current members or to any attorney seeking help, and should never be insulated from the telephone or from personal contact. The position will require that the director be ready, either alone or together with a program volunteer, to travel within the State to meet with an attorney in need of the LAP.
- (3) Help members of the legal profession and their families to secure counseling and treatment for chemical dependency and mental conditions, by maintaining current information on available treatment services, both those that are available without charge as well as paid services. In this regard the director will be responsible for evaluating referral resources such as individual health care providers (physicians, counselors, therapists, etc.) and treatment programs, and developing a resource listing that is available for members or prospective members needing evaluation, treatment, or aftercare;
- (4) Establish and maintain regular contact with the New Hampshire Bar Association, the Professional Conduct Committee, the Complaint Screening Committee, the Committee on Judicial Conduct and their staff, and other agencies or committees that serve either as sources of referral or resources in providing help;
- (5) Help lawyers, judges, law firms, courts and others to identify and intervene with impaired members of the legal profession;
- (6) Establish and oversee monitoring services with respect to recovery of members of the legal profession for whom monitoring is appropriate under Rule 57.7 and 57.5(E). In furtherance of this duty, the executive director should work with the organizations listed in Rule 57.3(C)(4) above, as well as the commission, to create and maintain a working relationship that respects an

appropriate balance between the goals of the LAP and those of the disciplinary committees and the New Hampshire Bar Association;

(7) Recruit, select, train and coordinate the activities of volunteer lawyers and judges who will provide assistance, and provide for their identities and addresses to be generally known to the courts, bar and other appropriate referral entities. In furtherance of this duty the director should assist in coordinating volunteer support meetings and attend the meetings on a periodic basis to address questions or concerns of the volunteers;

(8) Work to establish and maintain a confidentiality policy that ensures confidentiality as an essential component of the LAP. Included in this duty will be the establishment of rules or policies relating to maintaining the confidentiality of those seeking assistance (whether voluntary or involuntary), as well as the confidentiality of LAP volunteers. Also included is the development of rules or policies necessary to implement the immunity protections granted under Supreme Court Rule 37(1)(e).

(9) Plan and deliver educational programs to inform the public, the judiciary, state and local bar associations, law firms, and civic organizations of the advocacy of early intervention and prevention and the assistance that is available to those in need.

(10) With the cooperation of Franklin Pierce Law School, plan and deliver educational programs and materials bringing to their curriculum a substance abuse component informing students of the nature and effect of substance abuse, its risks to those in the legal profession, and the resources available through LAP;

(11) Be responsible for the day-to-day administration of the LAP, including the development of job descriptions for LAP staff personnel, and the hiring, training, and assessing of such individuals, including clinicians, assistants, and office personnel, as budgetary considerations allow. The director will also be responsible, with the oversight of the commission, for the LAP's annual budget and oversee its fiscal management;

(12) In appropriate situations, *i.e.*, where no issue of confidentiality exists or has been waived in accordance with state law, appear at bar disciplinary, court, or bar admission proceedings to provide testimony regarding a legal professional's progress or lack of progress in meeting the purposes for which the LAP was established;

(13) To act as the liaison with the ABA Commission on Lawyers Assistance Programs and with lawyer assistance programs throughout the country;

(14) Establish private and public sources of funding for LAP; and

(15) Such other duties and responsibilities established by the commission.

RULE 57.4. VOLUNTEER LAWYERS, JUDGES, AND LAW STUDENTS

The program shall enlist volunteer lawyers, judges, and law students whose responsibilities may include:

(A) Assisting in interventions planned by LAP;

(B) Serving as twelve-step program sponsors and/or recovery mentors;

(C) Acting as local contact for members of the legal profession seeking help from the LAP;

(D) Acting as a contact between LAP and the courts, the Professional Conduct Committee, the Committee on Judicial Conduct, bar organizations, local committees, and law schools;

(E) Providing compliance monitoring when appropriate; and

(F) Performing any other function deemed appropriate and necessary by the commission to fulfill its purposes.

RULE 57.5. SERVICES

LAP may provide the following services as the commission determines feasible based upon the available financial, volunteer, and other resources:

(A) Immediate and continuing assistance to members of the legal profession who suffer from the effects of chemical dependency or mental conditions that result from disease, disorder, trauma or other infirmity and that affects their ability to practice their profession, quality of life, or study of law;

(B) Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and, to convey an understanding of appropriate ways of interacting with affected individuals;

- (C) Investigation, planning and participation in interventions with members of the legal profession in need of assistance;
- (D) Sponsoring and maintaining substance abuse and/or mental health support meetings for members of the legal profession;
- (E) Aftercare services upon request, by order, or under contract that may include but are not limited to, the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and
- (F) Monitoring services under Rule 57.7 or under contract that may include but are not limited to, the following: alcohol and/or drug screening programs, tracking aftercare, peer support and twelve-step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program.

RULE 57.6. REFERRALS

- (A) Self-referral: Any lawyer, judge, or law student may voluntarily call the LAP seeking assistance for him or herself.
- (B) Referrals from Third Parties: LAP shall receive referrals concerning any member of the legal profession from family members, colleagues, friends, law school faculty, law firms or any other source.
- (C) Disciplinary Authority Referrals: LAP shall receive referrals from the New Hampshire Supreme Court, the Professional Conduct Committee, the Complaint Screening Committee, the Committee on Judicial Conduct, General Counsel, Disciplinary Counsel, and the Committee on Character and Fitness (Disciplinary Authority) of the name of any lawyer whom the Disciplinary Authority determines or believes should be contacted by LAP. This provision shall not be construed to prevent the Disciplinary Authority from notifying the LAP of the name of any lawyer whom the Disciplinary Counsel determines should be contacted concerning the LAP. Once a referral is made by the Disciplinary Authority the referred lawyer has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made by the referred lawyer to any LAP personnel while seeking or receiving peer assistance or substance abuse treatment through the LAP.

RULE 57.7. REFERRALS FROM THE PROFESSIONAL CONDUCT COMMITTEE, COMMITTEE ON JUDICIAL CONDUCT, AND THE JUDICIARY

(A) Referrals: LAP may accept referrals regarding lawyers under diversion, or under conditional, provisional, or probational status from the Court, Professional Conduct Committee or the Complaint Screening Committee, and referrals of judges from the Court or the Committee on Judicial Conduct and referrals regarding prospective lawyers from the Committee on Character and Fitness.

(B) Progress Reports: When LAP accepts a referral under Rule 57.7(A), LAP may provide progress reports or reports of non-compliance by lawyers, judges, or prospective lawyers who are voluntarily receiving monitoring by LAP, or who are subject to monitoring by LAP pursuant to a court order. Notwithstanding Rule 57.8, these reports may be used as evidence in any complaint, investigation, proceeding or appeal relating to such referral from the Court, Professional Conduct Committee, and the Committee on Judicial Conduct.

RULE 57.8. CONFIDENTIALITY

(A) Rule 1.6(c) of the New Hampshire Rules of Professional Conduct shall govern the confidentiality of any information revealed by a lawyer, judge, or law student who seeks or receives assistance through the LAP program.

(B) Commission members, employees, and agents including volunteer lawyers, judges, and law students recruited under Rule 57.4 shall be deemed to be “LAP personnel” for the purposes of the confidentiality provisions of Rule 57.6(C) of this Rule and Rule 1.6(c) of the New Hampshire Rules of Professional Conduct.

RULE 57.9. DUTIES AND RESPONSIBILITIES

(A) The duties and responsibilities of commission members, employees and agents of LAP, including volunteers serving under Rule 57.4, are duties and responsibilities owed to the Court. Nothing in these rules shall be construed as creating a civil cause of action or right of suit.

(B) Except as otherwise required by law, or to prevent the commission of a crime, commission members, employees and agents of LAP including volunteers are relieved of the duty of disclosure of information to authorities required by N.H. Rules of Professional Conduct 8.3.

RULE 57.10. FACILITY

Any LAP office shall be so located as to be consistent with the privacy and confidentiality requirements of this Rule.

APPENDIX N

Amend Professional Conduct Rule 1.6 by adding a new paragraph (c) as follows (proposed new material is in **[bold and in brackets]**):

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or bodily harm or substantial injury to the financial interest or property of another; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

[(c) The relationship between New Hampshire Lawyers Assistance Program personnel and a lawyer, judge or law student who seeks or receives assistance through the New Hampshire Lawyers Assistance Program shall be the same as that of lawyer and client for purposes of the application of Rule 1.6, Rule 8.1, and Rule 8.3.]

APPENDIX O

Amend Professional Conduct Rule 8.3(c) as follows (proposed new material is in **[bold and in brackets]**; proposed deleted material is in ~~strikethrough~~ format):

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6, or information received by members of the New Hampshire Bar Association during the course of their work on behalf of the ~~Professional Continuity Committee~~. **[New Hampshire Lawyers Assistance Program.]**