

ADVISORY COMMITTEE ON RULES  
March 14, 2007

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  
Mrs. Alice Guay  
Hon. Richard Hampe  
Martin Honigberg, Esquire  
Hon. Philip Mangones  
Paul McEachern, Esquire  
Jennifer L. Parent, Esquire  
Emily G. Rice, Esquire  
Raymond W. Taylor, Esquire

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

On motion of Judge Cullen, seconded by Attorney Ardinger, the Committee approved the minutes of the December 13, 2006 meeting, as amended.

With respect to action taken by the Supreme Court since the Committee's last meeting, David Peck reported that the Supreme Court has adopted almost all proposals recommended by the Committee, most of which went into effect March 1<sup>st</sup>, including the Lawyers Assistance Program with a funding mechanism approved by the Court. In addition, the Public Access Rules were put out for public comment with a March 30<sup>th</sup> deadline.

Attorney Emily Rice joined the meeting.

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

Relative to the Rules of Civil Procedure and Rules of Probate Administration prepared by the Bar's Committee to Restructure, Update and Simplify NH Rules of Civil Procedure, Judge Dalianis stated that even though the Committee has not had an opportunity to discuss these rules changes, she recommends that they be included on the Committee's June public hearing agenda. She noted that following the public hearing, Committee members will have an opportunity to discuss the rules changes and any public comments received. Following discussion, and on motion of Judge Hampe, seconded by Mrs. Guay, the Committee voted to send the proposed Rules of Civil Procedure and proposed Rules of Probate Administration, as set forth in the Committee's April 18, 2007 public hearing notice, to the Committee's next public hearing. David Peck inquired whether the Bar's Committee to Restructure should review the amendments to court rules that were recently adopted by the supreme court. The Committee asked Attorney Honigberg to inquire of the Committee to Restructure if they would be willing to review these rules and to report their recommendations to David Peck.

Relative to comments to the Professional Conduct Rules, Attorneys Parent and Honigberg briefed the Committee on their subcommittee's review of the proposed changes to the Professional Conduct rules suggested by the Bar's Ethics Committee, noting whether they agreed or disagreed with the Ethics Committee's recommendations. Attorneys Rolf Goodwin and Mitchell Simon from the Ethics Committee joined the meeting during the presentation to offer their input.

During the discussion on Professional Conduct Rule 5.5, and on motion of Attorney Honigberg, seconded by Attorney Parent, the Committee voted to recommend immediate repeal of section (e) of the rule. Following further discussion, and on motion of Attorney Parent, seconded by Judge Hampe, the Committee voted to further amend the Rules of Professional Conduct, and to recommend to the Supreme Court the adoption of the rules as amended. Representative Paul McEachern left during these discussions.

Relative to the Report of the Committee on the Status of the Legal Profession previously distributed to Committee members, Attorneys Goodwin and Mitchell agreed to have their committee review the report and to make recommendations to this Committee.

Relative to system-wide guardians ad litem guidelines, Judge Hampe distributed a letter with attachment from Attorney Henrietta Luneau. Judge Hampe agreed to contact Judge Edwin Kelly to obtain the name of someone in the Family Division he can talk with about the guidelines. He agreed to report back to the committee at its June meeting.

Relative to pro hac vice rules, Attorney Ardinger distributed amendments to the pro hac vice rules, noting that the amendments would require a non-member attorney to pay a fee at the time of application and, if a case continued for more than a year, to pay a renewal fee. During the discussion, the Committee considered whether to include a renewal fee in the rules, what an in-state lawyer's duties would be, and what would be required to enforce the rule. Following discussion, and on motion of Judge Dalianis, seconded by Attorney Rice, the Committee voted to: (1) ask Attorney Ardinger to send a letter to Jeannine McCoy, Executive Director, of the NH

Bar Association, explaining the process and asking for her input; (2) further amend the proposal to eliminate the annual renewal fee; and (3) recommend that Supreme Court Rule 33, Superior Court Rule 19, District Court Rule 1.3C and Probate Court Rule 19, as amended and contained in Appendices A - D of these minutes, be sent to the Committee's next public hearing.

Relative to Supreme Court Rule 38 pertaining to the Judicial Conduct Committee, this matter was deferred until the Committee's next meeting.

Relative to Supreme Court Rule 42 pertaining to whether there should be a limited license for retired attorneys who wish to provide pro bono services, Attorney Ardinger reported that his survey of other state bars indicated that many states have a pro bono rule and he recommended that New Hampshire consider adopting one as well. He stated, however, that his review of other states' pro bono rules raised several questions that needed to be addressed before he could draft the rule. During the discussion, the Committee provided Attorney Ardinger guidance in several areas including: whether the rule should require CLE training and/or supervision by an in-state lawyer or a legal services organization such as LARC; and whether lawyers qualify if they were members in good standing of other state bars. Following discussion, Attorney Ardinger agreed to prepare a draft rule for the Committee's consideration at its next meeting.

The Committee turned its attention to the new items before it and the following action was taken:

Relative to Superior Court Rules 170 and 170-A, and a proposed Code of Ethics for Rule 170-A Arbitration and Mediation, following discussion, and on motion of Judge Hampe, seconded by Judge Mangones, the Committee voted to send the

proposed amendments to said rules, as set forth in the Committee's April 18, 2007 public hearing notice, to the Committee's next public hearing.

Relative to Supreme Court Rule 3 pertaining to the definition of "mandatory appeal," following a brief discussion and on motion of Attorney Ardinger, seconded by Judge Cullen, the Committee voted to send the proposed amendment to Supreme Court Rule 3, as set forth in Appendix E of these minutes, to the Committee's next public hearing.

Relative to amendments to various court rules adopted by the Supreme Court on a temporary basis, on motion of Attorney Honigberg, seconded by Attorney Rice, the Committee voted to send the various amendments to Supreme Court Rules 37, and 37A; new Superior Court Rules 61-B and 169-A, new Probate Court Rules 61-B and 169-A, new District Court Rules 1.25 and 1.26, and new Family Division (General) Rules 12 and 13, as set forth in the Committee's April 18, 2007 public hearing notice, to the Committee's next public hearing to see whether they should be adopted on a permanent basis.

The next meeting of the Commission is scheduled for June 6, 2007 at 12:00 p.m., to be followed by a public hearing beginning at 1:00 p.m.

No further business to come before the Committee, the meeting adjourned at 3:00 p.m.

## APPENDIX A

Amend Supreme Court Rule 33 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

### **RULE 33. Nonmember of the New Hampshire Bar.**

(1) (a) An attorney, who is not a member of the Bar of this State **[(a “Nonmember Attorney”)]**, shall not be allowed to enter an appearance in any case, except on application to appear *pro hac vice*, which may be granted if a member of the Bar of this State **[(the “In-State Attorney”)]** is associated with him or her and present at oral argument.

(b) An **[Nonmember A]**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);

(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; ~~and~~

(8) 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 oral argument[; **and**

**(9) the date upon which the non-refundable fee set forth in Rule 33(5) was paid to the New Hampshire Bar Association].**

(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) **[such admission]** may be detrimental to the prompt, fair and efficient administration of justice;

(2) **[such admission]** 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.

(2) Without the prior written approval of the court, no person who is not a lawyer may represent a person other than himself or be listed on the notice of appeal or other appeal document, or on the brief, or sit at counsel table in the courtroom or present oral argument. Request for such written approval shall be made in writing at the time of filing the appeal or, if it relates to briefing or oral argument, not later than 15 days before the date scheduled for filing the brief or for oral argument. The request must contain: (a) a power of attorney signed by the party, and witnessed and acknowledged before a justice of the peace or notary public, constituting another person as his or her attorney to appear in the particular action; and (b) an affidavit under oath in which said other person discloses (i) all of said other person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (ii) all instances in which said other person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, and (iii) all

prior proceedings in which said other person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

(3) When an attorney provides limited representation to an otherwise unrepresented party by drafting a document to be filed by such party with the supreme court in a proceeding in which the attorney is not entering any appearance or otherwise appearing in the case in the supreme court, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement "This pleading was prepared with the assistance of a New Hampshire attorney." The unrepresented party must comply with this required disclosure.

**[(4) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.]**

**(5) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]**



## APPENDIX B

Amend Superior Court Rule 19 as follows (new material is in **brackets**]; deleted material is in ~~strikethrough~~ format):

19. (a) An attorney, who is not a member of the Bar of this State **[(a "Nonmember Attorney")]**, 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 **[(the "In-State Attorney")]** is associated with him or her and present at the trial or hearing.

(b) An **[Nonmember A]**~~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 [; **and**

**(8) the date upon which the non-refundable fee set forth in Rule 19(e) was paid to the New Hampshire Bar Association].**

~~(8)~~ **[(9)]** 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) **[such admission]** may be detrimental to the prompt, fair and efficient administration of justice;

(2) **[such admission]** 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.

**[(d) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.**

**(e) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]**

## APPENDIX C

Amend District Court Rule 1.3C. as follows (new material is in **brackets**]; deleted material is in ~~strikethrough~~ format):

C. (1) An attorney, who is not a member of the Bar of this State **[(a "Nonmember Attorney")]**, 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 **[(the "In-State Attorney")]** is associated with him or her and present at the trial or hearing.

(2) An **[Nonmember A]**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:

- (a) the applicant's residence and business address;
- (b) the name, address and phone number of each client sought to be represented;
- (c) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;
- (d) 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;
- (e) 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;
- (f) 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

(g) 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 [; **and**

**(h) the date upon which the non-refundable fee set forth in Rule 1.3C(5) was paid to the New Hampshire Bar Association].**

{8} **[(i)]** In addition, unless this requirement is waived by the district 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.

(3) 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~~:

(a) **[such admission]** may be detrimental to the prompt, fair and efficient administration of justice;

(b) **[such admission]** may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(c) 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

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

**[(4) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.**

**(5) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court.**

**Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]**

## APPENDIX D

Amend Probate Court Rule 19 as follows (new material is in **brackets**]; deleted material is in ~~strikethrough~~ format):

### **Rule 19. ATTORNEYS - Appearing *Pro Hac Vice*.**

(A) An attorney, who is not a member of the Bar of this State **[(a “Nonmember Attorney”)]**, 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 **[(the “In-State Attorney”)]** is associated with him or her and present at the trial or hearing.

(B) An **[Nonmember A]**~~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: (a) has been denied admission *pro hac vice* in this State; (b) had admission *pro hac vice* revoked in this State; or (c) 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 **]; and**

**(8) the date upon which the non-refundable fee set forth in Rule 19(E) was paid to the New Hampshire Bar Association].**

~~(8)~~ **[(9)]** In addition, unless this requirement is waived by the probate 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.

**[(D) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.**

**(E) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit *pro bono***

**representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]**



## APPENDIX E

Amend the definition of "mandatory appeal" in Supreme Court Rule 3 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

"Mandatory appeal": A mandatory appeal shall be accepted by the supreme court for review on the merits. A mandatory appeal is an appeal filed by the State pursuant to RSA 606:10, or **[the first appeal filed by a party]** ~~an appeal~~ from a final decision on the merits **[in a case pending in]** ~~issued by~~ a superior court, district court, probate court, or family division court, that is in compliance with these rules. Provided, however, that the following appeals are NOT mandatory appeals:

- (1) an appeal from a final decision on the merits issued in a post-conviction review proceeding (including petitions for writ of habeas corpus and motions for new trial);
- (2) an appeal from a final decision on the merits issued in a collateral challenge to any conviction or sentence;
- (3) an appeal from a final decision on the merits issued in a sentence modification or suspension proceeding;
- (4) an appeal from a final decision on the merits issued in an imposition of sentence proceeding;
- (5) an appeal from a final decision on the merits issued in a parole revocation proceeding;
- (6) an appeal from a final decision on the merits issued in a probation revocation proceeding.;
- (7) an appeal from a final decision on the merits issued in a landlord/tenant action filed under RSA chapter 540 or in a possessory action filed under RSA chapter 540; and
- (8) an appeal from an order denying a motion to intervene.

### Comments

**[Only the first appeal filed by a party from a final order in a case is a mandatory appeal. Should a subsequent appeal be filed by the same party from a subsequent final order in the same case, it will be a discretionary appeal, not a mandatory appeal. For example, if a party's first appeal in a divorce proceeding is from the final divorce decree, that appeal will be a mandatory appeal. If, at a later date, the same party appeals a subsequent final order issued in a post-divorce proceeding, such as a petition to modify the divorce decree or a petition to modify child support, that appeal will be a discretionary appeal.]**

A trial court order denying a motion by a non-party to intervene in a trial court proceeding is treated as a "final decision on the merits" for purposes of appeal. Thus, such an order is immediately appealable to the supreme court. Pursuant to this rule, however, such an appeal is not a mandatory appeal. Therefore, a non-party who wishes to appeal the trial court's denial of the non-party's motion to intervene must file an appeal pursuant to Rule 7(1)(B) within the time allowed for appeal under that rule.