

NEW HAMPSHIRE SUPREME COURT  
ADVISORY COMMITTEE ON RULES

Minutes of Meeting of March 23, 2011

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

The meeting was called to order at 12:20 p.m. by Justice Robert J. Lynn, Committee Chair. The following Committee members were present: Karen M. Anderson; Gina P. Apicelli, Esq.; William F. J. Ardinger, Esq.; Robert L. Chase; Hon. R. Laurence Cullen; Hon. Richard A. Hampe; Jeanne P. Herrick, Esq.; Honorable William L. O'Brien; Jennifer L. Parent, Esq.; Emily G. Rice, Esq.; Raymond W. Taylor, Esq.; and Hon. Robert J. Lynn.

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

Justice Lynn informed the Committee that the Supreme Court, by unanimous vote, had decided to make the Rules Advisory Committee meetings open to the public. It was determined that on meeting days, Committee members would meet at the Court for a light lunch, and would adjourn to the Courtroom by 12:30 to undertake the business before the Committee.

Justice Lynn inquired of Committee members whether they would be amenable to moving the Committee meetings from Wednesdays to Mondays or Fridays. Committee members agreed that they would be available to meet on Fridays. It was agreed that the Committee would meet on the following days:

Friday, June 24, 2011 (public hearing)  
Friday, Sept. 16, 2011  
Friday, Dec. 16, 2011

The Committee addressed the agenda items as follows:

1. Approval of Minutes

Upon motion made by Judge Cullen and seconded by Attorney Taylor, the Committee unanimously voted to approve the minutes of the Committee's December 8, 2010 meeting.

2. Status of Pending Items

(a) District Court Rules of Civil Procedure and Probate Court Rules of Civil Procedure and Probate Administration

Judge Cullen submitted to the Committee a revised draft of the proposed District Court Rules of Civil Procedure. He reported on the changes that had been made to the proposed rules.

There was some discussion regarding the creation of the new Circuit Court. There was also some discussion regarding the fact that a number of the comments received when the proposed superior court civil rules were put out for public comment were of some concern to the Supreme Court, which might cause the Supreme Court to refer some of the proposed civil court rules back to the Committee. In light of this discussion, the consensus was that the proposed district court rules of civil procedure and probate court rules of civil procedure and probate administration would not be put out for public comment.

(b) 2008-013, Judicial Conduct Committee Procedures

The Committee is waiting for a report from its subcommittee. The Committee requested that Carolyn Koegler contact Attorney Russ Hilliard, chair of the JCC subcommittee, to ascertain whether the subcommittee has any recommendations regarding the procedural rules that govern the JCC.

(c) 2007-001, Superior Court Rule 170 pertaining to Alternative Dispute Resolution

The Committee is waiting for a report from its subcommittee, which plans to conduct a survey on the ADR process and rules. The Committee requested that Carolyn Koegler contact Judge Nicolosi, the chair of the subcommittee, to determine the status of this item.

(d) 2009-012, Supreme Court Rule 24

The Advisory Committee on Rules received and reviewed a report from the subcommittee recommending that the Committee add a comment to Supreme Court Rule 24 to address a concern raised by attorney Josh Gordon regarding what constitutes a final order of the Supreme Court. Following some discussion, Judge Hampe moved that the Committee vote to recommend to the Supreme Court that it add the Comment recommended by the subcommittee. Attorney Taylor seconded the motion. The Committee unanimously agreed.

(e) 2010-007, Proposed Technical Amendment to Supreme Court Rule 53.1

Carolyn Koegler reported that she had learned that this issue is on the MCLE Board's agenda for their meeting on April 4. Therefore, this issue was deferred to the June meeting.

(f) 2010-011, HB 1223 (notice in class actions under Consumer Protection Act)

Attorney Ardinger reported that he is in the process of reviewing HB 1223 to determine whether the legislation requires court rule amendments. While he believes that it is not necessary to amend the rules, he deferred giving a final report until the June meeting.

(g) 2010-015, Model Rules for Client Trust Account Records.

Attorney Herrick reported that she had not heard back from the Committee on Cooperation with the Courts. She also reported that she had done some research regarding how easy it is for an attorney to determine whether funds have been "collected," and noted that she had learned that banks are often reluctant to declare funds "collected," and it is often easier for an attorney to determine the date upon which the funds become "available." Some discussion ensued regarding this issue. Attorney Herrick agreed to further research this issue, and report back to the Committee. She also agreed to ascertain whether the Committee on Cooperation with the Court wishes to provide a formal response to the Professional Conduct Committee's recommendation that the Court adopt the Model Rules for Client Trust Account records set forth in Thomas v. Trevethick's letter of November 17, 2010.

Attorney Parent noted that Thomas v. Trevethick's January 19, 2011 letter clarifies that the Professional Conduct Committee recommends the adoption of the Model Rules for Client Trust Account records set forth in his letter of November 17, 2010. Therefore, it would be advisable for the Rules Advisory Committee to request that the Ethics Committee review the proposal and comment on it. The consensus of the Committee was that Carolyn Koegler should forward the proposal to the Ethics Committee and request that the Ethics Committee review the Professional Conduct Committee's proposal and provide comments on the proposal.

(h) 2010-016, HB 1393 (Investment Trusts).

Attorney Ardinger reported to the Committee that he believed that there is no need to amend the court rules in response to legislation regarding investment trusts. Following some discussion, and upon motion made by Attorney Rice and seconded by Attorney Ardinger, the Committee voted to take no action.

(i) 2010-018 Supreme Court Rule 42(10)—Bar Admission

At its December meeting, the Committee had considered a memorandum dated September 23 submitted by David Peck stating that the Supreme Court had asked the Committee to consider whether Supreme Court Rule 42 should be amended to define the term “primarily” as it is used in the provisions setting forth the required qualifications for any attorney who seeks to become a member of the New Hampshire Bar on motion. It was noted at the December meeting that it would be important to consider how any rule adopted in New Hampshire would apply in Maine and Vermont. The Committee asked Carolyn Koegler to research whether Maine and Vermont currently define what it means to be “primarily engaged in the active practice of law” in terms of a minimum number of hours per week/month/year.

Carolyn Koegler reported that the Vermont rules state that an applicant shall be deemed to have been “actively engaged in the practice of law” for any seven-day period during which he or she is engaged in qualified work for at least 25 hours.” The Maine rules do not specify what it means to be “primarily engaged in the active practice of law.”

After some discussion, it was decided that it is preferable to leave to the reviewers to determine whether someone is, “primarily engaged in the active practice of law” on a case-by-case basis. Upon motion made by Judge Hampe and seconded by Attorney Ardinger, it was unanimously voted to recommend to the Supreme Court that the rule not be amended.

3. New Items for Committee Consideration

(a) 2010-017 District Court Rules 6.1 to 6.7 (Local Ordinance Citations).

At its December 8, 2010 meeting, the committee voted to recommend that the Supreme Court adopt the proposed rule temporarily, and that there be a public hearing on whether to adopt them on a permanent basis. By order dated January 19, 2011, the Supreme Court adopted new District Court Rules 6.1 to 6.7 on a temporary basis, and referred the matter to the Advisory Committee on Rules for its recommendation as to whether they should be adopted on a permanent basis. It was agreed, consistent with the December 8 vote, that the rules should be put out for public hearing.

(b) 2011-001 Proposed Amendment to New Hampshire Supreme Court Rule 37

Committee members considered a proposed amendment to New Hampshire Supreme Court Rule 37 submitted by Thomas V. Trevethick, Deputy General Counsel of the Attorney Discipline Office. Attorney

Trevethick's letter proposes adding a new section to Supreme Court Rule 37(13) relating to disbarred or suspended attorneys.

After some discussion and upon motion by Judge Hampe, seconded by Attorney Rice, it was unanimously voted to recommend that the Supreme Court decline to adopt the proposed amendment.

- (c) 2011-002 Supreme Court Request to Review the Provisions of Supreme Court Rule 42 relating to the admission to the bar of foreign law school graduates

The Committee considered the Supreme Court's request, set out in Clerk Fox's February 17, 2011 letter, to review the provisions of Supreme Court Rule 42 relating to the admission to the bar of foreign law school graduates to determine whether changes should be made to the rule to make it easier to administer.

After some discussion, it was the consensus of the Committee that Carolyn Koegler should research the rules in other states related to the admission to the bar of foreign law school graduates, and report back to the Committee.

- (d) 2011-003 Supreme Court Rule 48-B (Family Mediator Fees)

By Order dated August 10, 2010, the Supreme Court adopted amendments to Supreme Court Rule 48-B (Family Mediator Fees), and referred the matter to the Advisory Committee on Rules for its recommendation as to whether the amendments should be adopted on a permanent basis. It was noted that in June 2010, the Committee had voted for this item to go to public hearing.

- (e) 2011-004 Superior Court Rule 203 (Vital Statistics Report)

By order dated August 10, 2010, the Supreme Court adopted amendments to Superior Court Rule 203 (Vital Statistics Report) and referred the matter back to the Advisory Committee on Rules for its recommendation as to whether the amendments should be adopted on a permanent basis. Upon motion by Judge Hampe and seconded by Judge Cullen, the Committee unanimously voted to send this to public hearing.

- (f) 2011-005 Family Division Rule 2.25 (Vital Statistics Form)

By Order dated August 10, 2010, the Supreme Court adopted amendments to Family Division Rule 2.25 (Vital Statistics Form) and referred the matter back to the Advisory Committee on Rules for its recommendation as to whether the amendments should be adopted on a permanent basis. Upon

motion by Judge Hampe and seconded by Judge Cullen, the Committee unanimously voted to send this to public hearing.

- (g) 2010-020 Non-lawyer Representative Rules. Supreme Court Rules 33(2), Superior Court Rules 14(c), District Court Rule 1.3(D)(1), Probate Court Rules 14, Family Division Rule 1.18. See 12/15/10 memo from David Peck and 12/13/10 letter from Harriet E. Cady

After some discussion, and because Ms. Cady had expressed interest in attending the meeting of the Advisory Rules Committee at which this item would be discussed, it was agreed that this matter would be deferred to the June meeting, which will be open to the public.

- (h) 2011-006 Preparation of Transcripts. Supreme Court Rule 59. See 3/15/11 letter and suggested changes to Rule 59 from Judge King

Justice Lynn noted that the rules changes proposed by Judge King appeared to be technical. After some discussion, and upon motion made by Attorney Ardinger, and seconded by Attorney Parent, the Committee unanimously voted to recommend that the Court adopt the proposed amendments.

#### 4. Next Meeting

The next meeting (and public hearing) is scheduled for Friday, June 24, 2011, at 12:30 p.m.

#### 5. Items to be Considered at the Public Hearing In June

Carolyn Koegler noted that over the course of the year, the Committee had voted to have a public hearing on the following:

- Whether to adopt the temporary amendments to Supreme Court Rule 53.7 on a permanent basis;
- Whether to adopt the temporary amendments to Supreme Court Rule 48-B on a permanent basis;
- Whether to adopt the Superior Court PAD Pilot Rules on a permanent basis;
- Whether to adopt the Ethic's Committees proposed amendment to Rule of Professional Conduct 1.10;
- Whether to adopt District Court Rules 6.1 to 6.7 on a permanent basis;
- Whether to adopt temporary amendments to Superior Court Rule 203 (Vital Statistics Report) on a permanent basis;

- Whether to adopt temporary amendments to Family Division Rule 2.25 (Vital Statistics Form) on a permanent basis

After some discussion, and upon motion made by Judge Cullen and seconded by Attorney Parent, the Committee unanimously voted not to send the Superior Court PAD Pilot Rules to public hearing.

6. Miscellaneous

After some general discussions regarding administrative issues related to the fact that the Rules Advisory Committee meetings would be open to the public beginning June 24, 2011, the Committee instructed Carolyn Koegler to: (1) post the Advisory Rules Committee meeting dates on the Supreme Court website; (2) ensure that materials being considered by the Advisory Rules Committee be available to the public upon request; (3) post the draft minutes of each Advisory Rules Committee meeting on the Supreme Court website, to the extent possible, within five business days of the meeting.

7. Meeting Schedule for 2011

Friday, June 24, 2011 (meeting and public hearing)

Friday, Sept. 16, 2011

Friday, Dec. 16, 2011

The meeting adjourned.