

NEW HAMPSHIRE SUPREME COURT
ADVISORY COMMITTEE ON RULES

Minutes of March 6, 2020 Public Meeting

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

The meeting was called to order at 12:35 p.m. by Justice Donovan, Committee Chair. The following Committee members were present: Abigail Albee, Esq., Hon. Paul Berch, Hon. R. Laurence Cullen (arriving late), John A. Curran, Esq., Hon. N. William Delker, Hon. Michael Garner, Sean Gill, Esq., Sara S. Greene, Esq., Jeanne P. Herrick, Esq., Derek Lick, Esq., Ari Richter, Patrick W. Ryan, Esq., Charles P.E. Stewart, and Hon. Patrick Donovan.

Also present was the Secretary to the Committee, David Peck, Esq.

1. Approval of Minutes of December 6, 2019 Meeting

Upon motion made and seconded, the Committee approved the December 6, 2019 minutes.

2. Items Still Pending Before the Committee

(a) 2017-016. Supreme Court Rules 38, 40, and Superior Court Administrative Rule 1-6. Code of Judicial Conduct

At the December 6, 2019 meeting, the committee voted to add to the agenda for March the questions of whether the term “adjudicatory function” should be further defined, and whether Superior Court Administrative Rule 1-6 should be amended as a result of the changes that have been made to the definition of “judge” in Supreme Court Rule 40. Attorney Albee informed the committee that she intends to review other court rules to determine whether additional amendments may be appropriate in light of the changes to the definition of “judge.” Upon motion made and seconded, the Committee voted to table consideration of this matter and to place it on the agenda for its next meeting.¹

¹ It was noted during discussion that in a February 4, 2019 memo to the committee, a quoted proposal to amend Supreme Court Rule 40(2) (definition of “judge”) refers to a “cannon” (rather than to a “canon”) of the Code of Judicial Conduct. (The committee’s secretary will follow up to see if the error was carried into the adopted rule amendment.)

3. New Submissions

(a) 2020-001. Supreme Court Rule 24 -- submission of Joseph Haas, Jr.

Justice Donovan discussed the provisions of Supreme Court Rule 24, which governs the issuance of mandates. After further discussion by the committee, upon motion made and seconded, it was voted that the committee take no action on the submission to amend Rule 24.

(b) 2020-002. Supreme Court Rule 42(XI)(f) -- submission of Sherry M. Hieber.

The committee discussed the proposal submitted by Sherry Hieber to eliminate the provision that prohibits applicants who have failed the bar examination four times from being eligible for admission by motion without examination. Upon motion made and seconded, it was voted to put the following amendment out for public comment and for consideration by the committee at its May 29, 2020 public hearing:

Amend Supreme Court Rule 42(XI)(f) as follows (deleted material is in ~~strikethru~~ format):

(f) An applicant who has failed the New Hampshire bar examination within five years of the date of filing a motion for admission without examination shall not be eligible for admission by motion. ~~An applicant who is not permitted to retake the New Hampshire bar examination pursuant to Rule 42(VIII)(c) shall not be eligible for admission by motion.~~ An applicant who has resigned from the New Hampshire bar shall not be eligible for admission by motion, but may be eligible for readmission upon compliance with the requirements of Rule 37(15).

4. Adjournment

Upon motion made and seconded, it was voted to adjourn the meeting. The next public meeting of the committee, which shall include a public hearing, is scheduled for Friday, May 29, 2020.