

**NEW HAMPSHIRE SUPREME COURT ADVISORY COMMITTEE ON RULES**

**PUBLIC HEARING NOTICE**

The New Hampshire Supreme Court Advisory Committee on Rules will hold a PUBLIC HEARING at 12:30 p.m. on Friday, June 5, 2015, at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar on court rules changes which the Committee is considering for possible recommendation to the Supreme Court.

Comments on any of the court rules proposals which the Committee is considering for possible recommendation to the Supreme Court may be submitted in writing to the secretary of the Committee at any time on or before June 4, 2015 or may be submitted at the hearing on June 5, 2015. Comments may be e-mailed to the Committee on or before June 4, 2015, at:

[rulescomment@courts.state.nh.us](mailto:rulescomment@courts.state.nh.us)

Comments may also be mailed or delivered to the Committee at the following address:

N.H. Supreme Court  
Advisory Committee on Rules  
1 Charles Doe Drive  
Concord, NH 03301

Any suggestions for rules changes other than those set forth below may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

Copies of the specific changes being considered by the Committee are available on request to the secretary of the Committee at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Telephone 271-2646). In addition, the changes being considered are available

on the Internet (in the Appendix to the Public Hearing Notice) at:

<http://www.courts.state.nh.us/committees/adviscommrules/notices.htm>

The changes being considered concern the following rules:

**I. Supreme Court Rule 20 - Non-Precedential Status of Orders**

*(These proposed amendments to Supreme Court Rule 20 would allow litigants to cite and discuss unpublished opinions, but also provide that they do not constitute binding precedent.)*

1. Amend Supreme Court Rule 20, Copy of Opinion; Non-precedential Status of Orders, as set forth in Appendix A.

**II. Supreme Court Rule 28 - Parties' Designation**

*(These proposed amendments to Supreme Court Rule 28 would make clear that in cases in which a statute or a rule of court requires that the name of a party be kept confidential, only the first letter of the forename and first letter of the surname of that party shall be listed.)*

1. Amend Supreme Court Rule 28, Parties' Designation, as set forth in Appendix B.

**III. Supreme Court Rule 40 - Code of Judicial Conduct**

*(These proposed amendments to Supreme Court Rule 40(12) would resolve an inconsistency in paragraph 12, which sets forth the procedure to be followed when the Judicial Conduct Committee determines that a judge has committed a serious violation of the Code of Judicial Conduct and would clarify two procedural issues.)*

1. Amend Supreme Court Rule 40(12), Procedural Rules of the Committee on Judicial Conduct – Dispositions Following Hearing, as set forth in Appendix C.

**IV. Supreme Court Rule 42B - Character and Fitness Standards**

*(One proposed amendment to Supreme Court Rule 42B would provide that an applicant for admission to the bar could be denied admission if he or she fails to sufficiently recognize the wrongfulness of his or her misconduct, even if the*

*misconduct standing alone is not significant enough to be disqualifying. Additional proposed amendments would make technical and stylistic changes to the rule.)*

1. Amend Supreme Court Rule 42B, Character and Fitness Standards, as set forth in Appendix D.

#### **V. Supreme Court Rule 51 – Rulemaking Procedures**

*(This proposed amendment would delete Supreme Court Rule 51 and replace it with a new rule. The new rule would make significant substantive changes to the rulemaking process.)*

1. Amend Supreme Court Rule 51, Rulemaking Procedures, as set forth in Appendix E.

#### **VI. Circuit Court – District Division Rule 2.18 - Petition to Annul Record of Conviction and Sentence**

*(These proposed amendments to Circuit Court – District Division Rule 2.18 are designed to facilitate electronic filing and make other substantive changes to the rule.)*

1. Amend Circuit Court – District Division Rule 2.18, Application to annual record of conviction and sentence, as set forth in Appendix F.

#### **VII. Temporary Amendments**

*(These proposals would adopt on a permanent basis amendments which have been in effect on a temporary basis.)*

1. Amend on a permanent basis Supreme Court Rule 42(IV), which was amended on a temporary basis by Supreme Court Order dated December 29, 2014, as set forth in Appendix G.
2. Adopt on a permanent basis Circuit Court – Probate Division Rule 96-A, which was adopted on a temporary basis by Supreme Court Order dated December 29, 2014, as set forth in Appendix H.
3. Adopt on a permanent basis Circuit Court – Probate Division Rule 94, which was adopted on a temporary basis by Supreme Court Order dated December 29, 2014, as set forth in Appendix I.

4. Adopt on a permanent basis Supreme Court Rule 40(11)(j), which was adopted on a temporary basis by Supreme Court Order dated April 4, 2014, as set forth in Appendix J.

5. Adopt on a permanent basis Rule 98 of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases Filed in Superior Court, which was adopted on a temporary basis by Supreme Court order dated February 20, 2014, as set forth in Appendix K.

New Hampshire Supreme Court  
Advisory Committee on Rules

By: Robert J. Lynn, Chairperson  
and Carolyn A. Koegler, Secretary

April 24, 2015

## APPENDIX A

Amend Supreme Court Rule 20 (new material is in **[bold and in brackets]**, deleted material is in ~~strikethrough~~ format) as follows:

### **Rule 20. Copy of Opinion; Non[-]precedential Status of Orders.**

(1) In each case, the clerk of the supreme court shall distribute without charge to counsel of record for each party one copy of the opinion filed by the court and of the order made.

(2) Non[-]precedential Status of Orders. An order disposing of any case that has been briefed but in which no opinion is issued, whether or not oral argument has been held, shall have no precedential value**[, but it may, nevertheless, be cited or referenced]** and ~~shall not be cited in any pleadings or rulings in any court in this state~~**[, so long as it is identified as a non-precedential order. Such non-precedential orders]**; ~~provided, however, that such order may be cited and shall be controlling with respect to issues of claim preclusion, law of the case and similar issues involving the parties or facts of the case in which the order was issued. See also Rule 12-D(3).~~ **[All citations to non-precedential orders shall identify the court, docket number and date.**

**Citations to Supreme Court of the United States cases that cannot be made to the official *United States Reports* or to the *Supreme Court Reporter* shall include the month, day, and year of decision or a reference to *United States Law Week*. Citations to other federal decisions not presently reported shall identify the court, docket number, and date.**

**Citations to the decisions of this court may be to the New Hampshire Reports only. Citations to other State court decisions may either be: (a) to the official report and to the West Reporter system, with the year of decision; or (b) to the West Reporter only, in which case the citation should identify the State court by name or level, and should mention the year of decision.]**

## APPENDIX B

Amend Supreme Court Rule 28 (new material is in **[bold and in brackets]**)

as follows:

### **Rule 28. Parties' Designation.**

(1) (a) In a case entered by a petition requesting the supreme court to exercise its original jurisdiction, the party filing the petition shall be designated as the petitioner, even though the party may have filed the petition in the supreme court by reason of proceedings pending in a trial court or in an administrative agency in which the party is the defendant. In all other types of cases entered, the parties shall retain their trial court or administrative agency designations as plaintiffs and defendants.

(b) When a statute or a rule of court requires that the name of a party be kept confidential, the **[first letter of the]** forename and first letter of the surname of that party shall be listed only, unless another form of listing the party's name is preferable in the circumstances of the case.

(2) Unless the supreme court expressly orders differently, cases in which the State, a State agency, or a State official is a party, the State's name shall be listed as "The State of New Hampshire"; the name of the State agency shall be preceded by the words "New Hampshire", *e.g.*, "New Hampshire Department of Health and Welfare"; the name of a State division shall be preceded by the words "New Hampshire" but shall not mention the parent agency, *e.g.*, "New Hampshire Division of Human Services"; and the title of a State official, but not his name, shall be listed, *e.g.*, "Secretary of State". If the title of a State official is identical to that of a municipal or county official, the State official's title shall be preceded by the words "New Hampshire".

(3) The supreme court may process and report a case under a new name or names.

## APPENDIX C

Amend Supreme Court Rule 40(12) (new material is in **[bold and in brackets]**, deleted material is in ~~strikethrough~~ format) as follows:

(12) *Dispositions Following Hearing.*

(a) The committee shall render its decision promptly after the hearing.

(b) If the committee decides that a violation of the Code of Judicial Conduct has not been established, the proceeding shall be dismissed, with or without a caution, and the judge and the reporter shall be so notified.

(c) If the committee determines, by the affirmative vote of at least seven of its members, that there has been a violation of the Code of Judicial Conduct, but that the violation is not of a sufficiently serious nature to warrant the imposition of formal discipline by the supreme court, it shall dispose of the matter by resolution without formal discipline, with or without consent of the judge. Such disposition may take the form of issuing a reprimand, requiring corrective action, directing professional counseling or assistance, imposing conditions on the judge's conduct, or other similar remedial action, or any combination of the foregoing. The committee may provide for monitoring or review by an administrative judge or other suitable person of any remedial action it may require or conditions it may impose in connection with a resolution without formal discipline. If a proceeding is disposed of by resolution without formal discipline pursuant to this subsection (c), the committee shall prepare a report of its findings and disposition, which shall be available for public inspection. Disclosure to the reporter shall be limited as provided in subsection (3)(d)(2) of this rule.

(d) If the committee determines, by the affirmative vote of at least seven of its members, that the judge complained against has violated the Code of Judicial Conduct and that the violation is of a serious nature so as to warrant formal disciplinary action by the supreme court, the committee shall prepare a summary report of the proceeding and of its findings. Such report shall include the recommendations of the committee (if any) concerning the sanctions to be imposed. Any member who dissents from the determination of the committee may prepare a minority opinion which shall be appended to the report of the committee. **[The committee shall notify the judge and the supreme court of the committee's decision, shall provide a copy of the report to the judge, and shall file the report in the public docket of the committee.]** ~~The committee shall also prepare a record of the proceeding, which shall include the committee's formal statement of charges, the judge's answer, any other pleadings, exhibits, and a transcript of the hearing. The committee's report and the record of the proceeding, certified by the chair or the executive~~

secretary, shall be filed with the supreme court. Said report and record and all further proceedings before the court shall be public. Contemporaneously with such filing, copies shall be served on the judge, in the manner provided in section 9(a), and proof of such service shall be filed with the court.

~~(e) If the committee determines, by the affirmative vote of at least seven of its members, that the judge complained against has violated the Code of Judicial Conduct, and [(1) If] the judge disagrees with the findings or recommendations reached by the committee, the judge may, within 15 days of the notice of the decision of the committee, file a request with the supreme court for a *de novo* hearing. If such a request is filed, only the statement of formal charges and the judge's answer shall be filed [with the court] by the committee, and the supreme court shall appoint a judicial referee to conduct the hearing. [The hearing shall be public.] After hearing, the judicial referee shall issue a decision including any findings and recommendations for sanctions. A record of the proceedings shall be prepared, which shall include the statement of formal charges, the judge's answer and any other pleadings [and], exhibits[,] and a transcript of the hearing[, and the referee's decision]. The decision and record [of the proceedings, certified by the chair or the executive secretary,] shall be filed with the supreme court.~~

**[(2) If the judge does not file a request for a *de novo* hearing, the committee shall prepare a record of the proceeding, which shall include the committee's formal statement of charges, the judge's answer and any other pleadings and exhibits, a transcript of the hearing, and the committee's report. The record of the proceedings, certified by the chair or the executive secretary, shall be filed with the supreme court thirty (30) days after the notice of the issuance of the committee's report has been filed in the public docket of the committee. Said record of the proceedings before the committee and all further proceedings before the court shall be public.]**

Amend Supreme Court Rule 42B (new material is in **[bold and in brackets]**, deleted material is in ~~strikethrough~~ format) as follows:

**Rule 42B. Character and Fitness Standards.**

(I) **Admission a privilege, not a right.** The right to practice law is not one of the inherent rights of every citizen, as is the right to carry on an ordinary trade or business. It is a peculiar privilege granted ~~and continued~~ only to those who demonstrate ~~special fitness in intellectual attainment and in~~ **[good]** moral character **[and fitness to practice law]**.

(II) **Requirement to establish character and fitness.** All persons who desire to be admitted to practice law shall be required to establish their moral character and fitness to the satisfaction of the Standing Committee on Character and Fitness of the Supreme Court of New Hampshire in advance of such admission.

(III) **Burden of proof on the applicant.** Any person who seeks admission to practice law in the State of New Hampshire shall at all times have the burden of proving his or her good moral character and fitness before the Committee on Character and Fitness ~~of~~ **[and]** the Supreme Court of New Hampshire. This burden requires both the production of evidence and the persuasion of the Committee and Court as to the applicant's good moral character and fitness.

(IV) **Proof by clear and convincing evidence.** The applicant must prove his or her good moral character and fitness by clear and convincing evidence.

(V) **Doubts resolved in favor of protecting the public.** Any doubt concerning an applicant's character and fitness shall be resolved in favor of protecting the public by denying admission to the applicant.

(VI) **Positive Characteristics To Be Considered.** The Committee will consider **[the following]** positive characteristics in evaluating an applicant's character and fitness to practice law ~~including~~:

(1) The ability to reason, recall complex factual information and integrate that information with complex legal theories;

(2) The ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity;

(3) The ability to use good judgment on behalf of clients and in conducting one's professional business;

(4) The ability to avoid acts which exhibit disregard for the rights or welfare of others;

(5) The ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts, and others;

(6) The ability to use good judgment in financial dealings on behalf of oneself, clients, and others; and

(7) The ability to comply with deadlines and time constraints.

(VII) **Grounds to deny admission.** Any of the following may be grounds for the Committee to recommend denial of admission for lack of character or fitness:

(1) ~~Insufficient~~ **[Failure to possess sufficient]** positive characteristics set forth in section (VI) above.

(2) Acts Involving Dishonesty, Fraud, Deceit or Misrepresentation.

#### **Character and Fitness Committee Comment**

"In order to maintain public confidence in the bar and trust among members of the bar, attorneys must be honest in their dealings." *Application of T.J.S.*, 141 N.H. 697, 702 (1997). An applicant's record of conduct should demonstrate the honesty which future clients, adversaries, courts and others have a right to expect of a lawyer.

**[The committee may consider such acts regardless of]** ~~It is irrelevant~~ whether the applicant has been charged with and/or convicted of a crime as result of such an act **[and regardless of ]**. ~~It is also irrelevant~~ whether the act was committed in the applicant's personal life or in the course of an occupation or employment.

(3) False or Misleading Statements or Omissions in the Application Process.

#### **Character and Fitness Committee Comment**

Much of the information that the Committee uses in assessing an applicant's character and fitness is contained in the Petition and Questionnaire for Admission to the Bar of New Hampshire. The information in the Petition and Questionnaire is also one of the sources of information used for requesting further information from the applicant and in conducting further investigation. As such, it is crucial that applicants be absolutely candid **[, honest]** and complete in disclosing the information requested in the form or in response to further inquiries by the Committee.

(4) Lack of Candor in Dealing with the Committee or Staff.

**Character and Fitness Committee Comment**

As with false and misleading statements or omissions during the application process, the failure of an applicant to deal with the Committee or its staff in a candid **[and forthright]** manner may result in recommendation of denial of admission.

(5) Failure to Cooperate with or to Provide Information to the Committee or its Staff.

**Character and Fitness Committee Comment**

Because the burden of proving good moral character and fitness is on the applicant, the Committee and its staff often require applicants to provide further information and/or documentation concerning matters of concern to them. Failure to provide such information and/or to cooperate with the Committee and its staff in their efforts to fully investigate matters may make it impossible for the Committee to complete its task of assessing the applicant's character and fitness and may thereby result in a recommendation to deny admission.

(6) Criminal Acts.

**Character and Fitness Committee Comment**

Conduct which is criminal in nature which the Committee finds to have occurred may be grounds for recommending denial of admission whether or not the conduct results in a prosecution and conviction and even though the arrest and/or conviction for the conduct have been annulled.

(7) Other Unlawful Conduct which Demonstrates a Disrespect for or Unwillingness to Obey the Law.

**Character and Fitness Committee Comment**

The New Hampshire Supreme Court in *Application of Appell*, 116 N.H. 400 (1976), denied admission to an applicant and upheld the findings of a single justice who had determined that the applicant's "violations of various statutes and regulations indicate at best a careless failure to determine the legality of his actions and at worst an arrogant disregard of the law." Thus, when the Committee finds that an applicant has committed acts, **[that] which** are not criminal, but **[that] which** are unlawful and demonstrate disrespect for the law, the Committee may determine that the applicant does not possess the necessary moral character for admission to the bar.

(8) Violation of a Court Order.

**Character and Fitness Committee Comment**

Respect for **[judicial authority]** ~~the law~~ and obedience of court orders and directives are crucial to the operation of the judicial system. Violations of court orders and/or directives, either in the applicant's professional or personal life, may be grounds for a recommendation of the denial of admission.

(9) Abuse of the Judicial Process.

#### **Character and Fitness Committee Comment**

Applicants are asked to disclose on their applications all judicial and administrative proceedings to which they have been a party. The Committee quite often requests applicants to provide detailed information concerning those proceedings. Applicants who abuse the judicial process in either their personal affairs or in professional matters may be deemed to put the public at risk of continuing such behavior if they are admitted. **[The Committee may consider abuse of the judicial process regardless of]** ~~It is irrelevant whether the courts in those matters~~ **[a court has]** ~~have made [a] judicial determinations that such abuse has occurred, [and regardless of] or whether [a court has imposed] sanctions have been imposed for [the] such abuse.~~

(10) Academic Misconduct - Plagiarism and Cheating.

#### **Character and Fitness Committee Comment**

As part of the approval process, the Committee requests law school deans to complete a questionnaire concerning each applicant. The Committee also requires applicants to disclose whether they have been dropped, suspended, placed on probation, expelled or requested to resign from any school, college, university or law school, or requested or advised by any such school or institution to discontinue their studies therein. If plagiarism and/or cheating **[are]** ~~is~~ disclosed, the Committee conducts a further inquiry to determine the seriousness of the matter.

(11) Financial Irresponsibility.

#### **Character and Fitness Committee Comment**

An applicant must demonstrate that he/she is acting responsibly with respect to his or her financial obligations. Being in debt or unable to stay current with debts is not in itself disqualifying. However, the Committee expects an applicant with debt to keep each creditor informed of a current address, to make payment when the applicant is able to, and when unable to pay debts, to make reasonable efforts to work out settlements and/or repayment plans.

A declaration of bankruptcy is not a ground for recommending denial of admission. However, bankruptcy petition[s] are generally scrutinized by the Committee. Any false statements, admissions or acts involving dishonesty, fraud, deceit or misrepresentation in connection with the filing of bankruptcy may be grounds for a recommendation of denial of admission. Further, the facts and

circumstances surrounding a bankruptcy may also bear on the issue of whether the applicant is able to handle his or her affairs.

(12) Mental Disorders which Impair the Ability to Practice Law.

**Character and Fitness Committee Comment**

A[n existing or recent] mental disorder that impairs an applicant's [current] ability to practice law may be disqualifying. Should the Committee become aware of a[n existing or recent] mental disorder which has the potential to impair an applicant's [current] ability to practice law, it will ask for details of any treatment, and may ask treating or independent professionals for reports as to whether the disorder will impair the applicant's ability to practice law in a competent and professional manner.

(13) Alcohol or Drug Addiction or Abuse.

**Character and Fitness Committee Comment**

An applicant who has become addicted to alcohol or other drugs or is using illegal drugs, will not be approved by the Committee if he/she is still currently using the substance or if the Committee believes that there is an undue risk that the applicant will begin using the substance after admission to the bar. Applicants who have been addicted to alcohol or other drugs are expected to demonstrate a meaningful period of non-use and to have developed support and/or coping mechanisms, either external or internal, which make it unlikely that the applicant will again use the addictive substance.

Applicants who have been addicted to or abused alcohol or drugs are generally expected to be free of alcohol use or drug abuse for at least 1 year in order to be approved.

(14) Inability to Handle One's Own Affairs.

**Character and Fitness Committee Comment**

The practice of law often involves being entrusted with the affairs of clients. The inability of an applicant to handle his/her own affairs in a responsible manner may be grounds for finding that such an applicant does not possess the requisite fitness to engage in the practice of law.

(VIII) **Causes for further inquiry.** In addition to any of the above, any of the following are cause for further inquiry (but not in themselves disqualifying) before the Character and Fitness Committee decides whether the applicant possesses the character and fitness to practice law:

(1) Denial of admission to the bar in another jurisdiction on character and fitness grounds;

(2) Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agencies of any jurisdiction;

(3) Employment termination due to alleged misconduct;

(4) Receipt of negative references;

(5) Complaints of domestic violence against the applicant;

(6) Other than honorable military discharge;

(7) Bankruptcy;

(8) Debt obligations in default.

**(IX) Determination of disqualification.**

The Character and Fitness Committee must first determine whether any conduct or condition of the applicant is disqualifying.

**(X) When is [mis]conduct or condition [is] disqualifying.**

The misconduct or condition is disqualifying when it is so serious or significant that denying admission is necessary to protect the public and maintain public confidence in the bar.

**Character and Fitness Committee Comment**

In the character and fitness review process, the need to protect the public and maintain public confidence in the bar always overrides any concern that denying admission to an applicant who has successfully completed law school and passed the bar examination may seem unfair.

**(XI) Cumulative effect of events of misconduct.** The Committee may find the cumulative effect of two or more events of misconduct disqualifying even though no one of the events alone would be disqualifying.

**[(XII. Failure to recognize wrongfulness of conduct. The Committee may find an event of misconduct disqualifying even though the event alone is not serious enough to be disqualifying, when the applicant fails to sufficiently recognize the wrongfulness of that misconduct.]**

~~(XII)~~ **[(XIII)] Determination of current character and fitness.** If the Character and Fitness Committee finds any conduct or condition to be disqualifying, it must then determine whether the current character and fitness of the applicant qualifies the applicant for admission. It is the Committee's task to determine whether the applicant is sufficiently rehabilitated to remove the serious taint of the applicant's prior unfitness.

~~(XIII)~~ **[(XIV)] Factors considered.** The following factors, although not inclusive, may be considered when determining whether an applicant has demonstrated sufficient rehabilitation:

(1) The nature of the act of misconduct, including whether it involved moral turpitude, whether there were aggravating or mitigating circumstances, and whether the activity was an isolated event or part of a pattern.

(2) The age and education of the applicant at the time of the act of misconduct and the age and education of the applicant at the present time.

(3) The length of time that has passed between the act of misconduct and the present, absent any involvement in ~~any~~ further acts of **[misconduct]** ~~moral turpitude~~. The amount of time and the extent of rehabilitation will be dependent upon the nature and seriousness of the act of misconduct under consideration.

(4) Restitution to any person who has suffered monetary losses through related acts or omissions of the applicant.

(5) Expungement of a conviction.

(6) Successful completion or early discharge from probation or parole.

(7) Abstinence from the use of controlled substances or alcohol if the specific act of misconduct was attributable in part to the use of a controlled substance or alcohol. **[Proof of a]**Abstinence may **[include]** ~~be demonstrated by~~, but is not necessarily limited to, **[enrollment]** ~~enrolling in and~~ **[compliance]** ~~complying~~ with a self-help or professional treatment program.

(8) Evidence of remission if the specific act of misconduct was attributable in part to a medically recognized mental disease, disorder or illness. Evidence of remission may include, but is not limited to, seeking professional assistance and complying with the treatment program prescribed by the professional and submission of letters from the psychiatrist/psychologist verifying that the medically recognized mental disease, disorder or illness is in remission.

(9) Payment of the fine imposed in connection with any criminal conviction.

(10) Correction of behavior responsible in some degree for the act of misconduct.

(11) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(12) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(13) Change in attitude from that which existed at the time of the act of misconduct in question as evidenced by any or all of the following:

(a) Statements of the applicant.

(b) Statements from family members, friends, or other persons familiar with the applicant's previous conduct and with subsequent attitudes and behavioral patterns.

(c) Statements from probation or parole officers or law enforcement officials as to the applicant's social adjustments.

(d) Statements from persons competent to testify with regard to neuropsychiatric or emotional disturbances.

~~(XIV)~~ **[(XV)] Degree of rehabilitation.** The more serious the misconduct, the greater the showing of rehabilitation that will be required.

#### **Character and Fitness Committee Comment**

For applicants who have committed a criminal offense that would disqualify them from holding a license or certificate to practice another profession in this state, the burden of proving sufficient rehabilitation is extraordinarily difficult.

~~(XV)~~ **[(XVI)] Period of time of rehabilitation.** An applicant who has engaged in disqualifying misconduct in the past **[must demonstrate to the committee that the applicant has made relevant and significant personal change for a meaningful period of time.]** ~~needs to show that he or she is no longer the same person who behaved so poorly in the past and needs to behave in an exemplary fashion for a meaningful period of time.~~

~~(XVI)~~ **[(XVII)] Recognition of disqualifying conduct.** Establishing sufficient rehabilitation will usually require the applicant to recognize, appreciate, show

insight into, and have genuine remorse for the seriousness of his or her disqualifying conduct. Attempts to deny, rationalize, minimize or explain away disqualifying past behavior will usually result in the Committee finding insufficient rehabilitation.

~~(XVII)~~ **[(XIII)] When is rehabilitation sufficient.** Rehabilitation is sufficient when the applicant has established from all the facts that the public interest will not be jeopardized by his or her admission.

Delete Supreme Court Rule 51 in its entirety and adopt in its place the following:

**RULE 51 Rulemaking Procedures**

(a) *Scope and Purpose.* These procedures are adopted to aid the Supreme Court in discharging its rulemaking responsibilities in the areas of procedure in all courts and shall apply to all amendments or additions to such rules. The purpose of court rules is to provide necessary governance of court procedure and practice and to promote justice by ensuring a fair and expeditious process. In discharging its rulemaking responsibility, the New Hampshire Supreme Court seeks to ensure that:

- (1) Minimal disruption in court practice occurs, by limiting the frequency of rule changes;
- (2) Rules are regularly reviewed to consider current developments, needs, and changes;
- (3) The adoption and amendment of rules proceeds in an orderly and uniform manner;
- (4) The public, the bench and the bar receive notice and an opportunity to comment on proposed rules;
- (5) There is adequate notice of the adoption and effective date of new and revised rules;
- (6) The rules of court are clear, definite in application and consistent with each other.

(b) *Definitions.*

- (1) “Rule suggestion” is a suggestion for a rule change or a new rule that has been submitted to the Chair of the Advisory Committee on Rules.
- (2) “Proposed rule” is a rule change or addition that the Advisory Committee on Rules has recommended to the Supreme Court and which the Supreme Court has ordered published for comment or hearing before the Advisory Committee on Rules or the Court.
- (3) “Advisory Committee on Rules” is the Committee established by this rule to assist the Court in discharging its rulemaking responsibilities.

(c) *Initiation of Rules Change.*

- (1) Any person or group may submit to the Supreme Court a suggestion to adopt, amend or repeal a court rule. The suggestion shall be directed to the secretary of the Advisory Committee on Rules and should include the following, to the extent possible:

- (A) The text of the suggested rule. If the suggestion is to amend an existing rule, the text of the existing rule should be included and ~~striketrough~~ should be used to indicate the suggestion to delete text, and **[bold and brackets]** should be used to indicate the suggestion to add text; and
- (B) A letter or cover sheet providing the following information:
  - (i) *Name of Proponent*: the name of the person or group suggesting the rule change and the proponent's mailing address, telephone number and email address;
  - (ii) *Purpose*: the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules;
  - (iii) *Expedited consideration*: whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule.
  - (iv) *Hearing*. Whether the proponent wishes to be heard by the Advisory Committee on Rules regarding the suggested rule.
- (2) The Chair of the Advisory Committee on Rules shall review the request to determine whether it is clearly stated and provides sufficient information. If the Chair of the Committee determines that a request is unclear or is otherwise insufficient, the Chair may: (1) accept the rule suggestion notwithstanding its noncompliance; or (2) ask the proponent to submit additional information.
- (3) If the Chair accepts the rule suggestion, he or she shall direct the Secretary of the Advisory Committee on Rules to add the suggestion to the agenda of the next meeting of the Committee. However, if the Chair determines that the suggestion calls for a technical change, would implement a change required by statute that permits no discretion in the drafting of the language of the rule or rule amendment, or concludes that exceptional circumstances justify expedited consideration of the suggestion, the Chair may submit the suggestion directly to the Court, and the Court shall follow the procedures set forth in section (f) of this rule.

(d) *The Advisory Committee on Rules*

(1) *Membership*.

- (A) There shall be an Advisory Committee on Rules, which shall be composed of sixteen members as follows:
  - (i) One active or retired judge of the Supreme Court shall be appointed by the Supreme Court and shall serve as the Chair of the Committee;
  - (ii) One active or retired judge of the Superior Court shall be appointed by the Supreme Court;

- (iii) Two active or retired judges from the Circuit Court shall be appointed by the Supreme Court;
  - (iv) Two attorneys shall be appointed by the Supreme Court.
  - (v) Three laypersons shall be appointed by the Supreme Court.
  - (vi) One member shall be appointed by the Governor.
  - (vii) The president of the senate, or the president's designee.
  - (viii) The speaker of the house, or the speaker's designee.
  - (ix) One clerk or court administrator from the Superior Court shall be appointed by the Supreme Court.
  - (x) One clerk or court administrator from the Circuit Court shall be appointed by the Supreme Court.
  - (xi) One member of the New Hampshire Bar Association Board of Governors and one member of the Committee on Cooperation with the Courts shall be designated by the president of the New Hampshire Bar Association.
- (B) Members, except for the member appointed by the Governor and the designees of the Senate President and Speaker of the House, shall serve three year terms, and shall be limited to a maximum of three full terms. Initial appointments shall be for staggered terms: one third of the members for three years; one third of the members for two years and one third of the members for one year. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor.
- (C) The terms of the Governor's appointee, and of the Speaker of the House and the President of the Senate or their designees shall be coterminous with their terms of office.
- (D) A vacancy on the committee shall occur:
- (i) When a member has served three full terms;
  - (ii) When a member ceases to be a member by resignation or otherwise;
  - (iii) When a clerk or administrator ceases to hold the office which he or she held at the time of appointment;
  - (iv) When a lawyer ceases to be admitted to practice in the courts of this State or is appointed to judicial office;
  - (v) When a layperson becomes a lawyer or a judge;
  - (vi) When a New Hampshire Bar Association Board of Governors member ceases to be a member of the Board of Governors or when the Committee on Cooperation with the Courts representative ceases to be a member of the Committee on Cooperation with the Courts.
- (E) Members appointed by the Governor and the president of the New Hampshire Bar Association shall serve at the pleasure of the appointing authority.

- (F) The secretary of the committee shall be the Clerk of the Supreme Court or any other person designated by the Supreme Court.
- (2) *Responsibilities.* The Advisory Committee on Rules shall have the following responsibilities:
- (A) To receive and assess all suggested rule and rule amendments referred by the Chair of the Committee;
  - (B) To identify, and solicit comment from, those who are likely to be most affected by, or interested in, a suggested rule or rule amendment;
  - (C) To hold at least two public meetings per year;
  - (D) To hold public hearings to receive comment from any member of the public, bench or the bar on the suggested rule and rule amendments when the Committee believes it is appropriate to obtain additional information beyond the input it received from interested persons pursuant to subsection (d)(2)(B);
  - (E) To consider the entire body of rules for which it is responsible by periodically reviewing each separate set of rules;
  - (F) To consider the impact of any suggested rule or rule amendment upon existing statutes or pending legislation, and to include in any submission to the Court of proposed rule changes a statement of the Committee's views on such impact;
  - (G) To submit a report to the Court on or before April 1 and on or before November 1 of each year on proposed rule and rule amendments, or to report to the Court on or before April 1 and on or before November 1 that it has determined that no changes are in its opinion necessary at that time;
  - (H) To include in any submission to the Court a report of any comments received by the Committee from the courts, judges, bar or the public;
  - (I) To retain for a minimum of three years, as matters of public record, all rule suggestions and all Committee reports, agendas, minutes and notices of public hearing;
  - (J) To maintain a webpage on the judicial branch website.
- (3) *April 1 and November 1 Reports to the Court.*
- (A) On or before April 1 and on or before November 1 of each year, the Advisory Committee shall submit to the Court a report of any proposed rules or amendments by filing them with the Clerk of the Supreme Court.
  - (B) Each report shall include a summary of the Committee's reasons for the proposed rule and rule amendments.
  - (C) For each proposed rule or rule amendment, the Committee shall advise the Clerk of the Supreme Court whether it recommends a hearing before the full Court.

(e) *Court Consideration of Recommended Rules Changes.*

- (1) Upon receipt of a report from the Advisory Committee on Rules, the Clerk of the Supreme Court shall distribute copies of proposed rules and amendments or the Committee's summary thereof, together with an invitation for comments, as follows:
  - (A) Copies to the New Hampshire Bar Association and such publications as the Court deems appropriate;
  - (B) Copies to the President of the Senate, Speaker of the House and Chairpersons of the Senate and House Judiciary Committees;
  - (C) Copies to such other persons and places as the Chief Justice may direct.
- (2) The invitation shall call for comment on the proposed rules or amendments from members of the bench, bar, and public to be filed with the Clerk of the Supreme Court. Unless the Court determines that a shorter period is necessary, a period of at least 30 days shall be allowed for comment. All comments shall be available for public review.
- (3) The Court may, in its discretion, hold a hearing on a proposed rule at a time and in a manner specified by the court. If the Supreme Court orders a hearing, it shall set the time and place of the hearing and determine the manner in which the hearing will be conducted. The Supreme Court may designate one or more justices to conduct the hearing.

(f) *Special Cases.*

- (1) The Chair of the Advisory Committee on Rules may, as set forth in paragraph (c)(3), refer a rule suggestion directly to the Court, rather than to the Advisory Committee on Rules.
- (2) If the Chair of the Advisory Committee on Rules, upon review of a suggested rule or rule amendment, concludes that the change is technical, or would implement a change required by statute that permits no discretion in the drafting of the language of the rule or rule amendment, the Chair may submit the suggested rule or rule amendment to the Court with a recommendation that it be adopted on a permanent basis.
- (3) If the Chair of the Advisory Committee on Rules, upon review of a suggested rule or rule amendment, concludes that exceptional circumstances justify expedited consideration of the request, the Chair may submit the suggested rule or rule amendment to the Court.
  - (A) The submission shall include the Chair's reasons for believing that the Court should take immediate action on the request.
  - (B) If the Court agrees that circumstances justify expedited consideration of the request, the Court shall afford such notice and opportunity for comment and hearing as may be practicable. The Court shall distribute the suggested rule or

rule amendment, together with an invitation for comments, as follows:

- (i) Copies to the New Hampshire Bar News;
- (ii) Copies to members of the Advisory Committee on Rules;
- (iii) Copies to the President of the New Hampshire Bar Association; and
- (iv) Copies to such other persons and places as the Chief Justice may direct.

(C) All comments on the suggested rule or rule amendment shall be submitted in writing to the Supreme Court by the deadline specified by the Court. All comments shall be available for public review.

(g) *Final Action by the Supreme Court, Publication and Effective Date*

- (1) After considering any comments or written or oral testimony received regarding a proposed or suggested rule, the Supreme Court may adopt, amend or reject the rule change or take such other action as the Supreme Court deems appropriate.
- (2) The effective date of all new rules or amendments shall be as ordered by the Supreme Court.
- (3) Following adoption of new rules or amendments, the Clerk of the Supreme Court shall promptly cause copies thereof to be distributed.
- (4) The adopted rules shall be posted on the internet sites of the Supreme Court, and an announcement of such publication shall be made in the New Hampshire Bar News.

## APPENDIX F

Amend Circuit Court – District Division Rule 2.18 (new material is in **[bold and in brackets]**, deleted material is in ~~strikethrough~~ format) as follows:

### **Rule 2.18. [Petition] Application to annul record of conviction and sentence.**

A. Each such **[petition]** ~~application~~ shall specify in detail the facts relied on for the granting of the **[petition]** ~~application~~, and shall be signed and **[shall indicate in writing an understanding that making a false statement in the petition to annul may subject that party to criminal penalties.** ~~sworn to by the applicant.~~

B. The **[petition]** ~~application~~ shall bear the same name and number as the case in which the original sentence was entered and shall be filed therein.

C. The Clerk shall, within 7 days after filing of the **[petition]** ~~application~~, issue a copy thereof, as notification, ~~to the County Attorney for the county where the application is filed, and to the arresting law enforcement agency~~ **[or prosecutor for the arresting law enforcement agency]**. The Clerk shall charge the **[petitioner]** ~~applicant~~ the required fee for the entry; provided, however, that **[the clerk]** he shall waive such fee if there is filed with the **[petition]** ~~application~~ a proper affidavit proving the **[indigence]** indigency of the person previously sentenced. The Clerk shall send a copy of the **[petition]** ~~application~~ to the **[Department of Corrections]** ~~Probation Department~~, together with a request for the report that the statute requires from the Probation Officer.

D. The ~~County Attorney and/or~~ arresting law enforcement agency **[or prosecutor for the arresting law enforcement agency]** shall, within 30 days of the notice date, file a statement **[of]** ~~as to their~~ position with reference to the **[petition]** ~~application~~, specifying their reasons **[therefor]**, and stating whether or not **[a hearing is requested]** ~~they wish to be heard.~~

~~E. A hearing shall be scheduled on each such application at which the person previously sentenced, and if he is not the applicant, the applicant, must appear; provided, however, that the Court shall have the right to waive the presence of the applicant and/or the person previously sentenced, and grant the application without a hearing if there is no opposition.~~

**[E. If the petitioner, the arresting law enforcement agency or prosecutor for the law enforcement agency indicate a desire to be heard, a hearing shall be scheduled on the petition. The petitioner shall be required to appear at the hearing. If the petitioner is not the person**

**previously sentenced, the person previously sentenced must also appear at the hearing. The Court shall have the right to waive the presence of the petitioner (and/or person previously sentenced if not the petitioner) and grant the petition without a hearing if there is no opposition.]**

## APPENDIX G

Amend on a permanent basis Supreme Court Rule 42(IV), which was amended on a temporary basis by Supreme Court Order dated December 29, 2014 as follows (no changes are being proposed to the temporary rule now in effect):

### IV. **General Requirements for Admission to Bar**

(a) **Eligibility.** Every applicant for admission to the New Hampshire bar shall be required:

(1) to comply with all provisions of this rule;

(2) to file all application forms prescribed by the board, respond to all requests of the board, the committee, their designees, and the staff of the Office of Bar Admissions, for information deemed relevant to the application for admission, and to pay all prescribed fees related to the application for admission;

(3) to meet one of the following requirements:

(A) to pass the bar examination; or

(B) to satisfy the requirements for admission by transferred UBE score set forth in paragraph X; or

(C) to satisfy the requirements for admission without examination set forth in Rule 42(XI); or

(D) to satisfy the requirements for admission after successful completion of the Daniel Webster Scholar Honors Program set forth in Rule 42(XII);

(4) to pass the Multistate Professional Responsibility Examination;

(5) to be at least 18 years of age;

(6) to satisfy the educational requirements set forth in Rule 42(V); and

(7) to establish his or her character and fitness to practice law to the committee and to the court.

(b) **Determination of eligibility.** An applicant's eligibility to take the bar examination, to be admitted by transferred UBE score, or to be admitted by motion without examination, shall be determined in the first instance by the bar admissions administrator or a member of the board. If the bar admissions administrator or board member determines that the applicant is ineligible for admission, the applicant may seek reconsideration from the board or a subcommittee thereof, in accordance with procedures established by the board.

(c) **Petition for Review.**

(1) If the board or subcommittee determines that an applicant is ineligible for admission, the applicant may seek review by the supreme court of the board or subcommittee's final decision by filing with the supreme court an original and eight copies of a petition for review within twenty days of the date of the notice of final decision. If no such petition is filed within the twenty-day period, the board or subcommittee's determination shall not be subject to review. The petition for review shall:

(A) specify the name and address of the person seeking review of the final decision and of counsel, including counsel's bar identification number;

(B) contain a copy of the final decision sought to be reviewed, a copy of a motion for reconsideration, if any, and a copy of any order on the motion for reconsideration;

(C) specify the questions presented for review;

(D) specify the provisions of the constitutions, statutes, rules, regulations or other law involved in the matter, setting them out verbatim, and giving their citation. If the provisions to be set out verbatim are lengthy, their pertinent text shall be annexed to the petition for review;

(E) set forth a concise statement of the case containing the facts material to the consideration of the questions presented, with appropriate references to the transcript, if any;

(F) set forth all claims of error and reasons for challenging the board or subcommittee's determination;

(G) include a statement that every issue raised has been presented to the board or subcommittee below; and

(H) contain a certification that a copy of the complete petition for review has been delivered, mailed, or served on the Office of Bar Admissions.

(2) Upon notification that a petition for review has been filed, the board shall transmit to the supreme court the complete record in the case, including a transcript of any hearing before the board or subcommittee of the board. The petitioner, and not the board, is responsible for paying the cost of preparing the transcript.

(3) Unless the court orders otherwise, no response to the petition for review will be required and the petition shall be deemed submitted for the court's review based upon the record. The court shall review the petition for review in the normal course and, after consideration of the petition for review and the record, the court shall make such order as justice may require.

(d) **Time Limitation.** If an applicant does not satisfy the requirements for admission to the bar set forth in Rule 42 (IV)(a) above and take the oath of admission within two years of the date of the notice of successfully passing the bar examination, or within two years of the date of the notice that his or her motion for admission without examination, or motion for admission by transferred UBE score has been granted, the applicant's application or motion for admission to the bar shall be denied, and he or she shall be required to retake and pass the bar examination, or file a new motion for admission without examination, or a new motion for admission by transferred UBE score, unless the board grants a request for an extension of the deadline for good cause shown. Any such applicant shall be required to once again establish his or her good moral character and fitness to the satisfaction of the committee and the supreme court.

(e) **Readmission to the bar.** The application process for a person seeking readmission to the bar is governed by Rule 37.

(f) **Applicant's duty to cooperate.** An applicant for admission to the New Hampshire bar has a duty to cooperate with the board, the committee, their designees, and the staff of the Office of Bar Admissions. Any person who seeks admission to the New Hampshire bar agrees to waive all rights of privacy with reference to any and all documentary material filed or secured in connection with his or her application or motion for admission. The applicant also agrees that any documentation submitted by the applicant may be offered into evidence, without objection, by the board or committee, in any proceeding relating to the applicant's admission to the practice of law.

(g) **Confidentiality.** All documents submitted by an applicant for admission to the New Hampshire bar, all information relating to an applicant gathered by the board, committee, or staff of the Office of Bar Admissions, and all minutes and records circulated to members of the board or committee, shall be confidential and shall not be disclosed or open to the public for inspection except for the following permitted disclosures. The board, committee and staff of the Office of Bar Admissions are authorized to:

1. disclose the names and addresses of applicants to the New Hampshire bar;
2. publish the names of applicants who have passed the bar examination;
3. publish statistical information about bar examination results;
4. provide name-specific pass-fail results to any law school regarding graduates of that law school, which may include an applicant's prior names, date of birth, the date that the applicant's law degree was conferred, and whether the applicant was a first-time or repeat taker. The information will be released to the law schools on condition that no information other than the names of those who passed the exam will be further disseminated.
5. upon receipt of a request and duly executed release from an applicant, provide copies of material in an applicant's file to admissions authorities from other jurisdictions;
6. investigate the character and fitness of an applicant, and disclose any information necessary to the investigation, pursuant to an authorization and release signed by the applicant as part of the petition and questionnaire for admission;
7. disclose relevant information that is otherwise confidential to agencies authorized to investigate complaints of attorney misconduct, or to law enforcement agencies authorized to investigate and prosecute violations of the criminal law;
8. release information regarding an applicant pursuant to a court order;
9. release name and score information to the National Conference of Bar Examiners;
10. release a copy of an applicant's bar admission application upon a written request executed by the applicant and submission of the appropriate fee;
11. publish an applicant's answer to a question on the bar examination as a representative sample of an answer, provided that the identity of the applicant is not disclosed.

Adopt on a permanent basis Circuit Court – Probate Division Rule 96-A, which was adopted on a temporary basis by Supreme Court Order dated December 29, 2014 as follows (no changes are being proposed to the temporary rule now in effect):

**Rule 96-A. PROOF OF VALIDITY OF WILL/TRUST**

**(a) Proof of Will**

(1) At the time that the Petition to Prove Will is filed the petitioner shall also file the original will sought to be validated. The petitioner shall certify that the will filed with the petition is the petitioner’s current will and that no subsequent wills or codicils are in existence.

(2) The petitioner shall certify that a copy of the petition and a copy of the attached will have been sent to all interested parties as defined in RSA 552:18, III. The court may order that notice be given to other persons.

(3) Upon filing of the petition, the court shall schedule a hearing within 30 days and shall cause notice of the hearing to be sent via first class U.S. mail to all interested parties listed on the petition as well as any other parties deemed by the court to be interested parties per RSA 552:18, V.

(4) At the conclusion of the hearing, the court shall issue an order declaring the will to be valid or invalid and may include any findings of fact or conclusions of law that it deems appropriate or necessary.

(5) Thirty days following the issuance of the court’s order or of the clerk’s written notice of decision, whichever is later, if the court has not received notice that an appeal has been filed with the New Hampshire Supreme Court, notice shall be provided to the petitioner or to the petitioner’s attorney that the original will must be retrieved from the Probate Division within 10 days. The court shall cause a certified copy of the will to be placed in the court’s file prior to delivery to the petitioner or to the petitioner’s attorney, and said copy shall become part of the court’s official record of the proceeding. If the original will is not retrieved, the court shall maintain the original will in the court’s file pending notification of the decease of the petitioner.

(6) If, subsequent to the proceeding but prior to the delivery of the

original will to the petitioner, the court receives reliable information that the petitioner is deceased, the court shall cause the original will to be filed in the Probate Division located in the county of residence of the petitioner pursuant to RSA 552:2. If the Probate Division holding the original will is the Probate Division located in the county of residence of the petitioner, the court shall cause a new file to be created as if the original will had been filed pursuant to RSA 552:2.

**(b) Proof of Trust by Settlor**

(1) At the time that a Petition is filed, the Petitioner shall certify that a copy of the Petition and a copy of the trust have been sent to all interested parties as defined in RSA 564-B:4-406 (d)(3) and (4). The court may order that notice be given to other persons.

(2) The court shall schedule a hearing on the Petition and shall cause notice to be sent to all interested persons via first class U.S. mail.

(3) At the conclusion of the hearing, the court shall issue an order declaring the trust to be valid or invalid and may include any findings of fact or conclusions of law that it deems appropriate or necessary.

## APPENDIX I

Adopt on a permanent basis Circuit Court – Probate Division Rule 94, which was adopted on a temporary basis by Supreme Court Order dated December 29, 2014 as follows (no changes are being proposed to the temporary rule now in effect):

### **Rule 94. GESTATIONAL CARRIER AGREEMENTS – PARENTAGE ORDERS**

- (a) For the purpose of a Petition for Parentage Order, the parties requiring notice shall be the parties to the gestational carrier agreement and shall include:
- (1) The intended parent or parents;
  - (2) The gestational carrier, and
  - (3) The spouse of the gestational carrier.

In addition to the parties listed above and in the discretion of the court, the non-spousal partner of the gestational carrier, if any, may be included as a party if not a party to the gestational carrier agreement.

- (b) The petitioner, at the time of filing the Petition for Parentage Order, shall file a copy of the gestational carrier agreement with the court.
- (c) The petitioner shall attach to the petition any sworn affidavits intended to demonstrate substantial compliance with RSA Ch. 168-C.
- (d) The petitioner shall cause notice of the filing to be provided to all parties to the gestational carrier agreement and shall certify on the petition that said notice has been provided. Any responsive pleading shall be filed with the court within 10 days of the filing of the petition.
- (e) In the event that the court determines that a hearing on the petition is necessary, notice shall be provided to the parties in paragraph A by first class mail. Any hearing shall be scheduled within 30 days of the date of filing of the petition.

## APPENDIX J

Adopt on a permanent basis Supreme Court Rule 40(11)(j), which was amended on a temporary basis by Supreme Court Order dated April 4, 2014 as follows (no changes are being proposed to the temporary rule now in effect):

(j) *Photographing, Recording and Broadcasting*

(1) Except as otherwise provided by this rule or by other provisions of law, any person, whether or not a member of an established media organization, shall be permitted to photograph, record and broadcast all proceedings that are open to the public, provided that such person provides advance notice to the committee in accordance with section (3) of this rule that he or she intends to do so. No person shall photograph, record or broadcast any proceeding without providing advance notice to the committee that he or she intends to do so. In addition to giving any parties in interest an opportunity to object, the purpose of the notice requirement is to allow the committee to ensure that the photographing, recording or broadcasting will not be disruptive to the proceedings and will not be conducted in such a manner or using such equipment as to violate the provisions of this rule.

(2) Official court reporters, court monitors and other persons employed or engaged by the committee to make the official record of any proceeding may record such proceeding by video and/or audio means without compliance with the notice provisions of section (1) of this rule.

(3) Any person desiring to photograph, record or broadcast any proceeding, or to bring equipment intended to be used for these purposes into a hearing room, shall submit a written request to the committee before commencement of the proceeding, or, if the proceeding has already commenced, at the first reasonable opportunity during the proceeding, so the committee before commencement of the proceeding, or at an appropriate time during the proceeding, may give all interested parties a reasonable opportunity to be heard on the request.

(4) Any party to a proceeding or other interested person who has reason to believe that a request to photograph, record or broadcast a proceeding will be made and who desires to place limitations beyond that specified by this rule upon these activities may file a written request seeking such relief. The request shall be filed as far in advance of the proceeding as is practicable. Upon the filing of such a request, the committee may schedule a hearing as expeditiously as possible before the commencement of the proceeding and, if a hearing is scheduled, the committee shall provide as much notice of the hearing as is

reasonably possible to all interested parties and to the Associated Press, which shall disseminate the notice to its members.

(5) The committee shall not establish notice rules, requirements or procedures that are different than those established by this rule.

(6) At any hearing conducted pursuant to subsections (3) or (4) of this rule, the party or person seeking to prohibit or impose restrictions beyond the terms of this rule on the photographing, recording or broadcasting of a proceeding that is open to the public shall bear the burden of demonstrating: (1) that the relief sought advances an overriding public interest that is likely to be prejudiced if the relief is not granted; (2) that the relief sought is no broader than necessary to protect that interest; and (3) that no reasonable less restrictive alternatives are available to protect the interest. Any order prohibiting or imposing restrictions beyond the terms of this rule upon the photographing, recording or broadcasting of a proceeding that is open to the public shall be supported by particularized findings of fact that demonstrate the necessity of the committee's action.

(7) The committee retains discretion to limit the number of cameras, recording devices and related equipment allowed in the hearing room at one time. In imposing such limitations, the committee may give preference to requests to photograph, record or broadcast made by a representative of an established media organization that disseminates information concerning court proceedings to the public. The committee also may require representatives of the media to arrange pool coverage.

(8) It is the responsibility of representatives of media organizations desiring to photograph, record or broadcast a proceeding to contact the executive secretary in advance of a proceeding to ascertain if pool coverage will be required. If the committee has determined that pool coverage will be required, it is the sole responsibility of such media representatives, with assistance as needed from executive secretary, to determine which media organization will provide the coverage feed. Disputes about pool coverage will not ordinarily be resolved by the committee, and the committee may deny media organizations' requests to photograph, record or broadcast a proceeding if pool agreements cannot be reached. It also is the responsibility of said person to make arrangements with the executive secretary sufficiently in advance of the proceeding so that the set up of any needed equipment in the hearing room, including equipment for pool coverage, can be completed without delaying the proceeding. The court shall allow reasonable time prior to a proceeding for the set up of such equipment.

(9) The committee shall make all documents and exhibits filed with the committee, and not sealed, available for inspection by members of the public in a reasonably timely fashion, it being recognized that the committee's need to

make use of documents and exhibits for official purposes must take precedence over their availability for public inspection. The committee may elect to make one “public” copy of an exhibit available.

(10) The exact location of all recording, photographing and broadcasting equipment within the hearing room shall be determined by the committee. Once established, movement of such equipment within the hearing room is prohibited without the express prior approval of the committee. The committee may prohibit the use of any equipment which requires the laying of cords or wires that pose a safety hazard or impair easy ingress and egress from the hearing room. All equipment used must operate with minimal noise so as not to disrupt the proceedings.

(11) Unless otherwise ordered by the committee, the following standing orders shall apply to all recording, photographing or broadcasting of proceedings within any hearing room:

(a) No flash or other artificial lighting devices shall be used.

(b) Set up and dismantling of equipment in a disruptive manner while committee is in session is prohibited.

(c) No recording, photographing or broadcasting equipment may be moved into, out of, or within the hearing room while the hearing is in session.

(d) Recording, photographing or broadcasting equipment must remain a reasonable distance from the parties, counsel tables, alleged victims and their families and witnesses, unless such person(s) voluntarily approach the position where such equipment is located. No such equipment shall be used or set up in a location that creates a risk of picking up confidential communications between lawyer and client or conferences held at the bench among committee members and counsel or the parties.

(e) All persons using recording, photographing or broadcasting equipment must abide by the directions of the committee at all times.

(f) Interviews within the hearing room are not permitted before or after a proceeding.

(g) A person who has been granted permission to record, photograph or broadcast a hearing shall not engage in any activity that distracts the participants or impairs the dignity of the proceedings.

#### Comments

With respect to subsection (3) of this rule, it is contemplated that such requests will be deemed timely if they are filed enough in advance of the proceeding that the committee has an opportunity to read and consider the request, to orally notify all interested parties of its existence, and to conduct a brief hearing in the event that any interested party objects to the request. Given the strong presumption under New Hampshire law that photographing, recording and/or broadcasting judicial conduct committee proceedings that are open to the public is allowable, this subsection is not intended to impose lengthy or onerous advance notice requirements; instead, it recognizes that frequently such requests will be filed only shortly before the proceeding in question is to begin.

## APPENDIX K

Adopt on a permanent basis Rule 98 of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases Filed in Superior Court, which was amended on a temporary basis by Supreme Court Order dated February 20, 2014 as follows (no changes are being proposed to the temporary rule now in effect):

98. The following discovery and scheduling provisions shall apply to all criminal cases in the Superior Court unless otherwise modified by the presiding justice in accordance with paragraph J hereof.

### A. *Pretrial Disclosure by the State.*

(1) Within ten (10) calendar days after the entry of a not guilty plea by the defendant, the state shall provide the defendant with the materials specified below:

(i) A copy of all statements, written or oral, signed or unsigned, made by the defendant to any law enforcement officer or his agent which are intended for use by the state as evidence at trial or at a pretrial evidentiary hearing.

(ii) Copies of all police reports; statements of witnesses; results or reports of physical or mental examinations, scientific tests or experiments, or any other reports or statements of experts, as well as a summary of each expert's qualifications.

(iii) The defendant's prior criminal record.

(iv) Copies of or access to all books, papers, documents, photographs, tangible objects, buildings or places which are intended for use by the state as evidence at trial or at a pretrial evidentiary hearing.

(v) All exculpatory materials required to be disclosed pursuant to the doctrine of *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, including *State v. Laurie*, 139 N.H. 325 (1995).

(vi) Notification of the state's intention to offer at trial pursuant to N.H. Rule of Evidence 404(b) evidence of other crimes, wrongs or acts committed by the defendant, as well as copies of or access to all statements,

reports or other materials that the state will rely on to prove the commission of such other crimes, wrongs or acts.

*B. Pretrial Disclosure by the Defendant.*

(1) If the defendant intends to rely upon an alibi or any other defense specified in the Criminal Code, the defendant shall within thirty (30) calendar days after the entry of a plea of not guilty file a notice to this effect with the court and the prosecution as provided in Superior Court Rules 100 and 101.

(2) If a defendant in a case to which Superior Court Rule 100-A applies intends to offer evidence of prior sexual activity of the victim with a person other than the defendant, the defendant shall not less than forty-five (45) calendar days prior to jury selection file a motion in conformance with the requirements of said rule.

(3) Not less than thirty (30) calendar days prior to jury selection or, in the case of a pretrial evidentiary hearing, not less than three (3) calendar days prior to such hearing, the defendant shall provide the state with copies of or access to (i) all books, papers, documents, photographs, tangible objects, buildings or places which are intended for use by the defendant as evidence at the trial or hearing and (ii) all results or reports of physical or mental examinations, scientific tests or experiments or other reports or statements prepared or conducted by experts which the defendant anticipates calling as a witness at the trial or hearing, as well as a summary of each such expert's qualifications.

*C. Dispositional Conferences.*

The state shall provide a written offer for a negotiated plea, in compliance with the Victim's Rights statute, RSA 21-M:8-k, to the defense no less than fourteen (14) days prior to the dispositional conference. The defense shall respond to the state's offer no later than ten (10) days after receipt.

*D. Exchange of Information Concerning Trial Witnesses.*

(1) Not less than twenty (20) calendar days prior to final pretrial conference or, in the case of a pretrial evidentiary hearing, not less than three (3) calendar days prior to such hearing, the state shall provide the defendant with a list of the names of the witnesses it anticipates calling at the trial or hearing. Contemporaneously with the furnishing of such witness list and to the extent not already provided pursuant to paragraph A(ii) of this rule the state shall also provide the defendant with all statements of witnesses the state anticipates calling at the trial or hearing. At this same time, the state also shall furnish the defendant with the results of New Hampshire criminal record

checks for all of the state's trial or hearing witnesses other than those witnesses who are experts or law enforcement officers.

For each expert witness included on the list of witnesses, the state shall provide a brief summary of the expert's education and experience relevant to his area of expertise, state the subject matter on which the expert is expected to testify, state a summary of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and provide a copy of any expert report relating to such expert.

(2) Not later than ten (10) calendar days before the final pretrial conference or, in the case of a pretrial evidentiary hearing, not less than two (2) calendar days prior to such hearing, the defendant shall provide the state with a list of the names of the witnesses the defendant anticipates calling at the trial or hearing. Contemporaneously with the furnishing of such witness list, the defendant shall also provide the state with all statements of witnesses the defendant anticipates calling at the trial or hearing. Notwithstanding the preceding sentence, this rule does not require the defendant to provide the state with copies of or access to statements of the defendant.

For each expert witness included on the list of witnesses, the defendant shall provide a brief summary of the expert's education and experience relevant to his area of expertise, state the subject matter on which the expert is expected to testify, state a summary of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and provide a copy of any expert report relating to such expert.

(3) For purposes of this rule, a "statement" of a witness means: (i) a written statement signed or otherwise adopted or approved by the witness; (ii) a stenographic, mechanical, electrical or other recording, or a transcript thereof, which is a substantially verbatim recital of an oral statement made by the witness and recorded contemporaneously with the making of such oral statement; and (iii) the substance of an oral statement made by the witness and memorialized or summarized within any notes, reports or other writings or recordings, except that, in the case of notes personally prepared by the attorney representing the state or the defendant at trial, such notes do not constitute a "statement" unless they have been adopted or approved by the witness or by a third person who was present when the oral statement memorialized or summarized within the notes was made.

#### *E. Protection of Information Not Subject to Disclosure.*

To the extent either party contends that a particular statement of a witness otherwise subject to discovery under this rule contains information concerning the mental impressions, theories, legal conclusions or trial or hearing strategy of counsel, or contains information that is not pertinent to the

anticipated testimony of the witness on direct or cross examination, that party shall at or before the time disclosure hereunder is required submit to the opposing party a proposed redacted copy of the statement deleting the information which the party contends should not be disclosed, together with (i) notification that the statement or report in question has been redacted and (ii) (without disclosing the contents of the redacted portions) a general statement of the basis for the redactions. If the opposing party is not satisfied with the redacted version of the statement so provided, the party claiming the right to prevent disclosure of the redacted material shall submit to the court for *in camera* review a complete copy of the statement at issue as well as the proposed redacted version, along with a memorandum of law detailing the grounds for nondisclosure.

*F. Motions Seeking Additional Discovery.*

Subject to the provisions of paragraph J, the discovery mandated by paragraphs A, B and D of this rule shall be provided as a matter of course and without the need for making formal request or filing a motion for the same. No motion seeking discovery of any of the materials required to be disclosed by paragraphs A, B, and D of this rule shall be accepted for filing by the clerk of court unless said motion contains a specific recitation of (i) the particular discovery materials sought by the motion, (ii) the efforts which the movant has made to obtain said materials from the opposing party without the need for filing a motion and (iii) the reasons, if any, given by the opposing party for refusing to provide such materials.

Nonetheless, this rule does not preclude any party from filing motions to obtain additional discovery. Except with respect to witnesses or information first disclosed pursuant to paragraph D, all motions seeking additional discovery, including motions for a bill of particulars and for depositions, shall be filed within forty-five (45) calendar days after the defendant enters a plea of not guilty. Motions for additional discovery or depositions with respect to trial witnesses first disclosed pursuant to paragraph D shall be filed no later than seven (7) calendar days after such disclosure occurs.

*G. Other Pretrial Motions.*

The parties shall file all pretrial motions other than discovery related motions, including but not limited to motions to dismiss, motions to suppress and motions to sever charges or defendants, not more than sixty (60) calendar days after entry of a plea of not guilty or within such other time in advance of trial as the Court may order for good cause shown or may provide for in a pretrial scheduling order.

*H. Motions in Limine.*

The parties shall file all motions in limine no less than five (5) calendar days prior to the final pretrial conference. For purposes of this paragraph, a motion which seeks to exclude the introduction of evidence on the ground that the manner in which such evidence was obtained was in violation of the constitution or laws of this state or any other jurisdiction shall be treated as a motion to suppress and not a motion in limine.

I. *Continuing Duty to Disclose.*

The parties are under a continuing obligation to supplement their discovery responses on a timely basis as additional materials covered by this order are generated or as a party learns that discovery previously provided is incomplete, inaccurate or misleading.

J. *Protective and Modifying Orders.*

Upon a sufficient showing of good cause, the court may at any time order that discovery required hereunder be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing of good cause, in whole or in part, in the form of an ex parte written submission to be reviewed by the court *in camera*. If the court enters an order granting relief following such an ex parte showing, the written submission made by the party shall be sealed and preserved in the records of the court to be made available to the supreme court in the event of an appeal.

K. *Sanctions for Failure to Comply.*

If at any time during the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may take such action as it deems just under the circumstances, including but not limited to: (i) ordering the party to provide the discovery not previously provided, (ii) granting a continuance of the trial or hearing, (iii) prohibiting the party from introducing the evidence not disclosed, (iv) assessing costs and attorneys fees against the party or counsel who has violated the terms of this rule.