

**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 15, 2012, 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 15, 2012, or may be submitted at the hearing on June 15, 2012. Comments may be e-mailed to the Committee on or before June 15, 2012, at:

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 (Tel. 271-2646). In addition, the changes being considered are available on the Internet (in the Appendix to this Notice of Public Hearing) at:

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

The changes being considered concern the following rules:

I. Parental Notification Rules

(By order dated December 30, 2011, the New Hampshire Supreme Court adopted, on a temporary basis, a number of rule amendments to comply with RSA 132:32-36 and referred the amendments to the Advisory Committee on Rules for its recommendation as to whether they should be adopted on a permanent basis. RSA 132:32-36, effective January 1, 2012, requires parental notification before abortions can be performed on unemancipated minors. The statute provides that a minor may petition “a court of competent jurisdiction” for an order authorizing an abortion without notification. If a court denies the petition, the minor may file an expedited confidential appeal to the New Hampshire Supreme Court. The following temporary rule amendments relate to the filing of a petition for waiver of parental notice prior to abortion in superior court, and for the filing of an appeal if the petition is denied. The rule amendments are currently in effect on a temporary basis, and the Committee is considering recommending to the Supreme Court that they be adopted on a permanent basis.)

1. Adopt Superior Court Rules 215-222, regarding petitions for waiver of parental notice prior to abortion pursuant to RSA 132:34, on a permanent basis, as set forth in Appendix A.

2. Amend Supreme Court Rule 7, regarding appeals from trial court decisions on the merits, on a permanent basis, as set forth in Appendix B.

3. Adopt Supreme Court Rule 7-B, regarding appeals from lower court decisions on parental notification prior to abortion, on a permanent basis, as set forth in Appendix C.

4. Adopt Supreme Court Rule 32-B, regarding counsel in appeals from lower court decisions on parental notification prior to abortion, on a permanent basis, as set forth in Appendix D.

5. Amend Supreme Court Rule 48, regarding counsel fees and expenses in other indigent cases, on a permanent basis, as set forth in Appendix E.

6. Amend Supreme Court Rule 48-A, regarding guardians ad litem fees in indigent cases, on a permanent basis, as set forth in Appendix F.

II. Admission to the Bar; Board of Bar Examiners; Character and Fitness Committee; Uniform Bar Examination

(By order dated April 27, 2012 the New Hampshire Supreme Court amended, on a temporary basis, effective September 1, 2012, New Hampshire Supreme Court Rule 42, creating an Office of Bar Admissions, clarifying the duties and responsibilities of the Board of Bar Examiners and the Character and Fitness Committee and setting forth an appellate process for applicants who have received a negative decision from the Board of Bar Examiners regarding their eligibility for admission, a request for testing accommodation and an accusation of misconduct during the bar examination. The New Hampshire Supreme referred the temporary amendment to the Advisory Committee on Rules for its recommendation as to whether it should be adopted on a permanent basis. The Committee is considering recommending both that the Court adopt the temporary amendment on a permanent basis and that the Court adopt additional amendments to make New Hampshire a Uniform Bar Examination jurisdiction.)

1. Amend Supreme Court Rule 42, regarding admission to the Bar, Board of Bar Examiners, Character and Fitness Committee, and the Uniform Bar Examination, on a permanent basis, as set forth in Appendix G.

III. Committee on Judicial Conduct

(The Committee on Judicial Conduct has proposed a number of amendments to the procedural rules of the Committee on Judicial Conduct.)

1. Amend Supreme Court Rule 40, regarding procedural rules of the Committee on Judicial Conduct, as set forth in Appendix H.

IV. Preservation of Issues for Appeal

(The proposed amendments to Superior Court Rule 59-A, Circuit Court-District Division Rule 3.11(E), Circuit Court-Probate Division Rule 59-A, and Circuit Court-Family Division Rule 1.26(F) would include in the rules the requirement, set forth in New Hampshire Dep't of Corrections v. Butland, 147 N.H. 676, 679 (2002), that in order to preserve issues for appeal, any issues which could not have been presented to the trial court prior to its decision must be presented to the trial court in a motion for reconsideration.)

1. Amend Superior Court Rule 59-A, as set forth in Appendix I.
2. Amend Circuit Court-District Division Rule 3.11(E), as set forth in Appendix J.
3. Amend Circuit Court-Probate Division Rule 59-A, as set forth in Appendix K.
4. Amend Circuit Court-Family Division Rule 1.26(F), as set forth in Appendix L.

V. Counsel in Guardianship, Involuntary Admission, and Termination of Parental Rights Cases

(The proposed amendment to Supreme Court Rule 32-A, governing the appointment of appellate counsel in certain non-criminal cases, would include in the rule civil commitment cases filed under RSA 135-E and involuntary admission cases filed under RSA 171-B.)

1. Amend Supreme Court Rule 32-A, as set forth in Appendix M.

VI. Appellate Mediation

(The proposed amendment to Supreme Court Rule 12-A would allow retired marital masters to serve as mediators in family law appeals.)

1. Amend Supreme Court Rule 12-A, regarding appellate mediation, as set forth in Appendix N.

New Hampshire Supreme Court
Advisory Committee on Rules

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

May 10, 2012

APPENDIX A

Adopt on a permanent basis Superior Court Rules 215-222, which were adopted on a temporary basis by Supreme Court order dated December 30, 2011, as follows (no changes are being proposed to the temporary rule now in effect):

PETITION FOR WAIVER OF PARENTAL NOTICE PRIOR TO ABORTION PURSUANT TO RSA 132:34

215. COMMENCEMENT OF ACTION. A request for waiver of parental notice prior to abortion, pursuant to RSA 132:34, shall be filed in the superior court in the form of the "Petition for Waiver of Parental Notice For Abortion Requested by a Minor," as approved by the supreme court. The minor must provide her legal name and date of birth in the petition, but she may request that the petition be titled using a pseudonym or her initials. The minor must provide information in the petition about how she can be contacted confidentially, unless she is represented by counsel, in which case she shall provide contact information for her counsel. If the minor is unrepresented and is unable to provide the court with a confidential means to contact her, the minor must file the petition with the court in person and wait at the court for notice of the scheduled hearing. See Rule 216.

The petition for waiver of parental notice shall be signed by the minor. If a petition is filed by e-mail, the minor's name may be typewritten in lieu of a signature.

All proceedings pursuant to these rules shall be held in closed court, shall be confidential and shall ensure the anonymity of the minor. All court proceedings shall be sealed. All documents related to the petition shall be confidential and shall not be available to the public.

216. FILING. No filing fee shall be required for a petition for waiver of parental notice prior to abortion filed pursuant to RSA 132:34.

A petition shall be deemed filed upon the court's receipt of the completed petition for waiver of parental notice. Filing may be accomplished in any of the following ways:

- (1) by delivery to the office of the clerk of the superior court during normal court hours;

(2) by depositing in a drop box at a superior court location, but in such circumstances, the petition shall be deemed filed when opened by the court staff, but in any case, no later than 8:00 a.m. the following business day;

(3) by first-class mail to the office of the clerk of the superior court; or

(4) by e-mail to the following e-mail address: parentalnotice@courts.state.nh.us. If a petition is filed by e-mail, the minor or her counsel shall also call the telephone number listed on the judicial branch website to inform the office of the clerk through the court's answering service that a petition for waiver of parental notice has been filed. In addition to advising the answering service that a petition under RSA 132 has been filed by e-mail, the minor or her counsel shall identify the superior court location selected for filing, and provide a telephone number so that the minor or her counsel can be contacted in the event the court does not receive the e-mail filing.

217. RIGHT TO COUNSEL; GUARDIAN AD LITEM. A minor filing a petition for waiver of parental notice has a right to court-appointed counsel. A minor requesting the appointment of counsel shall indicate in the petition for a waiver of parental notice whether she is requesting the appointment of counsel by the court. The court shall appoint counsel for the minor as soon as possible after the filing of the petition for waiver of parental notice in which counsel is requested, but in every case in which counsel is requested, counsel shall be appointed prior to the hearing on the petition. The court may also appoint a guardian ad litem for the minor.

218. SCHEDULING A HEARING. A hearing on a petition for waiver of parental notice shall be scheduled as soon as practicable, but in every case, within 48 hours of filing, unless such time period is waived by the minor. At the court's discretion, the hearing may be held in person, telephonically, or electronically, at any location chosen by the court.

The minor and her counsel are obligated to make themselves available for a hearing, which may be scheduled with short notice at any time after the filing of the petition for waiver of parental notice. Failure on the part of the minor to make herself available for a hearing may result in the denial of the petition without prejudice.

Notice of the date and time of the hearing shall be given to the minor or her counsel through the means of contact provided by the minor or her counsel in the petition, or through another means agreed upon by the minor or her counsel and the clerk. Every attempt shall be made to provide the minor or her counsel with notice of the hearing at

least two hours prior to the time of the hearing. Nevertheless, transmittal of notice to the minor or her counsel of the scheduling of the hearing through the means of contact provided in the petition or agreed upon with the clerk shall be deemed sufficient notice of the hearing, whether the minor or her counsel receives the notice prior to the hearing.

219. RULING ON PETITION. The court shall rule upon the petition for waiver of parental notice within 48 hours of filing, and a copy of the court's order will be provided to the minor or her counsel within the same time period. A copy of the order may be provided in hand, or provided by another means agreed upon by the minor or her counsel and the clerk. An electronically signed order shall have the same force and effect as a paper order containing an original signature and conventionally signed order. An electronically signed order shall include, but is not limited to, the signatory's name (i) preceded by a "/s/", (ii) typed in the document, or (iii) inserted in the document as an imaged signature. A person who relies upon a court order issued pursuant to this rule as evidence that the minor has obtained a judicial waiver of notice pursuant to RSA 132:34, II shall not be held liable under RSA 132:35.

The clerk shall make a Notice of Decision available to the minor by the next business day. The Notice of Decision may be provided in hand at the court to the minor or provided by another means agreed upon by the minor or her counsel and the clerk. The Notice of Decision shall be mailed to the minor's counsel and to the guardian ad litem, if any, by the next business day.

220. CERTIFICATE. If the petition for waiver of parental notice is granted, the court shall issue a Certificate to Allow Medical Provider to Perform an Abortion without Notifying a Minor's Parents or Guardian. This certificate shall set forth the minor's legal name and her date of birth, but shall not include the court's factual findings and legal conclusions supporting its decision. The certificate shall be issued under court seal. The certificate shall be made available to the minor in hand at the court, or by another means agreed upon by the minor or her counsel and the clerk, no later than the next business day. A person who relies upon a certificate issued pursuant to this rule as evidence that the minor has obtained a judicial waiver of notice pursuant to RSA 132:34, II shall not be held liable under RSA 132:35.

221. APPOINTMENT OF COUNSEL. If the minor requests the appointment of counsel, the court shall appoint an attorney to represent the minor.

Whether retained by the minor or appointed by the court, trial counsel shall be responsible for representing the minor in an appeal to

the supreme court pursuant to RSA 132:34, II (c), unless the superior court, prior to the filing of the appeal, permits counsel to withdraw due to exceptional circumstances. A motion to withdraw as counsel in such a matter must state the exceptional circumstances that would warrant the grant of leave to withdraw. If a motion to withdraw as counsel is granted, the court shall appoint new counsel to represent the minor for the remainder of the proceedings, or for the purpose of an appeal, if any.

A minor who seeks to appeal the denial of a petition for waiver of parental notice and who was not represented by counsel in superior court may request that the superior court appoint counsel to assist the minor on appeal. In such a case, the minor shall file with the superior court a "Request for Court-Appointed Counsel in Expedited Confidential Appeal From Lower Court Decision on Parental Notification Prior to Abortion" form. Such a request shall be filed with the superior court prior to filing a notice of appeal in the supreme court, and shall be brought to the attention of the court for immediate ruling. See Supreme Court Rule 32-B.

222. COUNSEL AND GUARDIAN AD LITEM FEES. All bills related to fees and expenses pursuant to petitions filed under RSA 132 by court appointed counsel or guardians *ad litem* must be itemized as to the time spent and expenses incurred. There shall be no separate charge for overhead or travel time. The expense of telephone calls shall not be reimbursed. The maximum fee for representation of a minor in the superior court is \$1000. All bills related to fees and expenses must be submitted to the court no later than sixty days after disposition. The court may allow late filing for good cause shown, when justice so requires.

APPENDIX B

Adopt on a permanent basis Supreme Court Rule 7, which was amended on a temporary basis by Supreme Court order dated December 30, 2011, as follows (no changes are being proposed to the temporary rule now in effect):

RULE 7. Appeal from Trial Court Decision on the Merits

(1)(A) *Mandatory appeals.*

Unless otherwise provided by law or by these rules, a mandatory appeal, other than an appeal in a parental notification case under RSA 132:34, shall be by notice of appeal in the form of notice of appeal approved by the supreme court for the filing of a mandatory appeal ("Notice of Mandatory Appeal" form). Such an appeal shall be filed by the moving party within 30 days from the date on the clerk's written notice of the decision on the merits.

(B) *Other appeals from trial court decisions on the merits.*

The supreme court may, in its discretion, decline to accept an appeal, other than a mandatory appeal, or any question raised therein, from a trial court after a decision on the merits, or may summarily dispose of such an appeal, or any question raised therein, as provided in Rule 25. Unless otherwise provided by law or by these rules, an appeal from a trial court decision on the merits other than a mandatory appeal shall be by notice of appeal in the form of notice of appeal approved by the supreme court for the filing of such an appeal ("Notice of Discretionary Appeal" form). Such an appeal shall be filed by the moving party within 30 days from the date on the clerk's written notice of the decision on the merits.

(C) The definition of "decision on the merits" in Rule 3 includes decisions on motions made after an order, verdict, opinion, decree or sentence. A timely filed post-trial motion stays the running of the appeal period for all parties to the case in the trial court including those not filing the motion. Untimely filed post-trial motions will not stay the running of the appeal period unless the trial court waives the untimeliness within the appeal period. Successive post-trial motions will not stay the running of the appeal period. *See Petition of Ellis*, 138 N.H. 159 (1993).

In criminal appeals, the time for filing a notice of appeal shall be within 30 days from the date of sentencing or the date of the clerk's written notice of disposition of post-trial motions, whichever is later, provided, however, that the date of the clerk's written notice of disposition of post-trial motion shall not be used to calculate the time for filing a notice of appeal in criminal cases if the post-trial motion was filed more than 10 days after sentencing.

(2) An appeal shall be deemed filed when the original and all copies of the notice of appeal in proper form, together with the filing fee, are received by the clerk of this court within 30 days from the date on the clerk's written notice of the decision.

(3) An appeal permitted by law on a different form and by a different procedure shall be deemed timely filed when it is received by the clerk of this court on the form and by the procedure prescribed by law.

(4) All parties to the proceedings in the court from whose decision on the merits the appeal is being taken shall be deemed parties in this court, unless the moving party shall notify the clerk of this court in writing of his belief that one or more of the parties below has no interest in the outcome of the transfer. The moving party shall mail a copy of the letter first class, or give a copy, to each party in the proceeding below. A party thus designated as no longer interested may remain a party in this court by notifying the clerk of this court, with notice mailed first class or given to the other parties, that he has an interest in the transfer. Parties supporting the position of the moving party shall meet the time schedule provided for that party.

(5) If a timely notice of appeal is filed by a party, any other party may file a notice of cross-appeal within 10 days from the date on which the first notice of appeal was filed and shall pay a filing fee therewith.

(6)(A) The appealing party in a mandatory appeal shall attach to the notice of appeal the decision below, the clerk's written notice of the decision below, any order disposing of a timely-filed post-trial motion, and the clerk's written notice of any order disposing of a timely-filed post-trial motion.

(B) The appealing party in an appeal other than a mandatory appeal shall attach to the notice of appeal the decision below, the clerk's written notice of the decision below, any order disposing of a timely-filed post-trial motion, and the clerk's written notice of any order disposing of a timely-filed post-trial motion. Any other pleadings and documents that the appealing party believes are necessary for the court to evaluate the specific questions raised on appeal and to determine whether the appeal is timely filed shall be filed as a separate appendix. The appendix shall

contain a table of contents referring to numbered pages, and only 8 copies shall be filed. Note: *Also see* Rule 26(5). If a ground for appeal is the legal sufficiency of the evidence, the question in the notice of appeal form raising that ground shall contain a succinct statement of why the evidence is alleged to be insufficient as a matter of law.

APPENDIX C

Adopt on a permanent basis Supreme Court Rule 7-B, which was adopted on a temporary basis by Supreme Court order dated December 30, 2011, as follows (no changes are being proposed to the temporary rule now in effect):

RULE 7-B. Appeal from Superior Court Decision on Parental Notification Prior to Abortion

RSA 132:32-36, effective January 1, 2012, requires parental notification before abortions can be performed on unemancipated minors. The statute provides that a minor may petition a court of competent jurisdiction for an order authorizing an abortion without notification. The statute also provides that if a court denies the petition, the minor may file, as provided by supreme court rule, an expedited confidential appeal to the New Hampshire Supreme Court. The following provides the procedures for filing such an appeal:

(1) Notwithstanding anything in these rules to the contrary, the following procedures shall apply to an appeal filed pursuant to RSA 132:34 by a pregnant minor for whom the superior court denies an order authorizing an abortion without notification.

(2) An expedited confidential appeal shall be available to any pregnant minor for whom the superior court denies an order authorizing an abortion without notification. Any such appeal shall be filed on the form of notice of appeal approved by the supreme court for the filing of an appeal under RSA 132:34 (“Notice of Expedited Confidential Appeal from Lower Court Decision on Parental Notification Prior to Abortion” form). An order authorizing an abortion without notification shall not be subject to appeal.

All proceedings pursuant to this rule shall be confidential and shall ensure the anonymity of the minor. All court proceedings shall be sealed. All documents related to the appeal shall be confidential and shall not be available to the public.

(3) An appeal under this rule shall be filed by the minor within 30 days from the date on the clerk’s written notice of the decision on the merits. A timely filed post-trial motion stays the running of the appeal period. Untimely filed post-trial motions will not stay the running of the appeal period unless the lower court waives the untimeliness within the appeal period. Successive post-trial motions will not stay the running of the appeal period. *See Petition of Ellis*, 138 N.H. 159 (1993).

(4) No filing fee shall be required for an appeal under this rule.

(5) Filing of an appeal under this rule may be accomplished by any of the following methods:

(A) By delivery of the original notice of appeal in proper form to the office of the clerk of the supreme court during normal business hours of the court.

(B) By depositing the original notice of appeal in proper form in the drop box at the supreme court, but in such circumstances, the notice of appeal shall be deemed filed when opened by the court staff, but in any case, no later than 8:30 a.m. the following business day.

(C) By e-mailing the notice of appeal in proper form to the following e-mail address: 7BAppeals@courts.state.nh.us. At the time that the notice of appeal is e-mailed to the aforesaid e-mail address, the appealing party shall also call the telephone number provided on the “Notice of Expedited Confidential Appeal from Lower Court Decision on Parental Notification Prior to Abortion” form, to inform the clerk of the supreme court through the court’s answering service that a notice of appeal under RSA 132:34 has been e-mailed to the office of the clerk of the supreme court. The appealing party need not give any information other than that a notice of appeal under RSA 132:34 has been filed by e-mail, but must provide a confidential telephone number so that the party can be reached in the event that the court has not received the notice of appeal by e-mail. The appealing party shall also either: (i) send the original notice of appeal, on or before the next business day, by first class mail addressed to the clerk of the supreme court; or (ii) deliver the original notice of appeal to the office of the clerk of the supreme court on the next business day. The date and time that the notice of appeal is received by e-mail, however, shall be the date and time of filing.

A minor who files her appeal by e-mail is urged to telephone the office of the clerk of the supreme court at (603) 271-2646 on the next business day to confirm that her notice of appeal was received.

(D) By sending the original notice of appeal in proper form by first class mail addressed to the clerk of the supreme court. The date and time that the notice of appeal is received by the court shall be the date and time of filing. A filing shall not be timely unless the papers are received by the clerk within the time fixed by rule or law. Filings postmarked at least two days prior to the time fixed by rule or law shall be deemed timely.

(6) Copies of the original notice of appeal shall, at or before the time of filing in the supreme court, be served by the minor or person acting for her on the clerk of the court from which the appeal is taken. Service may be personal

or by e-mail. Upon receiving notice that an appeal has been filed pursuant to this rule, the superior court shall immediately transmit a copy of the recording of the hearing in the superior court to the supreme court, along with all pleadings and exhibits filed and considered in the proceedings in the lower court, if it has not already done so. For the purposes of an appeal under this rule, the recording of the hearing in the superior court will be deemed to be the record of the proceeding, and a transcript is not required.

(7) The appealing party shall attach to the notice of appeal the decision below, the clerk's written notice of the decision below, any order disposing of a timely-filed post-trial motion, and the clerk's written notice of any order disposing of a timely-filed post-trial motion.

(8) The appealing party shall file a memorandum of law not to exceed 15 pages in length in support of her appeal with her original notice of appeal. The memorandum of law need not comply with the requirements of a brief set forth in Supreme Court Rule 16, including the requirements that briefs be bound in pamphlet form and have covers. The first page of the memorandum of law, however, shall contain: (i) the name of this court; (ii) the title of the case; (iii) the nature of the proceeding in this court and the name of the court below; (iv) the title of the document; and (v) the names, addresses, and New Hampshire Bar identification numbers of counsel representing the party on whose behalf the document is filed. The memorandum of law shall contain: (i) the questions presented for review, expressed in terms and circumstances of the case but without unnecessary detail; (ii) a concise statement of the case and a statement of facts material to the consideration of the questions presented; (iii) the argument, exhibiting clearly the points of fact and of law being presented, citing the authorities relied upon; (iv) a conclusion, specifying the relief to which the party believes herself entitled; and (v) a statement as to whether the party requests oral argument.

The notice of appeal or memorandum of law may be accompanied by an appendix containing copies of relevant documents that were filed in the superior court.

(9) Oral argument shall be held only upon order of the supreme court. Oral argument may be scheduled on short notice.

(10) The supreme court shall make a ruling within 48 hours from the time that the notice of appeal containing all of the materials required by subsections (7) and (8) of this rule is filed pursuant to this rule. If the superior court decision is vacated or reversed, the mandate will be issued immediately.

APPENDIX D

Adopt on a permanent basis Supreme Court Rule 32-B, which was adopted on a temporary basis by Supreme Court order dated December 30, 2011, as follows (no changes are being proposed to the temporary rule now in effect):

RULE 32-B. Counsel in Parental Notification Cases

(1) Whether retained by the pregnant minor or appointed by the superior court, trial counsel in a parental notification case pursuant to RSA 132:34 shall be responsible for representing the pregnant minor in the supreme court unless the superior court, prior to the filing of the appeal, permits counsel to withdraw due to exceptional circumstances. See Superior Court Rule 221. Counsel appointed to represent the pregnant minor in the trial court shall be deemed appointed to represent the pregnant minor in the supreme court.

(2) Trial counsel shall continue to participate until and unless the motion to withdraw is approved by the superior court.

(3) A pregnant minor who wishes to appeal the denial of a petition for an order authorizing an abortion without notification who was not represented by counsel in the superior court but who wishes to be represented in the supreme court by court-appointed counsel must file a “Request for Court-Appointed Counsel in Expedited Confidential Appeal From Lower Court Decision on Parental Notification Prior to Abortion” form with the superior court, prior to the filing of the appeal.

APPENDIX E

Adopt on a permanent basis Supreme Court Rule 48, which was amended on a temporary basis by Supreme Court order dated December 30, 2011, as follows (no changes are being proposed to the temporary rule now in effect):

RULE 48. Counsel Fees and Expenses – Other Indigent Cases and Parental Notification Cases

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which counsel is appointed to represent indigent persons, other than criminal defendants, indigent witnesses in appropriate circumstances, and minors (whether or not indigent) in parental notification cases under RSA 132:34. This rule refers to, but is not limited to, juvenile cases in the district court, guardianships under RSA chapter 464-A, termination of parental rights (TPR) under RSA chapter 170-C, and involuntary admissions under RSA chapter 135-C in the probate court and district court.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: \$60 per hour. The paralegal hourly rate shall not exceed \$35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee for all juvenile cases pursuant to RSA chapters 169-B, C, and D: \$1,700.

(c) De novo appeal of juvenile cases pursuant to RSA chapter 169-C: \$1,400.

(d) Maximum fee for guardianships under RSA chapters 463 or 464-A:

(i) RSA chapter 463: \$1,200;

(ii) RSA chapter 464-A: \$900.

(e) Maximum fee for annual review hearings for guardianships: \$300.

(f) Maximum fee for TPR cases pursuant to RSA chapter 170-C: \$1,700.

(g) Maximum fee for involuntary admissions under RSA chapter 135-C: \$600.

(h) Appeals to the supreme court, other than parental notification cases, in all juvenile cases and any matters within the subject matter jurisdiction of the probate court: \$2,000.

(i) Maximum fee for court review hearings of juvenile cases pursuant to RSA 169-B and D: \$300.

(j) Maximum fee for parental notification cases pursuant to RSA 132:34, excluding any appeal to the supreme court: \$1,000.

(k) Maximum fee for appeals to the supreme court in parental notification cases pursuant to RSA 132:34: \$500.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized.

In any case filed before July 12, 2011, any petition to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

In any case filed on or after July 12, 2011, any petition to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded. In any such case, fees in excess of the maximum compensation in this rule will be paid only if the administrative judge of the circuit court or the chief justice of the superior court, as the case may be, certifies the good cause and exceptional circumstances justifying the excess fees.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(g) The expense of telephone calls shall not be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

APPENDIX F

Adopt on a permanent basis Supreme Court Rule 48-A, which was amended on a temporary basis by Supreme Court order dated December 30, 2011, as follows (no changes are being proposed to the temporary rule now in effect):

RULE 48-A. Guardians Ad Litem Fees – Indigent Cases and Parental Notification Cases.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* The provisions of this rule shall only apply to proceedings within the original jurisdiction of the district and probate courts, in which guardians ad litem are appointed, and the party responsible for payment is indigent, and parental notification cases under RSA 132:34.

Maximum guardian ad litem compensation as authorized by the administrative justice shall be limited as follows:

(a) Time properly chargeable to case: \$60 per hour. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee for abuse and neglect cases through conclusion of dispositional hearing pursuant to RSA 169-C:19: \$1,400.

(c) Maximum fee for CHINS cases (169-D) or delinquency cases (169-B) through conclusion: \$900.

(d) Maximum fee for court review hearings in guardianship of minor or adult cases or abuse and neglect case: \$300.

(e) Maximum fee for TPR case (170-C): \$1,400.

(f) Maximum fee for appeals to the superior court: \$900.

(g) Maximum fee for guardianship cases pursuant to RSA chapters 463 or 464-A: \$1,400.

(h) Maximum fee for parental notification cases pursuant to RSA 132:34, excluding any appeal to the supreme court: \$1,000;

(i) Maximum fee for appeals to the supreme court in parental notification cases pursuant to RSA 132:34: \$500.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized.

In any case filed before July 12, 2011, any petition to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

In any case filed on or after July 12, 2011, any petition to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded. In any such case, fees in excess of the maximum compensation in this rule will be paid only if the administrative judge of the circuit court or the chief justice of the superior court, as the case may be, certifies the good cause and exceptional circumstances justifying the excess fees.

When a guardian ad litem represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* Investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(c) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(d) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(e) Guardians ad litem shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(f) The expense of telephone calls shall not be reimbursed.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

Adopt on a permanent basis Supreme Court Rule 42, which was amended on a temporary basis by Supreme Court order dated April 27, 2012 (deleting existing rule in its entirety and replacing it with the following), and further amend the rule as indicated (new material is in **[bold and brackets]**; deleted material is in ~~striketrough~~ format):

RULE 42. Admission to the Bar; Board of Bar Examiners; Character and Fitness Committee

I. Board of Bar Examiners

(a) **Board of Bar Examiners Established.** A board of bar examiners (board) will be appointed by the court to examine persons desiring to be admitted to the bar of New Hampshire. The board shall consist of no fewer than thirteen members of the New Hampshire bar. Appointments to the board shall be for terms of three years, and members shall be eligible for reappointment. The court shall designate one member of the board to serve as chair and one member to serve as vice-chair.

(b) **Expenses of Board.** All appropriate expenses for operations, staff, equipment and other expenses shall be paid from fees received by the board. Funds previously paid to the Character and Fitness Committee and in the possession of the committee on September 1, 2012 shall be transferred to the board.

(c) **Duties of Board.** The board is charged with the duty and vested with the power and authority:

(1) to determine eligibility of applicants for admission to the bar of New Hampshire;

(2) to determine reciprocal jurisdictions for purposes of admission by motion without examination under Rule 42 ~~(X)~~ **[(XI)]**(a);

(3) to provide for and administer the bar examination, and to provide for the conduct and security of the bar examination;

(4) with the approval of the court, to set the scores that will be considered passing on the bar examination and the Multistate Professional Responsibility Examination;

(5) to establish a fee schedule, with the approval of the court, for applications for admission to the New Hampshire bar, and for other services;

(6) to establish subcommittees, as appropriate, to perform its duties;

(7) to delegate to any of its members, subcommittees or administrator, all or any part of its duties and responsibilities under this section;

(8) to establish a budget, expend funds, enter into contracts and retain the assistance of experts and other personnel when deemed necessary for the efficient discharge of its duties;

(9) to oversee the Office of Bar Admissions; and

(10) to promulgate, amend and revise regulations relevant to the above duties to implement this rule. The regulations of the board shall be consistent with the provisions of this rule and shall not be effective until approved by the court, but once approved, shall have the same force and effect as this rule.

II. Character and Fitness Committee

(a) **Committee on Character and Fitness Established.** A Supreme Court committee on character and fitness (committee) is established to examine the character and fitness of applicants desiring to be admitted to the bar of New Hampshire. The committee shall consist of seven members appointed by the court. Six members shall be members of the New Hampshire Bar Association as follows: (i) one member of the board of bar examiners; (ii) one member who is a member of the committee on professional conduct; (iii) the attorney general of New Hampshire or his or her designee; (iv) the clerk of the supreme court or his or her designee; and (v) two other members of the New Hampshire Bar Association, one of whom shall be designated chair of the committee; and (vi) one layperson. The terms of the attorney general and of the clerk of the supreme court as members of the committee shall be coterminous with their terms of office; and, in the absence of either the attorney general or the clerk of the supreme court, his or her designee is authorized to act as an alternate, exercising all the powers of an appointed member of the committee. Each other member of the committee shall be appointed for a term of three years and shall be eligible for reappointment.

(b) **Expenses of Committee.** All appropriate expenses for operations, staff, and other expenses shall be paid from fees received by the board. Funds previously paid to the committee and in the possession of the committee on September 1, 2012 shall be transferred to the board. Members of the committee shall receive no compensation for their services, but their reasonable expenses shall be paid by the board.

(c) **Duties of Committee.** The committee is charged with the duty and vested with the power and authority:

(1) to investigate the character and fitness of applicants to the New Hampshire bar;

(2) to conduct interviews and evidentiary hearings with regard to an applicant's character and fitness;

(3) to retain the assistance of experts and other personnel when deemed necessary for the efficient discharge of its duties;

(4) to make recommendations to the New Hampshire Supreme Court regarding an applicant's good moral character and fitness to practice law in New Hampshire;

(5) to establish subcommittees, as appropriate, to perform its duties;

(6) to delegate to any of its members, subcommittees or administrator, all or any part of its duties and responsibilities under this section;

(7) to promulgate, amend and revise regulations relevant to the above duties to implement this rule. The regulations of the committee shall be consistent with the provisions of this rule and shall not be effective until approved by the court, but once approved, shall have the same force and effect as this rule.

III. Office of Bar Admissions

(a) An Office of Bar Admissions shall be established to administer and support the functions of the board and the committee. The court may appoint a bar admissions administrator who will serve at the pleasure of the court. The administrator may exercise authority delegated to him or her by the board, the committee, or their chairs.

(b) All appropriate expenses for operations, staff, including the salary of the administrator, equipment, and other expenses shall be paid from fees received by the board.

(c) The board shall have the authority to share, loan, or borrow employees, equipment, and office space with other court entities as may be necessary for efficient operation of the Office of Bar Admissions.

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**
 - ~~(B)~~**[(C)]** to satisfy the requirements for admission without examination set forth in Rule 42~~(X)~~ **[(XI)]**; or
 - ~~(C)~~**[(D)]** to satisfy the requirements for admission after successful completion of the Daniel Webster Scholar Honors Program set forth in Rule 42 ~~(XI)~~ **[(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 thereby 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 without examination. The applicant also agrees that any such documentary material, including the application form, the motion for admission without examination, and the petition and questionnaire for admission to the New Hampshire bar (petition and questionnaire for admission), 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, including all required forms, supporting documents, and the petition and questionnaire for admission, with the exception of the applicant's name and address, all matters referred to the board or committee and all information relating to an applicant gathered by the board or committee, shall be confidential. No member of the board or committee shall disclose any matter or information in any file, except at the request of the board, committee or the court or unless legally required to do so. All minutes or records circulated to members of the board or committee shall be kept confidential. All records relating to matters referred to the board or committee shall be retained in their respective files, in accordance with their respective retention schedules. Upon receipt of a request and duly executed release from the applicant, the staff of the Office of Bar Admissions may provide copies of materials in an applicant's file to admissions authorities of other states.

(h) **Disclosure to Authorized Agencies.** Notwithstanding the provision of Rule 42 (IV)(g), the board, the committee, and the staff of the Office of Bar Admissions, are authorized to 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.

V. Educational Requirements for Admission

(a) **Undergraduate Education.** Every applicant for admission to the bar must furnish satisfactory proof that the applicant successfully completed at least three (3) years of work required for a bachelor's degree in an accredited college before beginning the study of law, or that the applicant received an equivalent education. An applicant who has not successfully completed at least three (3) years of work required for a bachelor's degree in an accredited college shall have the burden of proving educational equivalency. In addition to filing the petition and questionnaire for admission, any such applicant must submit information sufficient for the board to determine that the requirements of this paragraph have been met.

(b) **Law School Education.** Except as provided in Rule 42(X)[XI](b), every applicant must have graduated from a law school approved by the American Bar Association having a three year course and requiring students to devote substantially all their working time to study, called a full-time law school, or from a law school approved by the American Bar Association having a course of not less than four school years equivalent in the number of working hours to a three year course in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school. A combination of study in full-time and part-time law schools will be accepted only if such law schools meet the above requirements, and the applicant has graduated from one of the law schools. Study in any law school which does not require attendance of its students at its lectures or classes or which conducts its courses by distance education (i.e. by technological transmission, including the internet; open broadcast; closed circuit, cable, microwave, or satellite transmission; audio or computer conferencing; video cassettes or discs; or correspondence) shall not constitute compliance with the rule, except that distance education in an ABA-approved law school, in compliance with Standard 306 of the ABA Standards and Rules of Procedure for Approval of Law Schools, shall constitute compliance.

(c) **Foreign Law School Graduate.** Notwithstanding the foregoing paragraph, a person who has graduated from a law school in an English-speaking, common law country and who has pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association shall be eligible to apply for examination provided that such person is a member in good standing of the bar of that country, and is either (i) the holder of a master's degree from a law school approved by the American Bar Association, or (ii) a member of the bar of one of the States of the United States who was admitted after examination and is in good standing. Any person who seeks admission to practice law in the State of New Hampshire who is a graduate of a law school in a foreign country shall have the burden of proving that the requirements of this paragraph have been met. In addition to filing the petition and questionnaire for admission, any foreign law school graduate seeking admission must file an affidavit, signed under oath, attesting that the requirements of this paragraph have been met and submitting information sufficient for the board to determine that the requirements have been met.

VI. Proof of Character and Fitness

(a) Any person who applies for admission to the bar shall be required to establish his or her moral character and fitness to the satisfaction of the committee and the court before admission to the bar. In determining the moral character and fitness of applicants, the committee shall

consider the Character and Fitness Standards set forth in New Hampshire Supreme Court Rule 42B.

(b) Any person who seeks admission to the bar shall at all times have the burden of proving his or her good moral character to the committee and the court. The failure of an applicant to answer any question on the petition and questionnaire for admission, or any question propounded by any member of the committee, a designee of the committee, or by the staff of the Office of Bar Admissions, or to supply any documentary material requested by any of them, shall justify a finding that the applicant has not met the burden of proving good moral character.

(c) Any person who seeks admission to the practice of law shall file with the committee the prescribed petition and questionnaire for admission, which shall contain a certificate signed by two persons certifying the applicant's good moral character. The petition and questionnaire for admission shall be executed by the applicant under oath.

(d) Upon receiving the petition and questionnaire for admission, the committee shall promptly: (1) review the facts stated in the petition, communicate with the references, and make such further investigation as it may deem desirable or necessary; (2) if it deems necessary, arrange for a personal interview with the applicant; (3) consider the character and fitness of the applicant to be admitted to the practice of law; and (4) transmit to the supreme court a report of its investigation and its recommendation in regard to the character and fitness of the applicant for admission to the practice of law.

(e) If the recommendation of the committee is in favor of admission, the court may accept the recommendation and grant the application for admission or decline to accept the recommendation. If the court determines that the recommendation of the committee should not be accepted, it shall either remand the matter to the committee for further investigation and consideration or refer the matter to a referee for an evidentiary hearing during which the applicant shall have the burden of proving his or her good moral character and fitness. If the recommendation of the committee is against admission, the report of the committee shall set forth the facts upon which the adverse recommendation is based and its reasons for rendering an adverse recommendation. The committee shall promptly notify the applicant about the adverse recommendation and shall give the applicant an opportunity to appear at a hearing before it and to be fully informed of the matters reported to the court by the committee, and to answer or explain such matters. Testimony at such hearings shall be given under oath and shall be recorded. Counsel for the committee, counsel for the applicant, and the bar admissions administrator, may issue subpoenas

and subpoenas duces tecum to summon witnesses with or without documents for attendance at hearings. Upon the request of an applicant who is not represented by counsel, counsel for the committee, or the bar admissions administrator, may issue such subpoenas to summon witnesses.

(f) If, following an applicant's appearance before it, the committee is still of the opinion that an adverse report should be made on the application, it shall first give the applicant the privilege of withdrawing the application. If the applicant elects not to withdraw the application, and the second report and recommendation of the committee to the court is against approval of the application, the court, upon receipt of the report with the adverse recommendation by the committee, may grant the application or shall require the applicant to show cause why the application should not be denied.

VII. Bar Examination

(a) The New Hampshire bar examination shall **[be the Uniform Bar Examination]** ~~consist of the Multistate Performance Test, the Multistate Essay Examination and the Multistate Bar Examination,~~ prepared **and coordinated** by the National Conference of Bar Examiners. It shall be administered at a time and place determined by the board on the last Wednesday of February and the preceding day, and the last Wednesday of July and the preceding day.

(b) The board's determination of an applicant's score on the bar examination is final and is not subject to review.

(c) If an applicant is aggrieved by a final decision of the board, or a subcommittee thereof, with respect to an issue arising from the applicant's conduct during, or related to, the bar examination, the applicant may seek review of the board or subcommittee's final decision by the supreme court by filing with the supreme court a petition for review within 20 days of the mailing of the notice of final decision. The applicant shall follow the procedures set forth in Supreme Court Rule 42 (IV)(c).

VIII. Application to take Bar Examination

(a) A person seeking to take the bar examination shall file with the board an application to take the New Hampshire bar examination and a completed petition and questionnaire for admission by the deadlines established by the board. The application and petition and questionnaire for admission must be accompanied by the bar examination application fee which shall be paid to the New Hampshire Board of Bar Examiners. The fee shall be nonrefundable.

(b) If an applicant to take the bar examination notifies the board at least thirty days before the date of the bar examination that he or she will not take the bar examination for which he or she applied, and wishes to take the immediately subsequent administration of the bar examination, the applicant shall be required to pay an administrative fee in an amount set by the board, but shall not be required to pay an additional bar examination application fee or submit a new application. The applicant is also required to notify the board in writing on or before the application deadline for the subsequent examination of any changes to the applicant's petition and questionnaire for admission.

(c) A person who has failed the New Hampshire bar examination four times will not be permitted to retake the examination. **For purposes of Rule 42, attempts to pass the examination shall count toward the limit of four regardless of whether the examination was taken in New Hampshire or taken in another jurisdiction administering the Uniform Bar Examination prepared and coordinated by the National Conference of Bar Examiners.**

IX. Bar Examination Testing Accommodation

(a) In accordance with the testing accommodation policy most recently approved by the court, an applicant whose disability requires testing accommodations shall submit a written request to the board at the time that the applicant files the application and petition and questionnaire for admission. No request for testing accommodations shall be accepted if received after the application deadline for the July or February examination as established by the board. The written request shall describe:

- (1) the type of accommodation requested; and
- (2) the reasons for the requested accommodation, including medical documentation in a format set forth in the testing accommodation policy.

(b) The request for accommodation shall be ruled on in the first instance by the chair of the board, and the applicant shall be notified of the decision. A denial or modification of a request for testing accommodations by the chair may be appealed to the board of bar examiners, or a subcommittee thereof, in accordance with procedures established by the board. The board or subcommittee's decision on appeal constitutes a final decision of the board. The applicant may seek review of the board or subcommittee's final decision by the supreme court by filing with the supreme court a petition for review within 20 days of the mailing of the notice of final decision. The applicant shall follow the procedures set forth in Supreme Court Rule 42 (IV)(c).

[X. Admission by Transferred Uniform Bar Examination Score

(a) An applicant who meets the Eligibility Requirements set forth in paragraphs 42 (IV)(a), (V), and (VI), and the following additional requirements may, upon motion to the board, be admitted by transferred UBE score. The applicant shall:

(1) Have earned a UBE score that meets or exceeds the minimum score required by the board on the date that the motion is filed; and

(2) Have either:

(A) earned the UBE score in an administration of the UBE which occurred within three years immediately preceded the date on which the motion for admission by transferred UBE score was filed; or

(B) earned the UBE score more than three years but less than five years prior to the date of filing of the motion for admission by transferred UBE score, and establish that he or she has been primarily engaged in the active practice of law, as defined by Rule 42 (XI)(d), for at least two years in another state, territory, or the District of Columbia in which the applicant was a member in good standing and authorized to practice law throughout the entire two-year period.

(b) To qualify for admission under this Rule 42 (X), the applicant must have earned the minimum score required by the board within no more than four attempts on the UBE. For purposes of this Rule, attempts to earn the minimum score are counted regardless of whether the applicant tested in New Hampshire or in another jurisdiction administering the UBE.

(c) A person seeking admission by transferred UBE score shall file with the board the required motion form, a completed petition, and supporting documents, in accordance with procedures established by the board, accompanied by the motion fee, which shall be paid to the board. The fee shall be nonrefundable, provided, however, that if a motion for admission by transferred UBE score is denied prior to the commencement of the character and fitness investigation by the committee, then one-half of the character and fitness investigation fee shall be refunded.

X[XI]. Admission by Motion Without Examination

(a) Applicant from Reciprocal Jurisdiction.

(1) An applicant who meets the Eligibility Requirements set forth in Rule 42 (IV)(a), (V), and (VI), and the following additional requirements may, upon motion to the board, be admitted to the bar without examination. The applicant shall:

(A) have been admitted by bar examination to practice law in another state, territory, or the District of Columbia; and

(B) have been primarily engaged in the active practice of law in one or more states, territories, or the District of Columbia for five of the seven years immediately preceding the date upon which the motion is filed; and

(C) have either:

i. taken and passed the bar examination in a reciprocal jurisdiction, provided that the applicant is currently a member in good standing of said jurisdiction and authorized to practice law therein; or

ii. been primarily engaged in the active practice of law, for five of the seven years immediately preceding the date upon which the motion is filed, in reciprocal jurisdictions, provided that the applicant was a member in good standing of said jurisdictions and authorized to practice law therein throughout the aforesaid five-year period and is currently a member in good standing of said jurisdictions and authorized to practice law therein; and

(D) establish that the applicant is currently a member in good standing in all jurisdictions where admitted; and

(E) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction; and

(F) designate the clerk of the New Hampshire Supreme Court as agent for service of process; and

(G) file with the board the required motion form, a completed petition and questionnaire for admission, and supporting documents, accompanied by the motion fee.

(2) For purposes of this rule, “reciprocal jurisdiction” is defined as another state, territory, or the District of Columbia that allows admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule.

(b) Vermont Applicant. An applicant who is licensed to practice law in Vermont may, upon motion, be admitted to the bar without examination, provided that the State of Vermont allows admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule. Such an applicant shall meet the Eligibility Requirements set forth in Rule 42 (IV)(a), (V)(a), and (VI), and the following additional requirements. The applicant shall:

(1) be licensed to practice law in the State of Vermont and be an active member of the Vermont bar; and

(2) have been primarily engaged in the active practice of law in Vermont for no less than three years immediately preceding the date upon which the motion is filed; and

- (3) establish that the applicant is currently a member in good standing in all jurisdictions where admitted; and
- (4) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction; and
- (5) have completed at least fifteen hours of continuing legal education on New Hampshire practice and procedure in courses approved by the NHMCLE Board within one year immediately preceding the date upon which the motion is filed and be certified by the NHMCLE Board as satisfying this requirement; and
- (6) designate the clerk of the New Hampshire Supreme Court as agent for service of process; and
- (7) file with the board the required motion form, a completed petition and questionnaire for admission, and supporting documents, accompanied by the motion fee.

(c) Maine Applicant. An applicant who is licensed to practice law in Maine may, upon motion, be admitted to the bar without examination, provided that the State of Maine allows admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule. Such an applicant shall meet the Eligibility Requirements set forth in Rule 42 (IV)(a), (V), and (VI), and the following additional requirements. The applicant shall:

- (1) be licensed to practice law in the State of Maine and be an active member of the Maine bar;
- (2) have been primarily engaged in the active practice of law in Maine for no less than three years immediately preceding the date upon which the motion is filed;
- (3) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
- (4) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;
- (5) have completed at least fifteen hours of continuing legal education on New Hampshire practice and procedure in courses approved by the NHMCLE Board within one year immediately preceding the date upon which the motion is filed and be certified by the NHMCLE Board as satisfying this requirement; and
- (6) designate the clerk of the New Hampshire Supreme Court as agent for service of process; and
- (7) file with the board the required motion form, a completed petition and questionnaire for admission, and supporting documents, accompanied by the motion fee.
- (8) Nothing in Rule 42 (X)(c) shall preclude an attorney who is licensed to practice law in the State of Maine from applying under Rule 42 ~~(X)~~**(XI)**(a) if the applicant meets the requirements of that section.

(d) For the purposes of this rule, the "active practice of law" shall include the following activities:

- (1) Representation of one or more clients in the private practice of law;
- (2) Service as a lawyer with a local, state, or federal agency, including military service;
- (3) Teaching law at a law school approved by the American Bar Association;
- (4) Service as a judge in a federal, state, or local court of record;
- (5) Service as a judicial law clerk; or
- (6) Service as corporate counsel.

(e) For the purposes of this rule, the "active practice of law" shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located. For the purposes of this rule, an applicant's service as corporate counsel shall not constitute the unauthorized practice of law in New Hampshire provided that the applicant submits an affidavit certifying that:

- (1) while serving as counsel, the applicant performed legal services solely for a corporation, association or other business entity, including its subsidiaries and affiliates; and
- (2) while serving as counsel, the applicant received his or her entire compensation from said corporation, association or business entity; and
- (3) said corporation, association or business entity is not engaged in the practice of law or provision of legal services.

(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).

(g) The motion fee paid by an applicant under Rule 42 ~~(X)~~**[(XI)]** shall be nonrefundable, provided, however, that if a motion for admission pursuant to Rule 42 ~~(X)~~**[(XI)]** is denied prior to the commencement of the character and fitness investigation by the committee, then a portion of the fee may be refunded to the applicant, in the discretion of the board.

~~XI~~[XII]. Daniel Webster Scholar Honors Program****

(a) An applicant who has met the Eligibility Requirements set forth in Rule 42 (IV)(a), (V), and (VI) who successfully completed the Daniel Webster Scholar Honors Program offered at the University of New Hampshire School of Law in Concord, New Hampshire, and who meets the following requirements may be admitted to the bar. The applicant shall:

(1) prior to admission, and within one year of the date upon which the application for admission is filed, have successfully completed, to the satisfaction of the board, the Daniel Webster Scholar Honors Program, after successfully completing taking and passing a variant of the New Hampshire bar examination to consist of rigorous, repeated and comprehensive evaluation of legal skills and abilities, the criteria for which will be established by this court, and which will amount to more than the twelve hours of testing required for the conventional bar examination.

(2) establish that the applicant is currently a member in good standing in all jurisdictions where admitted, if any;

(3) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction; and

(4) designate the clerk of the supreme court for service of process.

(b) An applicant seeking admission to the bar in accordance with this provision shall, by the deadline established by the board, file with the board an application for admission pursuant to New Hampshire Supreme Court Rule 42 ~~(XI)~~ **[(XII)]**, and the petition and questionnaire for admission, which shall contain a certificate signed by two persons certifying the applicant's good moral character, and shall be executed under oath. The board may waive the filing deadline requirement for good cause shown. The application shall be accompanied by the application fee. The fee shall be nonrefundable.

~~XII~~ [XIII]. Practical Skills Course Requirement

(a) Within two years of admission, each person admitted to practice law in New Hampshire must attend a practical skills course presented by the New Hampshire Bar Association, unless the admittee satisfies the requirements of paragraph (b) or, in exceptional instances, a longer period is approved in writing by the court. A failure to comply with the requirements of this rule will result in the suspension of the attorney's license. The course will assist new admittees in developing basic lawyering skills and in gaining practical knowledge of New Hampshire practice and procedures. Attendance is required and each new admittee will be required to execute an affidavit stating that he or she has attended each session of the course unless otherwise excused by the supreme court, but no test will be required.

(b) If a new admittee leaves New Hampshire on military or other government service assignment for more than a brief period within two years after being admitted to the bar and before completing the practical skills course, the new admittee's license shall not be suspended if he or she promptly so notifies the court in writing of his or her departure from the state and his or her intention to complete the course at a later date. Such a new admittee shall be required to attend a practical skills course given within three years of the date of departure, and further provided that, if he or she shall have completed the assignment and returned to New Hampshire within the three-year period, the course taken shall be the first available course given after his or her return. The admittee shall notify the court promptly of his or her return within the three-year period. Upon written request in exceptional instances, the court may extend the three-year period following the date of departure within which the admittee must attend a practical skills course.

(c) Attendance at the practical skills course means, for all new admittees, personal attendance at all sessions of the course.

(d) Exemptions from the practical skills course requirements, or any portion thereof, shall be granted only upon written application filed with the court, setting forth the exceptional circumstances believed to justify the requested exemption.

(e) Reinstatement of a license suspended under this paragraph shall be only by order, upon petition to the court following completion of the practical skills course, and upon such conditions as the court deems appropriate. If the petition to this court is filed more than one year after the date of the order suspending the person from the practice of law in this State, then the petition shall be accompanied by evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness. If the evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness, are satisfactory to the court, the court may order reinstatement upon such conditions as it deems appropriate.

If the evidence of continuing competence and learning in the law is not satisfactory to the court, the court shall refer the motion for reinstatement to the board. A subcommittee of the board shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competence and learning in law required for reinstatement. At the conclusion of the hearing, the subcommittee shall promptly file with the court the record and a report containing its findings and recommendations. The court shall consider the matter in the normal course and following the submission of briefs, if found necessary by the court, and any oral argument ordered by the court, shall enter a final order.

If the evidence of continuing moral character and fitness is not satisfactory to the court, the court shall order the applicant to file with the board and with the clerk of the supreme court the petition and questionnaire for admission referred to in Supreme Court Rule 42 (VI)(c). Further proceedings shall be governed by Rule 42 (VI).

~~XIII~~ [XIV]. Duty to Update Information

An applicant for admission to the New Hampshire bar has a continuing obligation to update any information submitted as a part of the application process by providing the new information in writing to the Office of Bar Admissions. The duty to update information exists during the entire pendency of the application or motion for admission. All persons admitted to the bar have a continuing obligation to notify the New Hampshire Bar Association immediately and in writing of all changes of residence address and address of principal office.

~~XIV~~ [XV]. Immunity

(a) The board members, committee members, the administrator of the office of bar admissions, and their staff, counsel, investigators, proctors, agents, and members of any hearing panels, in performing their duties under this rule, are regarded as acting as officers of the court and shall be immune from civil liability for any conduct arising out of the performance of their duties.

(b) A person shall be immune from civil liability for all of his or her statements made in good faith to the board, committee, office of bar admissions, office of the attorney general, or the court, given in any investigation or proceedings pertaining to an application for admission. The protection of this immunity does not apply to statements made to others.

Comment

The provisions of this amended rule shall apply to all applications and motions for admission to the bar filed or pending on or after September 1, 2012.

APPENDIX H

Amend Supreme Court Rule 40, as proposed by the Committee on Judicial Conduct, as follows (new material is in **[bold and in brackets]**; deleted material is in ~~striketrough~~ format):

RULE 40. Procedural Rules of Committee on Judicial Conduct

(1) *Applicability.*

All proceedings of the committee on judicial conduct, created by Supreme Court Rule 39, shall be governed by these rules.

(2) *Definitions.*

As used herein, the following terms shall have the following meanings:

Answer - The response filed by a judge to a complaint or statement of formal charges.

[Caution – Non-disciplinary action taken by the committee when it is believed that the judge acted in a manner which involved behavior requiring attention although not constituting clear violation of the Code of Judicial Conduct warranting disciplinary action. A caution may include recommendations concerning prudent future conduct, and may be issued at any stage of the proceedings with or without the consent of the judge.]

Code of Judicial Conduct - The Code of Judicial Conduct, as adopted by the New Hampshire Supreme Court in Rule 38, as the same may from time to time be amended.

Committee Counsel - Counsel engaged by the committee to assist it prior to the filing of formal charges.

Committee - The New Hampshire Supreme Court Committee on Judicial Conduct.

Committee Chair - The chair of the committee, or, in the absence of the chair, the vice-chair of the committee.

Complaint - A grievance **[report of alleged misconduct]** that is docketed by the committee after being reviewed and determined to be against a judge and to satisfy the requirements for docketing as a complaint as set forth in section (5)(c), or a complaint which is drafted and docketed by

the committee in accordance with section (7)(b) after a committee-initiated inquiry.

Court - The New Hampshire Supreme Court.

Discipline - Any disciplinary action authorized by this rule in a matter in which misconduct in violation of the Code of Judicial Conduct is found to warrant disciplinary action.

[Formal Discipline – Discipline imposed pursuant to a Statement of Formal of Charges and after a hearing and a finding of misconduct, where the committee determines that the violation is of a serious nature warranting formal disciplinary action by the Court, including a suspension.]

~~Grievance—A written allegation of misconduct against a judge, which is filed with the committee.~~

~~Grievant—A person who communicates a grievance to the committee.~~

Hearing - The proceedings which follow a statement of formal charges.

Hearing counsel - Counsel engaged by the committee to prosecute formal charges before the committee or disciplinary proceedings in this court. A lawyer who has served as committee counsel in connection with a matter may, in appropriate circumstances and in the committee's discretion, be engaged to serve as hearing counsel. Hearing counsel, after being appointed as such, shall have no ex parte communications with the committee.

~~Informal resolution or adjustment—Discipline imposed by the committee when the committee determines that the judge has violated 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 court. Informal resolution may include admonishment of the judge, issuance of a reprimand, requiring corrective action, directing professional counseling or assistance, imposing conditions on the judge's conduct, or other similar remedies.~~

Inquiry - A preliminary investigation of a matter begun by the committee on its own initiative to determine whether a complaint **[its findings]** should be docketed **[as a complaint]**.

Investigation - Fact gathering by or under the direction of the committee with respect to alleged misconduct.

Investigator - Any person designated by the committee to assist it in the investigation of alleged misconduct.

Judge - This term includes: (1) a full-time or part-time judge of the supreme, superior, district, and probate courts; (2) a full-time or part-time marital master; (3) a referee or other master; (4) a court stenographer, monitor or reporter, a clerk of court or deputy clerk, including a register of probate or deputy register, and any person performing the duties of a clerk or register. Not everyone who is a "judge" as defined herein is bound by every canon of the Code of Judicial Conduct -- the Code of Judicial Conduct applies to a judge to the extent provided in Supreme Court Rule 38.

Misconduct - Conduct on the part of a judge that is contrary to the Code of Judicial Conduct.

Proceeding - Each step taken or which may be taken under these rules with respect to a grievance **[a report of alleged misconduct]** filed with the committee alleging misconduct of a judge, or with respect to an inquiry concerning the conduct of a judge which the committee has initiated on its own motion.

[Report of Alleged Misconduct – A written allegation of misconduct against a judge, which is filed with the committee.

Reporter – A person who communicates a report of alleged misconduct to the committee.

Reprimand - An official written warning or admonition imposed after a finding of misconduct.

Resolution without formal discipline – Discipline imposed by the committee when it determines that the judge has violated 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 court. Sanctions may include issuance of a reprimand, requiring corrective action, directing professional counseling or assistance, imposing conditions on the judge’s conduct, or other similar action. It is issued with the consent of the judge or without consent after a hearing. The consent of the judge to resolution without formal discipline shall constitute a waiver of their right to a hearing.]

Rule - The provisions of Supreme Court Rule 40.

Statement of Formal Charges - A formal pleading served under section (9) of this rule by the committee.

Suspension - The temporary prohibition of a judge from exercising judicial authority for the period of time specified by the court. A suspended judge shall have the right to resume the exercise of judicial authority, after the expiration of the suspension period, upon compliance with all of the terms and conditions set forth in the suspension order promulgated by the court. As a term of suspension, the court may order that the judge's salary be suspended.

~~Warning - Non-disciplinary action taken by the committee when it is believed that a judge acted in a manner which involved behavior requiring attention although not constituting clear violation of the Code of Judicial Conduct warranting disciplinary action.~~

(3) *Confidentiality of Proceedings.*

~~Applicability Note: Section 3 shall apply to records and proceedings in all matters initiated on or after April 1, 2000.~~

(a) ~~Except [A]~~s provided in this section, all proceedings ~~before the committee~~, and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the committee in the course of its work, shall be confidential. No member of the committee or its staff and no employee of the committee shall disclose such proceedings, information, communications, materials, papers, files, or transcripts, except in the course of official duty and as otherwise authorized in this section.

[(b) The Reporter and Judge shall keep confidential the fact that a report of alleged judicial misconduct has been filed with the committee, including any action taken by the committee, until either the report is dismissed, a statement of formal charges is prepared and filed as described in section 9(a) of this rule, or the committee has disposed of the report by taking appropriate remedial action. Nothing in these rules, however, shall prohibit the Reporter and Judge from disclosing, in an underlying court case, such information about these proceedings as justice requires or to comply with the Code of Judicial conduct, or prohibit a Judge from disclosing to third parties, such information as is necessary in the preparation of any required responses to the committee during these proceedings.]

~~(b)~~**[(c) Grievance [Report of Alleged Misconduct]** not against a Judge or not Satisfying Requirements for a Complaint.

(1) In accordance with section (5)(d), a ~~grievance against~~ **[report involving]** a person who is not subject to the Code of Judicial Conduct

shall be dismissed and returned to the grievant **[reporter]** with a letter explaining the reason for the dismissal. The person who is the subject of the grievance **[report]** shall not be notified of it. No file on the grievance **[report]** will be maintained; however, the committee shall retain a copy of the letter to the grievant **[reporter]** returning the grievance **[report]**, which shall be available for public inspection in accordance with section (16)(a).

(2) In accordance with section (5)(d), a grievance **[report]** that fails to comply with the requirements for docketing as a complaint shall be dismissed. All records and materials relating to such a grievance **[report]** shall be available for public inspection (other than work product, internal memoranda, and deliberations) in accordance with section (16)(b) after correspondence is sent to the judge who is the subject of the grievance **[report]** and that judge has the opportunity to provide a reply to be filed in the public record in accordance with section (5)(d)(2). The judge's reply shall be filed in the public record.

~~(e)~~**[(d)]** Grievance **[Report of Alleged Misconduct]** Docketed As A Complaint. All records and proceedings relating to a grievance **[report of alleged misconduct]** which is docketed by the committee as a complaint after it has been determined by the committee that the grievance **[report]** is against a judge and satisfies the requirements for docketing as a complaint shall be available for public inspection (other than work product, internal memoranda, and deliberations) upon the earliest of the following:

(1) Upon preparation and filing of a statement of formal charges, the committee's file (other than work product, internal memoranda, and deliberations), the hearing, and the committee's disposition shall be public. The committee's deliberations shall be confidential.

(2) If a matter against a judge is ~~disposed of by informal resolution or adjustment~~ **[resolved without formal discipline]**, the committee shall inform the grievant **[reporter]** of such disposition, and the committee's file (other than work product, internal memoranda, and deliberations), including the committee's disposition, shall be public. If the judge shall thereby have received three or more ~~informal dispositions~~ **[that are resolved without formal discipline]** during the preceding five years, ~~including informal dispositions heretofore confidential under section (3-a)(h)~~, the following also shall be, after notice to the judge, available to the public: the prior complaints or notices of inquiry, the judge's responses, and the committee's findings and dispositions in all of the prior proceedings.

(3) If the committee, at any stage of a proceeding, dismisses a complaint after it has been docketed or dismisses formal charges, the committee shall inform the ~~grievant~~ **[reporter]** of such disposition, and the committee's file (other than work product, internal memoranda, and deliberations) including the committee's disposition, shall be public. If the judge has not previously been notified of the complaint, the committee's file shall be made available for public inspection after correspondence is sent to the judge who is the subject of the complaint and that judge has the opportunity to provide a reply to be filed in the public record. In addition, the committee may, at the request or with the consent of the judge concerned, issue a short explanatory statement to the public.

~~(d)~~**[(e)]** If a judge is publicly charged, through independent sources, with involvement in a proceeding before the committee, or publicly charged with conduct likely to become the subject of such a proceeding, the committee may, at the request or with the consent of the judge involved, issue brief public statements as it deems appropriate in order to confirm or deny the pendency of the proceeding, to clarify the procedural aspects thereof, to explain the right of the judge to a fair hearing without prejudgment, and to state that the judge denies the allegations.

~~(e)~~ **[(f)]** If the pendency of a proceeding before the committee is generally known to the public, through independent sources, and the subject matter thereof is of broad public interest or speculation, and public confidence in the administration of justice may be threatened because of lack of information concerning the status of the proceeding and the requirements of due process, the committee may, after consultation with the chief justice or the senior associate justice of the supreme court, issue brief statements as it may deem appropriate in order to confirm the existence of the investigation, to clarify the procedural aspects of the proceeding, to explain that the judge is entitled to due process, and to state that the judge denies the allegations.

~~(f)~~ **[(g)]** Protective order. Any person or entity may request from the committee, or the committee may issue on its own initiative, a protective order prohibiting the disclosure of confidential, malicious, personal, or privileged information or materials submitted in bad faith, and directing that the proceedings be so conducted as to implement the order. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the committee. The committee shall act upon the request within a reasonable time. Within 30 days of the committee's decision on a request for protective order, or of the committee's issuance of one on its own initiative, an aggrieved person or entity may request that the

supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the supreme court has acted, or the period for seeking supreme court review has expired.

~~(g)~~ **[(h)]** This section shall not be construed to prohibit the committee from preparing and releasing to the public materials which are not related to any particular proceeding or situation. Such materials may include explanations of:

(1) The jurisdiction of the committee and the limitations upon its powers and authority;

(2) The procedure for filing ~~grievances~~ **[reports of alleged misconduct]**; and

(3) The internal procedures of the committee.

In addition, the committee may release periodic statistical reports of its work.

~~(h)~~ **[(i)]** Nothing herein shall prevent the committee from responding to unjustified public criticism of a judge who is not the subject of a proceeding, and the committee may so respond in appropriate cases.

~~(i)~~ **[(j)]** Any violation of these provisions relating to the duty of confidentiality imposed by this rule may result in **[remedial]** action ~~of~~ **[taken by]** the committee ~~at the request of the non-violating party or on its own motion. That~~ **[Such]** action may consist of opening the file and the proceedings earlier than would have been the case under section (3); ~~terminating the proceedings with or without public comment,~~ **[forfeiture of the provisions afforded to a Reporter under these rules with respect to notification and/or access to certain non-public information prior to the matter being made public;]** or such other **[remedial]** action as the committee deems **[may determine to be]** appropriate ~~in~~ **[under]** the circumstances. Notwithstanding the provisions of this rule, the committee may disclose to an appropriate law enforcement authority any matter that comes before it, and shall, at the same time, inform the chief justice or the senior associate justice of the supreme court of the matter. Notwithstanding the provisions of this rule, the committee may also disclose relevant information that is otherwise confidential to agencies or commissions authorized to investigate the qualifications of judicial candidates, provided that the judge who is the subject of the request has signed a waiver permitting the requesting agency or commission to obtain confidential information, and further provided that the agency or commission shall maintain the confidentiality of the information provided to the fullest extent possible

consistent with the carrying out of its official duties unless it obtains a written waiver of confidentiality from the grievant or complainant and any other person whose confidentiality is protected by this rule.

Supreme Court Comment - 2000 amendment.

"One of the protections of the confidentiality provision is that a grievant is not liable for good faith statements contained in a grievance or made in the course of proceedings.

"Nothing in the rule of confidentiality prevents a grievant from disclosing publicly the conduct of a judge which he or she believes violates the Code of Judicial Conduct or is otherwise inappropriate. The immunity from civil liability does not apply to such disclosures. The rule does prohibit a grievant, however, from disclosing publicly the fact that a grievance against the judge about the conduct has been filed with the committee until a statement of formal charges is prepared and filed as described in section 9(a) of this rule, a grievance that had been docketed as a complaint is disposed of by informal resolution or adjustment or is dismissed, or a grievance that has not been docketed as a complaint is disposed of by the committee.

"Once a grievance or complaint has been disposed of by the committee, a grievant may make a public disclosure concerning the filing of a grievance including the conduct complained of and the action of the committee, and the committee's file, with the exception of work product, internal memoranda, and deliberations, shall be public."

~~(3-a) Confidentiality of Proceedings.~~

~~Applicability Note: Section 3-a shall not apply to records and proceedings in matters initiated on or after April 1, 2000.~~

~~(a) Except as provided in this section, all proceedings before the committee, and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the committee in the course of its work, shall be confidential. No member of the committee or its staff and no employee of the committee shall disclose such proceedings, information, communications, materials, papers, files, or transcripts, except in the course of official duty and as otherwise authorized in this section.~~

~~(b) A complainant shall keep confidential the fact that a complaint has been filed with the committee until either the complaint is dismissed, a statement of formal charges is prepared and filed as described in section 9(a) of this rule, or the complainant is notified that the committee has disposed of the complaint by taking appropriate remedial action as described in subsection (h) of this section.~~

~~(c) Upon preparation and filing of a statement of formal charges, the complaint or notice of inquiry, the judge's response, the statement of formal charges, all pleadings filed thereafter, the hearing, and the~~

~~committee's disposition shall be public. The committee's deliberations shall be confidential.~~

~~(d) If a matter against a judge is disposed of by informal resolution or adjustment, and if the judge shall thereby have received three or more informal dispositions during the preceding five years, the following shall be, after notice to the judge, available to the public: the complaints or notices of inquiry, the judge's responses, and the committee's findings and dispositions in all of the proceedings.~~

~~(e) If a judge is publicly charged, through independent sources, with involvement in a proceeding before the committee, or publicly charged with conduct likely to become the subject of such a proceeding, the committee may, at the request or with the consent of the judge involved, issue brief public statements as it deems appropriate in order to confirm or deny the pendency of the proceeding, to clarify the procedural aspects thereof, to explain the right of the judge to a fair hearing without prejudgment, and to state that the judge denies the allegations.~~

~~(f) If the pendency of a proceeding before the committee is generally known to the public, through independent sources, and the subject matter thereof is of broad public interest or speculation, and public confidence in the administration of justice may be threatened because of lack of information concerning the status of the proceeding and the requirements of due process, the committee may, after consultation with the chief justice or senior associate justice of the supreme court, issue brief statements as it may deem appropriate in order to confirm the existence of the investigation, to clarify the procedural aspects of the proceeding, to explain that the judge is entitled to due process, and to state that the judge denies the allegations.~~

~~(g) If the committee, at any stage of a proceeding, dismisses a complaint or formal charges, the committee shall inform the complainant of such disposition. In addition, the committee may, at the request or with the consent of the judge concerned, issue a short explanatory statement to the public.~~

~~(h) If the committee disposes of a proceeding by informal resolution or adjustment prior to the filing of formal charges, it shall inform the complainant of the form of informal resolution or adjustment. However, if the committee provides for monitoring or review of remedial action that it may require or conditions it may impose in connection with any informal resolution, it may make such disclosure of the terms of such informal resolution to the administrative judge or other person to whom such monitoring or review is delegated by the committee as necessary to enable such judge or person properly to perform such function.~~

~~(i) This section shall not be construed to prohibit the committee from preparing and releasing to the public materials which are not related to any particular proceeding or situation. Such materials may include explanations of:~~

~~(1) The jurisdiction of the committee and the limitations upon its powers and authority;~~

~~(2) The procedure for filing complaints; and~~

~~(3) The internal procedures of the committee.~~

~~In addition, the committee may release periodic statistical reports of its work which do not identify or permit the identification of any person involved in any proceeding before the committee other than persons involved in proceedings governed by subsections (c) and (d) of this section.~~

~~(j) Nothing herein shall prevent the committee from responding to unjustified public criticism of a judge who is not the subject of a proceeding, and the committee may so respond in appropriate cases.~~

~~(k) Any violation of these provisions relating to confidentiality shall constitute contempt of the supreme court. The committee may enforce these provisions by appropriate proceedings for contempt before any justice of the supreme court. Notwithstanding the provisions of this rule, the committee may disclose to an appropriate law enforcement authority any matter that comes before it. Notwithstanding the provisions of this rule, the committee may also disclose relevant information that is otherwise confidential to agencies or commissions authorized to investigate the qualifications of judicial candidates provided that the judge who is the subject of the request has signed a waiver permitting the requesting agency or commission to obtain confidential information, and further provided that the agency or commission shall maintain the confidentiality of the information provided to the fullest extent possible consistent with the carrying out of its official duties unless it obtains a written waiver of confidentiality from the complainant and any other person whose confidentiality is protected by this rule.~~

~~Supreme Court Comment — 1996 amendment to subdivision (3).~~

~~"One of the protections of the confidentiality provision is that a complainant is not liable for good faith statements contained in a complaint or made in the course of its proceedings.~~

~~— "Nothing in the rule of confidentiality prevents a complainant from disclosing publicly the conduct of a judge which he or she believes violates the Code of Judicial Conduct or is otherwise inappropriate. The immunity from civil liability does not apply to such disclosures. The rule~~

~~does prohibit a complainant, however, from disclosing publicly the fact that a complaint against the judge about the conduct has been filed with the committee until a statement of formal charges is prepared and filed as described in section 9(a) of this rule or until the complaint is finally disposed of by the committee.~~

~~—“Once a complaint has been disposed of by the committee, a complainant may make a public disclosure concerning the filing of a complaint including the conduct complained of and the action of the committee. The duty of confidentiality upon the committee remains, however, unless one of the specified exceptions provided by the rules applies.”~~

(4) *Grievance, Filing, Period of Limitation.*

(a) Any person may file a grievance **[report of alleged misconduct]** with the committee to call to the attention of the committee conduct that the grievant **[reporter]** believes constitutes misconduct by a judge that should be investigated by the committee.

(b) A grievance **[report of alleged misconduct]** shall be filed with the committee on judicial conduct by sending or delivering it to the committee. A grievance **[report of alleged misconduct]** shall be deemed filed when received by the committee.

Comment

The committee's address and telephone number are available on the Internet at the committee's website, which can be found at:

<http://www.courts.state.nh.us/committees/judconductcomm/index.htm>

(c) Period of Limitation. No ~~formal~~ disciplinary proceedings shall be commenced unless a grievance **[report of alleged misconduct]** is filed with the committee or a committee-generated complaint is docketed by the committee under section (7)(b) of this rule: **[within two (2) years after the commission of the alleged misconduct,]**

~~(1) within one (1) year after the commission of the alleged misconduct when the alleged misconduct was committed before April 1, 2000;~~

~~(2) within two (2) years after the commission of the alleged misconduct when the alleged misconduct was committed on or after April 1, 2000;~~

except when the acts or omissions that are the basis of the grievance **[report]** were not discovered and could not reasonably have been discovered at the time of the acts or omissions, in which case, the grievance **[report]** must be filed within two years of the time the grievant

[reporter] discovers, or in the exercise of reasonable diligence should have discovered, the acts or omissions complained of.

Misconduct will be deemed to have been committed when every element of the alleged misconduct has occurred, except, however, that where there is a continuing course of conduct, misconduct will be deemed to have been committed beginning at the termination of that course of conduct. ~~If the continuing course of conduct began before but terminated after April 1, 2000, continuing misconduct through March 31, 2000, will be subject to the one (1) year period of limitations while continuing misconduct for the period beginning on or after April 1, 2000, will be subject to the two (2) year period of limitations.~~

(5) *Committee Procedure After Receipt of Grievance* **[Report of alleged misconduct]**.

(a) The executive secretary of the committee shall acknowledge receipt of a grievance **[report of alleged misconduct]** in a timely fashion.

(b) A copy of the grievance **[report]** shall be sent to each member of the committee. The committee shall review each grievance **[report of alleged misconduct]** at a meeting of the committee to determine whether the grievance **[report]** is against a judge and whether the grievance **[report]** meets the requirements for docketing as a complaint.

(c) Subject to subsection (5)(c)(5) below, a grievance **[report of alleged misconduct]** shall be docketed as a complaint if it is against a judge and it satisfies the following requirements:

(1) It contains a concise statement of the facts which, if true, would establish a violation of the Code of Judicial Conduct.

(a) A grievance **[report of alleged misconduct]** that relates to a judge's findings, rulings or decision, which, in effect, is a substitute for an appeal, will not be considered by the committee.

(b) A grievance **[report of alleged misconduct]** which is repetitive of a prior grievance **[report]** or complaint, whether from the same or a different source, shall not be docketed as a complaint.

(2) It was filed by a person who is or was directly affected by the conduct complained of or who was present when the conduct complained of occurred, and it contains a concise statement establishing these facts.

(3) It is typed or in legible handwriting and signed by the grievant **[reporter]** under oath or affirmation. The following language, or language that is substantially equivalent, must appear above the

grievant's **[reporter's]** signature: "I hereby swear or affirm under the pains and penalties of perjury that the information contained in this grievance **[report of alleged misconduct]** is true to the best of my knowledge."

(4) It was filed with the committee within the period of limitation set forth in section (4)(c).

(5) Provided, however, that upon the vote of seven or more of its members, the committee may authorize a review of the court record to include the file and any recordings of proceedings to determine whether the court record supports the allegations in the grievance **[report]**. After review, the committee may dismiss the grievance **[report of alleged misconduct]** if it finds that in light of the court record, there is no reasonable likelihood of a finding of judicial misconduct. If the grievance **[report of alleged misconduct]** is not dismissed, the committee shall direct that it be docketed as a complaint.

[(6) At any stage of the proceedings, the committee may, for good cause, vote to hold in abeyance any matter pending before it for such period of time as it deems appropriate.]

The committee shall provide the Judge and Reporter timely notice of a decision to stay the proceedings, provided that, for good cause, the committee may vote to defer notification to the Judge or Reporter for such a period of time as it deems necessary.]

(d) A grievance **[report of alleged misconduct]** that is filed against a person who is not a judge or that fails to satisfy the requirements for docketing as a complaint as set forth in section (5)(c) shall be dismissed. The committee shall notify the grievant **[reporter]** in writing of the reason for the committee's action. In addition, the committee shall take the following action:

(1) If the committee determines that the person who is the subject of the grievance **[report of alleged misconduct]** is not subject to the Code of Judicial Conduct, it shall return the grievance **[report]** to the grievant **[reporter]** with a letter explaining the reason for the dismissal. No file on the grievance **[report of alleged misconduct]** will be maintained; however, the committee shall retain a copy of the letter to the grievant **[reporter]** returning the grievance **[report of alleged misconduct]**, which shall be available for public inspection in accordance with section (16)(a). The committee may bring such matter to the attention of the authorities of the appropriate jurisdiction, or to any other duly constituted body which may provide a forum for the consideration of the grievance **[report]** and shall advise the grievant **[reporter]** of such referral.

(2) If the committee determines that the grievance **[report of alleged misconduct]** does not allege conduct that violates the Code of Judicial Conduct, that the grievant **[reporter]** lacks standing, that the grievance **[report]** was not filed within the period of limitation, or that in light of the court record there is no reasonable likelihood of a finding of judicial misconduct, the judge who is the subject of the grievance **[report of alleged misconduct]** shall be provided with a copy of the grievance **[report]** and the decision of the committee and will be given an opportunity to submit a reply within 30 days from the date of the notification or such further time as may be ordered by the committee. The reply shall be available for public inspection in accordance with section (16)(b).

[(e) Provided, however, that upon the vote of seven or more of its members, when a report of alleged misconduct is dismissed, either where the alleged conduct, if true, does not constitute a violation of the Code of Judicial Conduct, or where after a review of the court record pursuant to section 5(c)(5) the committee determines that there is no reasonable likelihood of a finding of judicial misconduct, the committee may issue a caution if it believes that the judge acted in a manner which involved conduct requiring attention. Consent of the judge shall not be required, however, prior to the issuance of any caution, a copy of the report of alleged misconduct shall be forwarded to the judge who shall be afforded the opportunity to provide a written response or to appear before the committee; whichever the committee determines would be most appropriate under the circumstances. Upon receipt of a written request from the reporter, a copy of any response shall be provided to the reporter.]

~~(e)~~ **[(f)]** Notification to Administrative Judge. Whenever the executive secretary provides a judge with a copy of a grievance **[report of alleged misconduct]** against such judge which has been dismissed, the executive secretary shall at the same time send a copy of the grievance **[report]** to the chief justice or administrative judge of the court in which such person serves. In such instances, the chief justice or administrative judge shall send a copy of the grievance **[report]** to the presiding justice of the particular court in which such person serves.

(6) *Inquiries Initiated by Committee.*

The committee may initiate an inquiry concerning the conduct of any judge on its own motion, without a signed written grievance **[report of alleged misconduct]**, upon any reasonable factual basis. No such inquiry shall be initiated by the committee except upon the affirmative vote of six or more members of the committee taken at a meeting thereof.

Notice of the initiation of an inquiry by the committee on its own motion shall be given to the judge by the committee at such time as it deems appropriate. The committee may delay giving such notice to the judge to avoid possible compromise of the inquiry and any resulting investigation or for other good reason. Unless the committee votes to docket a complaint against a judge in accordance with section (7)(b), all records of a committee-initiated inquiry shall be confidential.

[Provided, however, that upon the vote of seven or more of its members, where the inquiry does not disclose conduct in violation of the Code of Judicial Conduct, or there is no reasonable likelihood of a finding of judicial misconduct, but the committee determines that the judge acted in a manner which involved conduct requiring attention, the committee may issue a caution. Consent of the judge shall not be required, however, prior to the issuance of any caution, the judge shall be apprised of the conduct requiring attention and shall be afforded the opportunity to provide a written response or to appear before the committee, whichever the committee determines would be most appropriate under the circumstances. Notwithstanding the above paragraph, any written caution issued herein shall be public and subject to the same access as if issued after a report of alleged misconduct pursuant to paragraph 16(a).]

(7) *Docketing Grievance [the Report of Alleged Misconduct] As Complaint; Procedure Following Docketing of Complaint.*

(a) *Docketing of Grievance [Report of Alleged Misconduct] as Complaint.* If the committee determines that a grievance **[report]** is against a judge and satisfies the requirements for docketing as a complaint as set forth in section (5)(c), it shall be docketed as a complaint.

(b) *Drafting and Docketing of Committee-generated Complaint.* If, after undertaking and completing an inquiry on its own initiative in accordance with section (6), the committee determines that there is a reasonable basis to docket a complaint against a judge, a written complaint shall promptly be drafted and docketed.

(c) *Request for Answer to Complaint.* After a complaint is docketed, the executive secretary shall promptly forward to the judge a copy of the complaint and a request for an answer thereto or to any portion thereof specified by the committee. Unless a shorter time is fixed by the committee and specified in such notice, the judge shall have 30 days from the date of such notice within which to file his or her answer with the committee. Such answer shall be filed with the executive secretary, who shall, upon receipt of a written request from the ~~grievant~~ **[reporter]**, provide to the ~~grievant~~ **[reporter]** a copy of the judge's response. In

addition to the required answer, the judge may submit to the committee such other matters as he may choose.

Whenever the executive secretary provides a judge with a copy of a complaint against such judge, the executive secretary shall at the same time send a copy of the complaint to the chief justice or administrative judge of the court system in which such person serves. In such instances, the chief justice or administrative judge shall send a copy of the complaint to the presiding justice of the particular court in which such person serves.

(d) For good cause shown, the chair may extend the time within which the judge is required to file his or her answer.

(8) *Preliminary Investigation.*

(a) The committee may undertake an investigation of any complaint properly before it upon the affirmative vote of seven or more members of the committee taken at a meeting thereof. Such investigation shall be conducted under the direction of the chair and in such manner as he or she may determine.

(b) The judge shall be notified of the investigation and afforded a reasonable opportunity to present such relevant matters as he or she may choose.

(c) In conducting an investigation, the chair may require that any statement or written information furnished to the committee or its employees be given under oath or affirmation subject to the penalties for perjury or false swearing in official proceedings pursuant to RSA chapter 641.

(d) Persons contacted for information shall be informed of their obligation to maintain confidentiality as set forth in section (3) ~~or (3-a)~~.

(e) Judges, clerks of court, court employees, members of the bar, and other officers of the court shall comply with the reasonable requests of the committee for assistance and cooperation in the conduct of any investigation by the committee.

(f) During the course **[or upon completion]** of its **[an]** investigation, **[or if the committee determines that no investigation is necessary]** the committee may ~~informally resolve the matter with the consent of the judge. Such informal resolution may take the form of written advice or admonishment, the requirement of remedial action, or the imposition of conditions, or any combination thereof. 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 an informal resolution or adjustment. The consent of the judge to informal resolution of the matter shall constitute a waiver of his or her right to a hearing.~~ **[take the following actions:**

(1) If the alleged conduct does not constitute a violation of the Code of Judicial Conduct, the complaint shall be dismissed. If the committee believes that the judge acted in a manner which involved behavior requiring attention a caution may also be issued, with or without the consent of the judge.

(2) The matter may be resolved without formal discipline with the consent of the judge. Such resolution may take the form of a written reprimand, the requirement of remedial action, or the imposition of conditions, or any combination thereof. 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.

(3) If the matter has not been resolved pursuant to subsection (2) of this section, the committee shall determine whether there is probable cause to warrant formal proceedings. If the committee does not determine that the investigation has disclosed probable cause to warrant formal proceedings, the committee shall dismiss the complaint or terminate the inquiry commenced on its own motion with or without a caution, and shall promptly notify the judge and reporter (if any) in writing of such dismissal or termination.

(4) If the matter is not resolved and if the investigation does not disclose probable cause to warrant further proceedings, the person submitting the statement, criticism or complaint shall be so notified but nevertheless a hearing may be requested by the judge complained against. The judge complained against shall be notified of the committee's findings and action.]

~~(g) Upon completion of the investigation, if the matter has not been informally resolved pursuant to subsection (f) of this section, the committee shall determine whether the investigation has disclosed probable cause to warrant formal proceedings. If the committee does not determine that the investigation has disclosed probable cause to warrant formal proceedings, the committee shall dismiss the complaint or terminate the inquiry commenced on its own motion with or without a warning, and shall promptly notify the judge and the grievant (if any) in writing of such dismissal or termination.~~

~~(h) If the matter is not informally resolved or adjusted and if the investigation does not disclose probable cause to warrant further proceedings, the person submitting the statement, criticism or complaint shall be so notified but nevertheless a hearing may be requested by the judge complained against. The judge complained against shall be notified of the committee's findings and action.~~

~~(i) A complaint relating to a trial or judicial proceeding in progress shall be held in abeyance until the termination of the trial or proceeding, unless the committee for good cause votes to proceed immediately with such complaint.~~

(9) *Statement of Formal Charges, Notice of Hearing and Answer.*

(a) If, after investigation the committee concludes, by the affirmative vote of seven or more members taken at a meeting, that probable cause to warrant formal proceedings exists, it shall prepare and file a formal statement of charges and shall set a time and place of hearing before itself. The committee shall promptly serve the judge, in hand or by registered or certified mail, postage prepaid, with a copy of the formal statement of charges together with a notice of hearing.

(b) The formal statement of charges shall (i) state whether the committee is proceeding on the basis of a complaint based upon a written grievance **[report of alleged misconduct]** or upon a committee-generated complaint, (ii) contain a clear summary of the allegations against the judge and of the alleged facts forming the basis of such allegations (including facts developed by the investigation), (iii) identify and cite the specific provisions of the Code of Judicial Conduct alleged to have been violated, and (iv) advise the judge of his or her duty to answer as provided in subsection (f) of this section.

(c) The formal statement of charges together with the notice of hearing shall be served on the judge at least thirty days prior to the hearing date assigned.

(d) The notice of hearing shall include the following:

(1) the date, time, and place of the hearing;

(2) the fact that both the committee and the judge may be represented by counsel at the hearing, may secure the attendance of witnesses and the production of documents by subpoena, and may examine and cross-examine witnesses;

(3) the identity of any committee or hearing counsel; and

(4) the fact that all further notices concerning the hearing, including any adjournments thereof, shall be given by the chair or pursuant to his or her direction.

(e) The committee shall give notice to the ~~grievant~~ **[reporter, if any]** of the date, time, and place of the hearing. The ~~grievant~~ **[reporter]** shall be entitled to attend the hearing as an observer, and may be required to attend and participate therein as a witness, but shall have no other function or right with respect to the hearing.

(f) Within thirty days after receipt of the formal statement of charges, the judge shall file an answer with the executive secretary, setting forth all denials, affirmative defenses, mitigating circumstances, and other matters which the judge intends to raise at the hearing.

(g) At any time prior to final decision, the committee may allow or require an amendment of the formal statement of charges, and may allow an amendment of the answer. When an amendment is made to the formal statement of charges, whether before or after commencement of the hearing, the judge shall be afforded a reasonable time and opportunity, as determined by the chair, to answer and prepare a defense against the matters newly charged.

(h) For good cause shown, the chair may extend the time within which the judge is required to file his or her answer, and may grant a continuance of the scheduled hearing, but no such extension or continuance shall be for a period longer than thirty days without the concurrence of the committee.

(i) **[Following the answer by the judge, or at any time thereafter,]** ~~T[t]he committee may terminate the proceeding and dismiss the complaint and formal statement of charges following the answer by the judge, or at any time thereafter, and shall in that event give notice to the judge and the grievant that it has found insufficient cause to proceed. [, with or without a caution, or with the consent of the judge resolve the matter without formal discipline, and shall give notice to the judge and the reporter.]~~

(10) *Discovery and Subpoena Powers.*

(a) At any time after the filing of a formal statement of charges, the judge or his or her counsel shall, upon written request, be entitled, as a matter of course:

(1) to obtain the names and addresses of all persons known to the committee to have relevant information;

(2) to examine and copy any of the following:

(A) statements of the ~~grievant~~ **[reporter]**;

(B) statements of persons claiming to have knowledge of the acts, omissions, or events underlying the formal proceeding;

(C) investigative reports made by or for the committee in connection with the proceeding; and

(D) any other writing or item which is relevant to the proceeding, or which appears likely to lead to relevant information.

(3) to discovery to the extent permitted in civil proceedings.

Anything in this section to the contrary notwithstanding, the committee shall not be required to disclose to the judge the identity of any informant who will not be called as a witness in support of the charges, and who has declined to sign a written ~~grievance~~ **[report of alleged misconduct]**, unless the alleged misconduct was directed at the informant.

(b) The judge shall make available to the committee, as a matter of course, upon the written request of the chair, executive secretary, or hearing counsel, any specified material which would be discoverable in civil proceedings in this State. The committee shall be entitled to discovery to the extent permitted in civil proceedings.

(c) Nothing in this section shall authorize access to any information, writing, or other item which is privileged by law, or which is protected as an attorney's work product.

(d) If disclosure is not forthcoming as provided in subsection (a) or (b) of this section, the judge or the committee may move to compel discovery before a justice of the supreme court.

(e) Witnesses may be summoned by subpoena issued by an attorney member or judicial member of the committee upon request of the committee or the judge whose conduct is being investigated. An attorney member or judicial member of the committee shall have the power to subpoena witnesses, compel their attendance and testimony, and require the production of books, records, documents, or other evidence or material deemed relevant to the investigation or hearing.

(f) The subpoena power shall be exercised in behalf of the judge, upon the judge's written request or the written request of the judge's counsel.

(g) If any witness disobeys a subpoena, either as to his or her appearance or as to the production of things specified in the subpoena, or refuses to testify or answer questions, the committee may apply to a justice of the supreme court for an order compelling compliance with the subpoena or compelling him to testify.

(h) Witnesses summoned to appear shall be entitled to the same fees and mileage expenses provided by law for witnesses in regular judicial proceedings. The expenses of witnesses shall be borne in the first instance by the party calling them.

(11) *Conduct of Hearing.*

(a) The hearing shall be open to the public.

(b) The committee may proceed with the hearing at the time and place fixed, whether or not the judge has filed an answer or appears for the hearing. The committee may draw an unfavorable inference from the failure of the judge to answer or appear; but no such failure, standing alone, shall be sufficient to meet the standard of proof.

(c) Every witness in any hearing before the committee shall be sworn to tell the truth.

(d) Hearing counsel shall have the burden of establishing by clear and convincing evidence a violation of the Code of Judicial Conduct.

(e) The judge shall be entitled to counsel of his or her choice, and shall have the right to adduce evidence, produce and cross-examine witnesses, and present all relevant arguments. The judge shall be given an opportunity to explain and be heard before the committee in advance of any unfavorable action.

(f) The committee shall not be bound by the technical rules of evidence, and may admit evidence which it considers to be reliable, material, and relevant. The chair shall rule on objections to the receipt of evidence, subject to being overruled by a majority of the committee present at the hearing.

(g) The hearing shall be recorded verbatim by stenographic, electronic, or other means approved by the committee. A transcript of the hearing shall be provided to the judge without cost.

(h) The decision of the committee shall be based solely on the record evidence presented to the committee at the hearing, but shall not be based solely on hearsay evidence. The committee shall exclude from its consideration any information reviewed in earlier stages of the

proceeding, unless such information is received in evidence at the hearing so as to become a part of the record.

(i) At any time after the hearing is closed but prior to final decision, the committee may reopen the hearing for the taking of additional evidence. The judge and the ~~grievant~~ **[reporter]** shall be given such notice of any such supplemental session as the circumstances may reasonably require.

(j) *Photographing, Recording and Broadcasting.*

(1) The committee should permit the media to photograph, record and broadcast all proceedings that are open to the public. The committee may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence. Except as specifically provided in this rule, or by order of the committee, no person shall within the hearing room take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of any proceeding.

(2) Reporters hired by the committee to record hearings pursuant to this rule and authorized recorders are not prohibited by this rule from making voice recordings for the sole purpose of discharging their official duties.

(3) *Proposed Limitations on Coverage by the Electronic Media.* Any party to formal proceedings – or any other interested person – shall notify the committee at the inception of a matter, or as soon as practicable, if that person intends to ask the committee to limit electronic media coverage of any proceeding that is open to the public. Failure to notify the committee in a timely fashion may be sufficient grounds for the denial of such a request. In the event of such a request, the committee shall either deny the request or issue an order notifying the parties to the proceeding and all other interested persons that such a limitation has been requested, establish deadlines for the filing of written objections by parties and interested persons, and order an evidentiary hearing during which all interested persons will be heard. The same procedure for notice and hearing shall be utilized in the event that the committee *sua sponte* proposes a limitation on coverage by the electronic media. A copy of the order shall, in addition to being incorporated in the case docket, be sent to the Associated Press, which will disseminate the order to its members and inform them of upcoming deadlines/hearing.

(4) *Advance Notice of Requests for Coverage.* Any requests to bring cameras, broadcasting equipment and recording devices into a hearing room for coverage of any proceedings shall be made as far in advance as practicable. If no objection to the requested electronic coverage is

received by the committee, coverage shall be permitted in compliance with this rule. If an objection is made, the media will be so advised and the committee will conduct an evidentiary hearing during which all interested parties will be heard to determine whether, and to what extent, coverage by the electronic media or still photography will be limited.

(5) *Pool Coverage.* The committee retains discretion to limit the number of still cameras and the amount of video equipment in the hearing room at one time and may require the media to arrange for pool coverage. The committee will allow reasonable time prior to a proceeding for the media to set up pool coverage for television, radio and still photographers providing broadcast quality sound and video.

(A) It is the responsibility of the news media to contact the executive secretary in advance of a proceeding to determine if pool coverage will be required. If the committee has determined that pool coverage will be required, it is the sole responsibility of the media, with assistance as needed from the executive secretary, to determine which news outlet will serve as the “pool.” Disputes about pool coverage will not be resolved by the committee. Access may be curtailed if pool agreements cannot be reached.

(B) In the event of multiple requests for media coverage, because scheduling renders a pool agreement impractical, the executive secretary retains the discretion to rotate media representatives into and out of the courtroom.

(6) *Live Feed.* Except for good cause shown, requests for live coverage should be made at least five (5) days in advance of a proceeding.

(7) *Exhibits.* For purposes of this rule, access to exhibits will be at the discretion of the committee. The committee retains the discretion to make one “media” copy of each exhibit available in the committee's office.

(8) *Equipment.* Exact locations for all video and still cameras, and audio equipment within the hearing room will be determined by the committee. Movement in the hearing room is prohibited, unless specifically approved by the committee.

(A) Placement of microphones in the hearing room will be determined by the committee. An effort should be made to facilitate broadcast quality sound. All microphones placed in the hearing room will be wireless.

(B) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash

equipment and other supplemental lighting or sound equipment is prohibited unless otherwise approved by the committee.

(9) *Restrictions.* Unless otherwise ordered by the committee, the following standing orders shall govern.

(A) No flash or other lighting devices will be used.

(B) Set up and dismantling of equipment is prohibited when the proceedings are in session.

(C) No camera movement during the proceedings.

(D) No cameras permitted behind the judge's table.

(E) Broadcast equipment will be positioned so that there will be no audio recording of conferences between attorney and client or among counsel and the committee at the bench. Any such recording is prohibited.

(F) Photographers and videographers must remain a reasonable distance from parties, counsel tables, alleged victims, witnesses and families unless the hearing participant voluntarily approaches the camera position.

(G) All reporters and photographers will abide by the directions of the executive secretary or other hearing room officers at all times.

(H) Broadcast or print interviews will not be permitted inside the hearing room before or after a proceeding.

(I) Photographers, videographers and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings.

(J) Appropriate dress is required.

(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 warning, and the judge and the ~~grievant~~ **[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 ~~informal resolution or adjustment~~ **[resolution without formal discipline, with or without consent of the judge]**. Such disposition may take the form of ~~admonishing the judge,~~ 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 ~~an informal resolution or adjustment~~ **[a resolution without formal discipline]**. If a proceeding is disposed of by ~~informal resolution or adjustment~~ **[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 ~~grievant~~ **[reporter]** shall be limited as provided in subsection (3)(c)(2) ~~or subsection (3-a)(h)~~ 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 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 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 by the committee, and the supreme court shall appoint a judicial referee to conduct the hearing. 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, exhibits and a transcript of the hearing. The decision and record shall be filed with the supreme court.]

(13) *Review by Supreme Court.*

Upon receipt of a report of its ~~its~~ **[the]** findings **[and record of the proceedings before]** ~~from~~ the committee under section 12(d), **[or after a de novo hearing before a Judicial Referee under section 12(e),]** the supreme court shall set the matter down for hearing **[briefing and oral argument]** which shall be open to the public. At such hearing **[oral argument]** the **[committee and the]** judge complained against shall have the opportunity to appear in person and/or by counsel ~~and be heard on the facts and the law.~~ The supreme court shall file a written opinion and judgment **[determining whether the findings of fact are supported by the record, and]** directing such disciplinary action as it finds just and proper, or exonerating the judge complained against.

(13-A) *Expenses Relating to Discipline Enforcement.*

In all cases in which discipline is imposed, including cases resolved by ~~informal resolution or adjustment~~ **[without formal discipline]** all expenses incurred by the committee on judicial conduct in the investigation and enforcement of discipline may, in whole or in part, be assessed to a disciplined judge to the extent appropriate.

(14) *Counsel Fees.*

Upon application from a judge against whom formal charges have been brought, the committee may, in its discretion and subject to the availability of funds, pay such portion as it deems equitable of the fee and expenses of the judge's counsel. Within 30 days of the committee's decision on such an application, the judge may request that the court review the matter.

(15) *Immunity.*

All persons shall be immune from civil liability for all of their statements made in good faith to the committee or to the supreme court or given in any investigation or proceedings pertaining to a grievance or complaint against a judge. The protection of this immunity does not exist as to: (a) any statements not made in good faith; and (b) any

statements made to others. The committee, its staff, counsel, and investigators shall be immune from civil liability for any conduct arising out of the performance of their duties.

(16) *Public Access to Committee Proceedings and Records.*

(a) Correspondence relating to a ~~grievance~~ **[report of alleged misconduct]** against a person who is not subject to the Code of Judicial Conduct shall be available for public inspection for a period of two years. After this two-year period, the correspondence shall be sealed.

(b) All records (other than work product, internal memoranda, and deliberations) relating to a ~~grievance~~ **[report of alleged misconduct]** against a judge that is not docketed as a complaint shall be maintained by the committee for two years from the date of filing, and shall be available for public inspection during this period. After this two-year period, the records shall be sealed.

(c) All records (other than work product, internal memoranda, and deliberations) relating to a ~~grievance~~ **[report of alleged misconduct]** filed with the committee that is docketed as a complaint shall be retained by the committee and shall be available for public inspection in accordance with the provisions of this rule.

(d) The committee shall maintain an index of complaints docketed against each judge, which shall contain pertinent information, including the outcome of the complaint. No index of grievances that are not docketed as complaints shall be maintained.

(17) *Use of Closed Files.*

A closed file may be referred to by the committee in subsequent proceedings in the following circumstances:

(a) Where a complaint or formal charges have been dismissed for any reason or there has been a finding of insufficient cause to proceed, and the subsequent proceeding raises similar allegations against the judge or is based upon a similar occurrence or factual situation, the closed file may be used to exonerate the judge or may be made a part of the investigation of the new complaint; or

(b) Where, after the disposition of a prior proceeding ~~by informal resolution or adjustment~~ **[without formal discipline]**, the judge fails to refrain from acting in the manner that caused the prior ~~grievance~~ **[report of alleged misconduct]** or complaint to be filed and a subsequent ~~grievance~~ **[report of alleged misconduct]** is filed alleging similar

conduct which is established or proven, the closed file may be used as evidence tending to show that the problem is a continuing one; or

(c) Where, following the hearing of subsequent related or unrelated charges, the committee determines that a violation of the Code of Judicial Conduct has occurred, the closed file may be referred to in connection with the decision as to the nature of the informal resolution to be imposed by the committee or as to the sanction to be recommended to the supreme court for imposition by the court.

APPENDIX I

Amend Superior Court Rule 59-A as follows (new material is in **[bold and in brackets]**; deleted material is in ~~striketrough~~ format):

59-A. (1) A motion for reconsideration or other post-decision relief shall be filed within ten (10) days of the date on the Clerk's written notice of the order or decision, which shall be mailed by the Clerk on the date of the notice. The motion shall state, with particular clarity, points of law or fact that the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present; but the motion shall not exceed ten (10) pages. **[To preserve issues for an appeal to the Supreme Court, an appellant must have given the Court the opportunity to consider such issues; thus, to the extent that the Court, in its decision, addresses matters not previously raised in the case, a party must identify any alleged errors concerning those matters in a motion under this rule to preserve such issues for appeal]**. A hearing on the motion shall not be permitted except by order of the Court.

(2) No answer to a motion for reconsideration or other ~~postdecision~~ **[post-decision]** relief shall be required unless ordered by the Court, but any answer or objection must be filed within ten (10) days of notification of the motion.

(3) If a motion for reconsideration or other post-decision relief is granted, the Court may revise its order or take other appropriate action without rehearing or may schedule a further hearing.

(4) The filing of a motion for reconsideration or other ~~postdecision~~ **[post-decision]** relief shall not stay any order of the Court unless, upon specific written request, the Court has ordered such a stay.

[Commentary:

The third sentence of paragraph (1) derives from N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 679 (2002), and is not intended to preclude a party from raising an issue on appeal under the plain error rule set forth in Supreme Court Rule 16-A.]

APPENDIX J

Amend Circuit Court-District Division Rule 3.11(E) as follows (new material is in **[bold and in brackets]**):

E. (1) A motion for reconsideration or other post-decision relief shall be filed within ten (10) days of the date on the clerk's written notice of the order or decision which shall be mailed by the clerk on the date of the notice. The motion shall state, with particularity, points of law or fact that the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present; but the motion shall not exceed ten (10) pages. **[To preserve issues for an appeal to the Supreme Court, an appellant must have given the Court the opportunity to consider such issues; thus, to the extent that the Court, in its decision, addresses matters not previously raised in the case, a party must identify any alleged errors concerning those matters in a motion under this rule to preserve such issues for appeal.]** A hearing on the motion shall not be permitted except by order of the Court.

(2) No answer to a motion for reconsideration or other post-decision relief shall be required unless ordered by the Court, but any answer or objection must be filed within ten (10) days of notification of the motion.

(3) If a motion for reconsideration or other post-decision relief is granted, the Court may revise its order or take other appropriate action without rehearing or may schedule a further hearing.

(4) The filing of a motion for reconsideration or other post-decision relief shall not stay any order of the Court unless, upon specific written request, the Court has ordered such a stay.

[Commentary:

The third sentence of paragraph (1) derives from N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 679 (2002), and is not intended to preclude a party from raising an issue on appeal under the plain error rule set forth in Supreme Court Rule 16-A.]

APPENDIX K

Amend Circuit Court-Probate Division 59-A as follows (new material is in **[bold and in brackets]**):

(1) A Motion for reconsideration or other post-decision relief shall be filed within ten (10) days of the date on the Register's written notice of the order or decision, which shall be mailed by the Register on the date of the notice. The Motion shall state, with particularity, points of law or fact that the Court has overlooked or misapprehended and shall contain such argument in support of the Motion as the movant desires to present; but the Motion shall not exceed ten (10) pages. **[To preserve issues for an appeal to the Supreme Court, an appellant must have given the Court the opportunity to consider such issues; thus, to the extent that the Court, in its decision, addresses matters not previously raised in the case, a party must identify any alleged errors concerning those matters in a motion under this rule to preserve such issues for appeal.]** A hearing on the Motion shall not be permitted except by order of the Court.

(2) No answer to a Motion for reconsideration or other post-decision relief shall be required unless ordered by the Court, but any answer or objection must be filed within ten (10) days after the filing of the Motion.

(3) If a Motion for reconsideration or other post-decision relief is granted, the Court may revise its order or take other appropriate action without rehearing or may schedule a further hearing.

(4) The filing of a Motion for reconsideration or other post-decision relief shall not stay any order of the Court unless, upon specific written request, the Court has ordered such a stay.

[Commentary:

The third sentence of paragraph (1) derives from N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 679 (2002), and is not intended to preclude a party from raising an issue on appeal under the plain error rule set forth in Supreme Court Rule 16-A.]

APPENDIX L

Amend Circuit Court-Family Division Rule 1.26(F) as follows (new material is in **[bold and in brackets]**):

F. Motions to Reconsider: A motion for reconsideration or other post-decision relief shall be filed within ten (10) days of the date on the Clerk's written notice of the order or decision, which shall be mailed by the Clerk on the date of the notice. The motion shall state, with particular clarity, points of law or fact that the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present; but the motion shall not exceed ten (10) pages. **[To preserve issues for an appeal to the Supreme Court, an appellant must have given the Court the opportunity to consider such issues; thus, to the extent that the Court, in its decision, addresses matters not previously raised in the case, a party must identify any alleged errors concerning those matters in a motion under this rule to preserve such issues for appeal.]** A hearing on the motion shall not be permitted except by order of the Court.

No answer to a motion for reconsideration or other post-decision relief shall be required unless ordered by the Court, but any answer or objection must be filed within ten (10) days of notification of the motion.

If a motion for reconsideration or other post-decision relief is granted, the court may schedule a further hearing.

The filing of a motion for reconsideration or other post-decision relief shall not stay any order of the Court unless, upon specific written request, the Court has ordered such a stay.

[Commentary:

The third sentence of paragraph [1] derives from N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 679 (2002), and is not intended to preclude a party from raising an issue on appeal under the plain error rule set forth in Supreme Court Rule 16-A.]

Amend Supreme Court Rule 32-A as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

RULE 32-A. Counsel in Guardianship, Involuntary Admission, [Civil Commitment,] and Termination of Parental Rights Cases.

(1) Whether retained by the defendant or appointed by a trial court, trial counsel in a guardianship case commenced by the filing of a petition pursuant to RSA 464-A:4 or RSA 464-A:12, an involuntary admission case commenced by the filing of a petition pursuant to RSA 135-C:36, **[a civil commitment case filed under RSA 135-E,]** ~~or~~ a termination of parental rights case commenced by the filing of a petition pursuant to RSA 170-C:4, **[or an involuntary admission case filed under RSA 171-B,]** shall be responsible for representing the defendant in the supreme court unless the supreme court relieves counsel from this responsibility for good cause shown. When the defendant clearly indicates to counsel a desire to appeal, counsel shall be responsible for the filing of a notice of appeal. Provided, however, that if counsel concludes that the appeal is frivolous, counsel must first attempt to persuade the defendant not to appeal. If, however, the defendant insists on appealing, counsel shall file the notice of appeal, setting forth therein all arguable issues. If counsel is thereafter ordered to file a brief, counsel shall examine the record and again determine whether any nonfrivolous arguments exist. If counsel concludes that the appeal is frivolous, counsel shall again advise the defendant to withdraw the appeal. If the defendant decides not to withdraw the appeal, counsel shall file a brief that argues the defendant's case as well as possible. In such a case, the assertion of a frivolous issue before the court shall not constitute a violation of New Hampshire Rule of Professional Conduct 3.1. However, in no case shall counsel deceive or mislead the court, or deliberately omit facts or authority that directly contradict counsel's arguments. *Cf. State v. Cigic*, 138 N.H. 313, 318 (1994) (explaining scope of exception to Professional Conduct Rule 3.1 for asserting frivolous issues in criminal appeals).

(2) A motion to withdraw as counsel on appeal in a guardianship case commenced by the filing of a petition pursuant to RSA 464-A:4 or RSA 464-A:12, an involuntary admission case commenced by the filing of a petition pursuant to RSA 135-C:36, **[a civil commitment case filed under RSA 135-E,]** ~~or~~ a termination of parental rights case commenced by the filing of a petition pursuant to RSA 170-C:4, **[or an involuntary admission case filed under RSA 171-B,]** must state reasons that would warrant the grant of leave to withdraw. Absent a showing of exceptional circumstances, the motion must be accompanied by a showing that new

counsel has been appointed by the trial court or retained to represent the defendant on appeal.

(3) Trial counsel shall continue to participate until and unless the motion to withdraw is approved by the supreme court.

(4) Any indigent party who wishes to be represented in the supreme court by court-appointed counsel, including indigent parties who were represented in the trial court by court-appointed counsel, must file a current "Financial Affidavit & Application for Court Appointed Counsel" (OCC Form 4) with the supreme court. If the indigent party is the appellant, the current "Financial Affidavit & Application for Court Appointed Counsel" (OCC Form 4) shall accompany the appeal document. Otherwise, the current "Financial Affidavit & Application for Court Appointed Counsel" (OCC Form 4) shall be filed within thirty days after the date that the appeal document is filed.

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

RULE 12-A. Mediation

(1) Cases pending at the supreme court may be referred to the Office of Mediation and Arbitration (OMA) for mediation as set forth in this rule. All mediation will be conducted by a retired full-time judge **[or a retired full-time marital master]**.

(2) With the exception of cases listed in the following paragraph, cases accepted by the court may be referred to the Office of Mediation and Arbitration (OMA) for mediation upon the agreement of all parties.

The following cases are not eligible for mediation: criminal cases; domestic violence cases; election cases; guardianship cases; involuntary commitment cases; juvenile cases, including abuse and neglect, CHINS, delinquency, and termination of parental rights cases; cases brought by a prisoner in the custody of a correctional institution; and stalking cases.

(3) When an acceptance order is issued in a case that appears to be eligible for mediation under this rule, the clerk shall provide the moving party with a mediation agreement form. If all parties agree to mediation, the moving party shall submit the completed mediation agreement form to the court within 15 days of the date of the acceptance order, and shall send a copy of the completed form to all parties. In a case in which more than one appeal has been filed, the order shall indicate who will be considered the moving party for the purpose of submitting the mediation agreement form.

(4) Upon receipt of a completed mediation agreement form, an order will be issued by the clerk referring the case to the OMA for mediation.

(5) Any order referring a case to the OMA for mediation shall impose a fee of \$200.00 per party to be paid to the OMA. This fee will be used by the OMA to pay mediator compensation, and is not refundable. On its own motion, or upon motion of the parties, the court may order an individual \$200.00 fee to apply to multiple plaintiffs or defendants, if under the circumstances of the case, the court determines that the per party fee would cause undue hardship if it were applied to individual parties, or if one fee for multiple parties on the same side is deemed

equitable by the court. Parties who are indigent may petition the court for waiver of the \$200.00 fee.

(6) Unless the order referring a case for mediation provides otherwise, when a case is referred to the OMA for mediation, further processing of the case by the court will be suspended for a period of 90 days. If the director of the OMA or the mediator believes that additional time is needed to complete the mediation, the director or mediator may file a notice with the court of an automatic extension of no more than 30 days. Upon filing of the notice, further processing of the case shall be suspended for the additional time without further order of the court. Extensions of time of more than 30 days may be requested only by motion to the court and are not favored.

(7) After a case has been referred to the OMA for mediation, the OMA shall be responsible for selecting a mediator and scheduling a mediation session. The parties shall comply with the OMA rules for appellate mediation. All communications and filings of the parties related to the mediation session shall be sent to the OMA and shall not be filed with the court, with the exception of filings relating to whether the case should be remanded to the court to resume processing of the case or requesting an extension of time to complete mediation.

(8) If the director of the OMA determines at any time after a case has been referred that the case should not be mediated, the director shall notify the clerk in writing. Thereafter, an order will be issued indicating that processing of the case will resume in accordance with Supreme Court rules.

(9) Within 15 days after the conclusion of a mediation, the mediator or the director of the OMA shall file a written report with the court of the results of the mediation. The report shall state whether a full or partial settlement was reached and describe the effect of the settlement on the pending case. The report shall not disclose the mediator's assessment of any aspect of the case or confidential matters discussed during the session or sessions.

(10) If the director of the OMA reports that there has not been a full settlement of a case referred for mediation, or upon expiration of the period during which processing of the case was suspended, the court ordinarily will resume processing the case in accordance with Supreme Court rules unless circumstances would make this inappropriate.

(11) Mediation proceedings and information relating to those proceedings shall be confidential. Information submitted or discussed during mediation shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party,

attorney, or other participant in aid of such proceeding shall be privileged and shall not be disclosed to any court or arbitrator or construed for any purpose as an admission against interest. Mediation proceedings under this rule are deemed settlement conferences consistent with the Rules of Evidence. Parties shall not introduce into evidence, in any subsequent proceeding, the fact that there was a mediation or any other material concerning the conduct of the mediation except as required by the Rules of Professional Conduct or the Mediator Standards of Conduct. Evidence that would otherwise be admissible in another proceeding shall not be rendered inadmissible as a result of its use in mediation.

(12) The OMA may adopt procedural rules to govern the appellate mediation process.