

**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 7, 2013, 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 7, 2013, or may be submitted at the hearing on June 7, 2013. Comments may be e-mailed to the Committee on or before June 7, 2013, at:

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

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

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

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

Copies of the specific changes being considered by the Committee are available on request to the secretary of the Committee at the N.H.

Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 271-2646). In addition, the changes being considered are available on the Internet (in the Appendix to Public Hearing Notice) at: <http://www.courts.state.nh.us/committees/adviscommrules/notices.htm>

The changes being considered concern the following rules:

### **I. Notice of Appeal Deadline**

*(This proposal would resolve an ambiguity in Supreme Court Rule 7(1)(C) regarding the notice of appeal deadline when a trial court grants a motion for reconsideration, and would clarify that a trial court's ruling on an untimely filed post-decision motion does not impliedly waive the untimeliness of the post-decision motion and, therefore, does not change the calculation of the appeal period.)*

1. Amend Supreme Court Rule 7(1)(C), regarding appeals from trial court decisions on the merits, as set forth in Appendix A.

### **II. Photographing, Recording and Broadcasting**

*(This proposal would adopt, on a temporary basis, an amendment to the procedural rules of the Committee on Judicial Conduct. The proposal would adopt on a temporary basis the same amendment recently adopted on a temporary basis to govern media access to proceedings in the trial courts. The amendment would clarify the presumption that the photographing, recording and broadcasting of Judicial Conduct Committee Proceedings that are open to the public is permissible.)*

1. Amend Supreme Court Rule 40(11)(j), regarding procedural rules of the Committee on Judicial Conduct, Photographing, Recording and Broadcasting, on a temporary basis, as set forth in Appendix B.

### **III. Continuing Judicial Education**

*(This proposal would amend Supreme Court Rule 45 to: (1) delete references to the National Judicial College; (2) consolidate two sections of the rule; (3) replace references to the "Office of General Counsel" with "Judicial Branch Educational Committee;" (4) remove references to "registers;" and (5) delete references to marital masters in section (b) and add references to marital masters in the new section (c).)*

1. Amend Supreme Court Rule 45, regarding continuing judicial

education, as set forth in Appendix C.

#### **IV. Rule-Making Procedures**

*(This proposal would amend Supreme Court Rule 51(B) to allow the Speaker of the House and the Senate President some flexibility to appoint a designee for some, or all, of the Advisory Committee on Rules meetings.)*

1. Amend Supreme Court Rule 51(B), regarding rule-making procedures, as set forth in Appendix D.

#### **V. Protocol for In-Camera Review of Documents**

*(This proposal would amend Supreme Court Rule 57-A, regarding custody and return of documents and materials filed in camera in trial courts. The Committee also invites comment on the following: (1) a proposed Superior Court protocol for handling in camera documents; (2) a proposed Order for Production of Records for In Camera Review form for use in the Superior Court; (3) a proposed In Camera Protective Order (Under Seal) form for use in the Superior Court; and (4) a proposed Required in Camera Certification form for use in the Superior Court.)*

1. Amend Supreme Court Rule 57-A, regarding custody and return of documents and materials filed in camera in trial courts, as set forth in Appendix E.

2. The Committee invites comment on a proposed Superior Court protocol for handling in camera documents, as set forth in Appendix F.

3. The Committee invites comment on a proposed Order for Production of Records for In Camera Review form for use in the Superior Court, as set forth in Appendix G.

4. The Committee invites comment on a proposed In Camera Protective Order (Under Seal) form for use in the Superior Court, as set forth in Appendix H.

5. The Committee invites comment on a proposed Required In Camera Certification form for use in the Superior Court, as set forth in Appendix I.

## **VI. Alternative Dispute Resolution**

*(This proposal would amend Superior Court Rule 170 by deleting the rule and replacing it in its entirety.)*

1. Amend Superior Court Rule 170 by deleting said rule and replacing it in its entirety, as set forth in Appendix J.

## **VII. Circuit Court Rules – Dismissal of Cases Pending Without Action**

*(This proposal would adopt new rules, applicable in the Circuit Court, providing for the dismissal by the Court of certain cases if they have seen no activity for a period of two years.)*

1. Adopt Circuit Court – District Division Rule 1.27, regarding dismissal of cases pending without action, as set forth in Appendix K.
2. Adopt Circuit Court – Probate Division Rule 48-A, regarding dismissal of cases pending without action, as set forth in Appendix L.
3. Adopt Circuit Court – Family Division Rule 1.32, regarding dismissal of cases pending without action, as set forth in Appendix M.

## **VIII. Counsel Fees and Guardians ad Litem Fees Rules**

*(These proposals would adopt on a permanent basis temporary amendments to the Counsel Fees and Guardians ad Litem Fees Rules.)*

1. Adopt on a permanent basis Supreme Court Rule 48(2), regarding counsel fees and expenses - other indigent cases and parental notification cases, which was amended on a temporary basis by Supreme Court Order dated July 12, 2011, as set forth in Appendix N.
2. Adopt on a permanent basis Supreme Court Rule 48-A(2), regarding guardians ad litem fees – indigent cases and parental notification cases, which was amended on a temporary basis by Supreme Court Order dated July 12, 2011, as set forth in Appendix O.

## **IX. Performance Evaluation of Judges**

*(This proposal would adopt on a permanent basis temporary amendments to Supreme Court Rule 56, relating to performance evaluation of judges.)*

1. Adopt on a permanent basis Supreme Court Rule 56, relating to

performance evaluation of judges, which was amended on a temporary basis by Supreme Court Order dated July 17, 2012, as set forth in Appendix P.

#### **X. Sentence Review Division Rules**

*(This proposal would adopt on a permanent basis temporary amendments to the Superior Court Sentence Review Division Rules.)*

1. Adopt on a permanent basis the Superior Court Sentence Review Division Rules, which were amended on a temporary basis by Supreme Court Order dated February 25, 2013, as set forth in Appendix Q.

#### **XI. Pro Hac Vice Fees**

*(These proposals would adopt on a permanent basis temporary amendments to court rules increasing the fee charged to applicants seeking permission to appear pro hac vice from \$225.00 to \$250.00.)*

1. Adopt on a permanent basis Supreme Court Rule 33(5), regarding non-members of the New Hampshire Bar, which was amended on a temporary basis by Supreme Court Order dated November 15, 2012, as set forth in Appendix R.

2. Adopt on a permanent basis Supreme Court Rule 49(I), regarding fees in the Supreme Court, which was amended on a temporary basis by Supreme Court Order dated November 15, 2012, as set forth in Appendix S.

3. Adopt on a permanent basis Superior Court Rule 19(e), regarding attorneys, which was amended on a temporary basis by Supreme Court Order dated November 15, 2012, as set forth in Appendix T.

4. Adopt on a permanent basis Superior Court Rule 169(III), regarding fees, which was amended on a temporary basis by Supreme Court Order dated November 15, 2012, as set forth in Appendix U.

5. Adopt on a permanent basis Circuit Court – District Division Rule 1.3(C)(5), regarding attorneys, which was amended on a temporary basis by Supreme Court Order dated November 15, 2012, as set forth in Appendix V.

6. Adopt on a permanent basis Circuit Court – District Division Rule 3.3(I), regarding court fees, which was amended on a temporary basis by Supreme Court Order dated November 15, 2012, as set forth in Appendix W.

7. Adopt on a permanent basis Circuit Court – Probate Division Rule 19(E), regarding attorneys – *Appearing Pro Hac Vice*, which was amended on a temporary basis by Supreme Court Order dated November 15, 2012, as set forth in Appendix X.

8. Adopt on a permanent basis Circuit Court – Probate Division Rule 169(IV), regarding fees, which was amended on a temporary basis by Supreme Court Order dated November 15, 2012, as set forth in Appendix Y.

9. Adopt on a permanent basis Circuit Court – Family Division Rule 1.21(D), regarding *Pro Hac Vice* Representation, which was amended on a temporary basis by Supreme Court Order dated November 15, 2012, as set forth in Appendix Z.

10. Adopt on a permanent basis Circuit Court – Family Division Rule 1.3(M), regarding fees, which was amended on a temporary basis by Supreme Court Order dated November 15, 2012, as set forth in Appendix AA.

New Hampshire Supreme Court  
Advisory Committee on Rules

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

April 11, 2013

## APPENDIX A

Amend Supreme Court Rule 7(1)(C) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(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 **[decision]** motion stays the running of the appeal period for all parties to the case in the trial court including those not filing the motion. **[If the trial court's decision on a post-decision motion creates a newly-losing party, and the newly-losing party files a timely motion for reconsideration, such motion will further stay 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 **[decision]** motions will not stay the running of the appeal period unless the trial court waives the untimeliness within the appeal period. **[In the absence of an express waiver of the untimeliness made by the trial court within the appeal period, the appeal period is not extended even if the trial court rules on the merits of an untimely filed post-decision motion.]** Successive post-trial **[decision]** motions **[filed by a party that is not a newly-losing party]** will not stay the running of the appeal period. *See Petition of Ellis*, 138 N.H. 159 (1993); **see also Super. Ct. Rule 59-A]**.

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.

## APPENDIX B

Amend Supreme Court Rule 40(11)(j) by deleting said rule and replacing it with the following:

(j) *Photographing, Recording and Broadcasting*

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

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

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

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



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

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

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

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

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

(9) The committee shall make all documents and exhibits filed with the committee, and not sealed, available for inspection by members of the public in a reasonably timely fashion, it being recognized that the committee's need to make use of documents and exhibits for official purposes must take precedence over their availability for public inspection. The committee may elect to make one "public" copy of an exhibit available.

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

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

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

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

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

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

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

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

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

#### Comments

With respect to subsection (3) of this rule, it is contemplated that such requests will be deemed timely if they are filed enough in advance of the proceeding that the committee has an opportunity to read

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

## APPENDIX C

Amend Supreme Court Rule 45 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

### **Rule 45. Continuing Judicial Education.**

(1) Continuing judicial training and education is essential to maintain public confidence in the judiciary and the highest level of professional standards.

Accordingly, at a minimum, the judges, masters, and clerks ~~and registers~~ of our respective courts and the Director of the Administrative Office of the Courts shall be required to attend continuing judicial education programs, subject to the availability of funds, as follows:

(a) Justices of the Supreme Court shall attend at least one Appellate Judges Seminar or similar program at least once a year.

(b) Justice(s) of the Superior Court shall attend ~~the general jurisdiction program at the National Judicial College or a similar educational program~~ **[a judicial orientation and training program]** as determined by the Chief Justice of the Superior Court within two years of their appointment and shall attend at least one in-state, regional, or national educational program approved by the Chief Justice of the Superior Court every year thereafter. All superior court clerks shall attend at least one in-state, regional, or national court-related educational program approved by the Chief Justice of the Superior Court each year. ~~All marital masters shall attend at least one in-state, regional, or national educational program approved by the Chief Justice of the Superior Court each year.~~ The Chief Justice of the Superior Court shall coordinate all educational activities within the Superior Court with the ~~New Hampshire Supreme Court Office of General Counsel~~ **[New Hampshire Judicial Branch Educational Committee]**.

~~——(c) Full-time probate judges shall attend a basic educational program at the National Judicial College or a similar educational program as determined by the Administrative Judge of the Probate Court within two years of their appointment. All probate judges shall attend at least one in-state, regional, or national educational program approved by the Administrative Judge of the Probate Court each year. All registers shall attend at least one in-state, regional, or national educational program approved by the Administrative Judge of the Probate Court each year. The Administrative Judge of the Probate Court shall coordinate all~~

educational activities within the Probate Court with the New Hampshire Supreme Court Office of General Counsel.—

———(d) Full time justices of the district courts shall attend a basic educational program at the National Judicial College or a similar educational program as determined by the Administrative Judge of the District Court within two years of their appointment, and all district court judges shall attend at least one in state, regional, or national educational program approved by the Administrative Judge of the District Court each year. All district court clerks shall attend at least one in-state, regional, or national educational program approved by the Administrative Judge of the District Court each year. The Administrative Judge of the District Court shall coordinate all educational activities within the District Court with the New Hampshire Supreme Court Office of General Counsel.—

**[(c) All circuit court judges and marital masters shall attend a judicial orientation and training program as determined by the Administrative Judge of the Circuit Court within two years of their appointment and shall attend at least one in-state, regional, or national educational program approved by the Administrative Judge of the Circuit Court every year thereafter. All circuit court clerks shall attend at least one in-state, regional, or national court-related educational program approved by the Administrative Judge of the Circuit Court each year. The Administrative Judge of the Circuit Court shall coordinate all educational activities within the Circuit Court with the New Hampshire Judicial Branch Educational Committee.]**

(e) **[(d)]** The Director of the Administrative Office of the Courts shall attend at least one in-state, regional, or national educational program approved by the Chief Justice of the Supreme Court each year.

(f) **[(e)]** Exceptions to this rule for good cause shown may be approved by the Supreme Court.

## APPENDIX D

Amend Supreme Court Rule 51(B) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

### *B. Appointment of Advisory Committee on Rules*

(1) There shall be an Advisory Committee on Rules, which shall be composed of sixteen members as follows:

(a) One active or retired judge from each of the following courts shall be appointed by the supreme court: district court, probate court, superior court, and supreme court.

(b) Two attorneys shall be appointed by the supreme court.

(c) Three lay persons shall be appointed by the supreme court.

(d) One member shall be appointed by the Governor.

(e) ~~One member of the senate shall be appointed by t~~**[T]**he president of the senate**[, or the president's designee]**.

(f) ~~One member of the house shall be appointed by t~~**[T]**he speaker of the house**[, or the speaker's designee]**.

(g) One clerk of court shall be appointed by the supreme court.

(h) One member of the New Hampshire Bar Association Board of Governors and one member of the Committee on Cooperation with the Courts shall be appointed by the president of the New Hampshire Bar Association.

(i) One active or retired judge, master, or administrator from the family division shall be appointed by the supreme court.

(2) Appointments by the supreme court shall, where possible, be made from the Committee on Judicial Conduct, the Committee on Professional Conduct, the New Hampshire Bar Association's Committees on Civil Procedure, Evidence and Ethics, and such other committees as may be either studying or enforcing rules for the administration of justice. All such committees shall channel recommended changes through the Advisory Committee on Rules and shall serve as its sub-committees for specific areas of rule-making.

(3) A vacancy in the office of the committee shall occur:

(a) when a member ceases to be a member by resignation or otherwise;

(b) when a judge, master, clerk, or administrator ceases to hold the office which he or she held at the time of selection;

(c) when a lawyer ceases to be admitted to practice in the courts of this State or is appointed to a judicial office;

- (d) when a lay person becomes a lawyer or a judge;
- (e) when a legislative member ceases to be a member of the general court;
- (f) when a New Hampshire Bar Association Board of Governors member ceases to be a member of the Board of Governors or when the Committee on Cooperation with the Courts representative ceases to be a member of the Committee on Cooperation with the Courts.

(4) Members appointed by the Governor, ~~the president of the senate, the speaker of the house,~~ and the president of the New Hampshire Bar Association shall serve at the pleasure of the appointing authority.

(5) The secretary of the committee shall be the clerk of the supreme court or any other person designated by the supreme court.

## APPENDIX E

Amend Supreme Court Rule 57-A as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

### **Rule 57-A. Custody and Return of Documents and Materials Filed In Camera in Trial Courts.**

During the time a case is pending in the trial court, all documents and materials filed in camera with the court shall be maintained by the court.

#### **[1. Civil Cases]**

(a) Upon the final conclusion of a **[civil]** case in the trial court, documents and materials filed in camera will be held at the court until such time as the appeal period has expired. At that time, the clerk shall return the documents and materials filed in camera to the individual or organization that filed **[furnished]** them ~~with the court~~ **[, unless the court orders otherwise].**

(b) If an appeal is filed **[in a civil case]**, the documents and materials filed in camera shall remain in the custody of the trial court pending resolution of the appeal unless the supreme court orders that they be transferred for purposes of the appeal. Upon receipt of the mandate from the supreme court, and if no further proceedings are required, the trial court clerk shall return the documents and materials filed in camera to the individual or organization that filed **[furnished]** them ~~with the court~~ **[, unless the court orders otherwise].**

#### **[2. Criminal Cases]**

**(a) Upon the final conclusion of a criminal case in the trial court, documents and materials filed in camera will be held at the court as a part of the official court file for a period of ten (10) years after the appeal period in the case has expired. After ten years, the clerk or designee shall destroy the in camera documents unless a written request has been made prior to that date for the records to be retained for an additional specified period.**

**(b) If an appeal is filed in a criminal case, the documents and materials filed**



**in camera shall remain in the custody of the trial court pending resolution of the appeal unless the supreme court orders that they be transferred for purposes of the appeal. The trial court clerk shall retain the documents as part of the official court file for a period of ten (10) years from the date of the supreme court mandate. After ten years, the clerk or designee shall destroy the in camera documents unless a written request has been made prior to that date for the records to be retained for an additional specified period.]**

## APPENDIX F

The Committee invites comment on the following proposed Superior Court protocol for handling *in camera* documents:

### PROTOCOL FOR HANDLING *IN CAMERA* DOCUMENTS

1. Parties seeking *in camera* review of documents shall file a motion with the Court.
2. The motion for *in camera* review shall be presented to a Judge for ruling in compliance with Superior Court Rules regarding motion practice.
3. If the Judge grants the motion for *in camera* review, the Judge shall issue an Order for Production of Records for *In Camera* Review. The order shall direct the State in criminal cases and the moving party in civil cases to deliver the order to the appropriate provider/agency as well as an *In Camera* Certification Form, which the court shall attach to the order. The Order shall require the provider/agency to complete the *In Camera* Certification form and to deliver the *in camera* documents to the State or moving civil party in a sealed envelope or other sealed container.
4. Upon receipt of the sealed *in camera* documents and *In Camera* Certification Form from the provider/agency, the State or moving party shall deliver the unopened *in camera* documents and *In Camera* Certification form to the Clerk's office in person as soon as practicable and in any event, within two business days of receipt. The delivering party shall be prohibited from opening the sealed *in camera* documents.
5. Upon receipt of the *in camera* documents, the Clerk shall maintain a record of each filing in the specific case in the Clerk's Case Management System (CMS) - Odyssey by recording the documents received in the **Exhibits** tab containing the following information:
  - A. Date of receipt of *in camera* documents
  - B. Name of the provider/agency providing the documents
  - C. Type of *in camera* documents received
  - D. Date of return/destruction of the *in camera* documents
6. *In camera* documents received by the Clerk shall be placed in a sealed envelope or a red or other colored file folder. The outside of this envelope/folder will:
  - A. Be labeled "A"
  - B. Contain the case number, case caption and name of the provider/agency

C. Be marked “CONFIDENTIAL *In Camera* Materials”

*In camera* documents can be kept in a location in the Clerk’s office separate from the case file or in a red or other colored confidential file attached to the file, as instructed by the Clerk.

7. As soon as practicable after receipt of *in camera* documents, the documents shall be presented to the Judge for review. If the Judge elects to disclose all or any portion of the *in camera* documents, the Judge will issue an order specifying the *in camera* documents to be disclosed along with the *In Camera* Protective Order which specifies limitations on the use or further dissemination of such documents. Unless otherwise ordered, the Clerk or designee will make copies of those *in camera* documents ordered to be disclosed for each lawyer, with one additional set of the copied documents placed in a sealed envelope marked as “B” to be kept as part of the Court’s record in the physical case file. A copy of the Court’s order relative to such disclosed *in camera* documents shall be attached to envelope “B” and the case number, case caption and the name of the provider/agency will be noted on the outside of envelope “B”. The outside of the envelope or file folder should also be marked “CONFIDENTIAL *In Camera* Materials.”

8. In civil cases, after the appeal period has expired or, if the case has been appealed, upon receipt of the mandate from the supreme court, the clerk shall return the documents and materials filed *in camera* to the individual or organization that provided them, unless the court orders otherwise.

9. In criminal cases, the clerk shall retain the *in camera* documents as part of the official court file for a period of ten (10) years after the appeal period in the case has expired. After ten years, the clerk or designee shall destroy the *in camera* documents unless a written request has been made prior to that date for the records to be retained for an additional specified period.

**Exhibit Tab step by step process to follow**

**APPENDIX G**

The Committee invites comment on the following form proposed for use in the Superior Court:

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH**

<http://www.courts.state.nh.us>

Court Name: \_\_\_\_\_

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

**ORDER FOR PRODUCTION OF RECORDS FOR *IN CAMERA* REVIEW**

**Case Name:** TEST CASE v. TEST CASE

**Case Number(s):** 218-2012-CR-00000

The above-referenced case is pending in the \_\_\_\_\_ County Superior Court. The Court has granted a request to conduct an *in camera* review of the confidential records of the person listed below. An *in camera* review is one in which the Judge reviews the records and makes a determination based on the contents and the particular facts of the case whether or not the records or any portion thereof will be disclosed to the parties in the case.

The Court is satisfied that there is reason to believe that (Insert name of provider) has records pertaining to the individual identified below.

Accordingly, the keeper of the records of the above-named provider is hereby ORDERED to produce for the following individual \_\_\_\_\_;

- The original or a complete copy of all such records
- The following records \_\_\_\_\_

The keeper of the records shall place these documents in a sealed envelope, or other sealed container, along with the attached completed *In Camera* Certification form. The provider shall deliver the documents to:

(Insert Name and Address of Responsible Party)

**NOTE:** If these records are to be delivered to a location other than the court, the entity at that location shall deliver the documents to the court forthwith, without having unsealed them.

If the provider has any question regarding this order, or its ability to comply in a timely manner, please contact the office listed above. **This Order shall remain under seal.**

SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Justice

**APPENDIX H**

The Committee invites comment on the following form proposed for use in the Superior Court:

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH**

<http://www.courts.state.nh.us>

Court Name: \_\_\_\_\_

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

***IN CAMERA* PROTECTIVE ORDER (UNDER SEAL)**

The Court conducted an *in camera* review of certain confidential records in this case. Enclosed please find the Court order dated \_\_\_\_\_ identifying which records are to be disclosed to the parties and also setting forth the legal basis for disclosure. The release of the disclosed records is subject to the following restrictions:

1. The State/plaintiff's and defense counsel shall each be entitled to one (1) copy of the records for use only in connection with this case.
2. No party shall make further copies of the records without further order of the Court.
3. Any notes taken by counsel in connection with the review of these records shall be treated as confidential and are subject to the restrictions in this protective order.
4. The records may be disclosed only to parties and their counsel and to investigators, experts, and witness-coordinators directly involved in and reasonably necessary to preparation for trial.
5. Any person to whom disclosure of the records is made shall not further disclose the information therein and shall not use the information therein for any purpose other than this proceeding.
6. Any person to whom disclosure of the records is made in connection with this case shall be advised of the terms of this order.
7. Except as specified in #4 above, the contents of the records shall not be disclosed to any third party without further order of the Court.

8. All *in camera records* in this case shall be maintained under seal by the Clerk and preserved in accordance with the established Superior Court policy for maintaining and preserving *in camera records*.

9. This Order shall remain under seal.

So ordered.

\_\_\_\_\_

Date

\_\_\_\_\_

Presiding Justice

**APPENDIX I**

The Committee invites comment on the following form proposed for use in the Superior Court:

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH**

<http://www.courts.state.nh.us>

Court Name: \_\_\_\_\_

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

***REQUIRED IN CAMERA CERTIFICATION***

TO: Responsible Party

FROM: (Insert Name and Address of Provider/Agency)

\_\_\_\_\_

\_\_\_\_\_

I \_\_\_\_\_, the undersigned, certify that the enclosed documents/records are complete and true copies of those documents/records the above-named provider/agency has been ordered to provide to you relative to \_\_\_\_\_ (individual's name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:



Amend Superior Court Rule 170 by deleting said rule and replacing it with the following:

**NEW HAMPSHIRE SUPERIOR COURT RULE 170  
ALTERNATE DISPUTE RESOLUTION (ADR)**

**(A) Cases for Alternative Dispute Resolution.**

(1) All civil cases shall be assigned to ADR, with the exception of those exempted in paragraph (2).

(2) The following categories of civil and equity actions are exempt from the requirements of this rule.

(a) Actions where the parties represent by joint motion that they have engaged in formal ADR before a neutral third party prior to suit being filed.

(b) Actions exempted by the court on motion and for good cause, but only when said motion is filed within 180 days of the return date.

**(B) Order of Alternative Dispute Resolution Procedure.**

(1) The order referring the case to ADR will be contained in the Structuring Conference Order (hereinafter Court Order for ADR) issued by the Court at least thirty days in advance of the assignment date. ADR proceedings shall not stay, alter, suspend, or delay pre-trial discovery, motions, hearings, or conferences nor the requirements and time deadlines of New Hampshire Superior Court Rules 62 & 63.

(2) A copy of an ADR report (form available on-line) must be filed by the plaintiff(s) or plaintiff(s)' counsel (unless otherwise agreed): (1) within 15 days of the ADR session; (2) as an exhibit to the final pre-trial statement if the case did not resolve through ADR; or (3) as an exhibit to the docket markings. If the ADR report is not timely filed, the court may schedule a show-cause hearing to determine the status of the ADR process and to impose sanctions appropriate to the circumstances, if necessary.

(3) In any action in which ADR does not result in a settlement, the action

will proceed in accordance with any agreement reached in the ADR process, or in the absence of an agreement, as ordered by the court.

**(C) Neutrals**

(1) All neutrals on the court approved roster shall be attorneys admitted to practice in New Hampshire who are in good standing.

(2) Selection of a Neutral.

(i) Unless the context of the rule indicates otherwise, the term "neutral" shall include one of the following:

- a. an ADR professional who is available at the courthouse on a day chosen at the Structuring Conference, or
- b. a neutral selected from the court's lists of approved neutrals at the Structuring Conference, or
- c. any neutral who is not on the court's approved lists but who is agreed upon by the parties at the Structuring Conference.

(ii) If the neutral is chosen at the structuring conference, within 10 days after the structuring conference, parties or counsel shall contact the neutral or the alternates, if necessary.

(iii) Except for the date by which the ADR procedure must be completed, the structuring conference order regarding ADR may thereafter be amended by agreement of the parties by filing an amended Stipulation with the court. The court may permit an extension of the date by which the ADR procedure must be completed on the motion of any party for good cause shown.

(3) Upon receipt of notice of appointment in a case, the neutral shall disclose any circumstance likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or prevent the process from proceeding as scheduled. If the neutral withdraws, has a conflict of interest, or is otherwise unavailable, another shall be appointed by the Court, unless the parties agree to a qualified substitute neutral.

(4) Specific Requirements:

- i. All Rule 170 neutrals must have either (1) training and demonstrated experience in civil mediation; or (2) service as a prior Rule 170 mediator.
- ii. All neutrals will be subject to an annual 8-hour refresher-training requirement. The 8-hour refresher training must be completed by January 1, 2015. The refresher training requirement may be satisfied by way of court-sponsored training, which shall be provided to neutrals, or neutrals may provide to the Office of Mediation and Arbitration documentation of equivalent training, subject to its approval.

#### (5) Application and Approval Process

(a) In order to serve as a neutral, an attorney must apply and be approved by the Administrative Council. In approving neutrals, the Administrative Council may consider the applicant's alternative dispute resolution experience or other relevant factors, such as length of practice or trial experience.

(b) Neutrals will be on the court-approved roster that will be posted on the New Hampshire Judicial Branch website. The neutral may provide biographical information for inclusion on the list, as well a description of those areas of the law in which the neutral has enhanced knowledge.

(c) Neutrals who would like to be included on the court's roster shall submit their application, and three letters of reference as set forth in this rule to the Office of Mediation/Arbitration. Inclusion on the court's list of approved neutrals remains valid for a one year period from January 1 through December 31 of each year. To request continued inclusion on the court's list or lists, a neutral, prior to January 1 of each year, shall:

(i) File a statement that there have been no material changes in his or her initial application for inclusion, or if there have been material changes, list and explain them.

(ii) File documentation that the neutral has completed required refresher training in the field of alternative dispute resolution in accordance with section (C) (4)(ii).

(d) No rostering fee shall be required of Rule 170 mediators

(6) Immunity for Rule 170 Neutral.

A Neutral selected to serve and serving under Superior Court Rule 170 or Rule 170-A shall have immunity consistent with RSA 490-E:5.

**(D) Inadmissibility of Alternative Dispute Resolution Proceedings.**

(1) ADR proceedings and information relating to those proceedings shall be confidential unless otherwise agreed in writing by all parties and all counsel. Information, evidence, or the admission of any party or the valuation placed on the case by any neutral 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. All ADR proceedings are deemed settlement conferences consistent with the Superior Court Rules and Rules of Evidence. In addition, the parties shall not introduce into evidence in any subsequent proceeding, the fact that there was an ADR proceeding or any other matter concerning the conduct of the ADR proceedings except as may otherwise be required by law. Notwithstanding the foregoing, if the parties have reached a settlement agreement, that fact and the terms of any such agreement may be admissible in a further proceeding to enforce same.

(2) There shall be no record made of any ADR proceedings.

(3) Evidence that would otherwise be admissible at trial shall not be rendered inadmissible as a result of its use in an ADR proceeding.

**(E) Sanctions.**

If a party or a party's counsel fails without good cause to appear at an ADR session scheduled pursuant to this rule, or fails to comply with any order made hereunder, the court may, on its own or upon motion of a party, impose any sanction that is just under the circumstances.

**(F) SURCHARGE. (to be considered)**

The sum of \$10.00 shall be added to each entry fee collected in the Superior Court for all civil cases and shall be deposited in the mediation and arbitration fund established under [RSA 490- E:4](#).

## **APPENDIX K**

Adopt Circuit Court – District Division Rule 1.27, as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

### **1.27 Dismissal of Cases Pending Without Action**

With the exception of a case which has been accepted for appeal by the New Hampshire Supreme Court, any non-criminal matter which has been pending without action for two calendar years from the date of the last court action may be dismissed by the court. Thirty days prior to dismissal the court shall send a notice of the pending dismissal to the last known address of all parties and counsel of record. A case may be considered “pending without action” in the following circumstances:

1. No court hearing has been scheduled or requested;
2. No pleadings are pending before the court;
3. No judgment has been entered in the case; and
4. No court order has been issued to stay the case.

## **APPENDIX L**

Adopt Circuit Court – Probate Division Rule 48-A, as follows:

### **48-A Dismissal of Cases Pending Without Action**

With the exception of a case which has been accepted for appeal by the New Hampshire Supreme Court, any non-criminal matter which has been pending without action for two calendar years from the date of the last court action may be dismissed by the court. Thirty days prior to dismissal the court shall send a notice of the pending dismissal to the last known address of all parties and counsel of record. A case may be considered “pending without action” in the following circumstances:

1. No court hearing has been scheduled or requested;
2. No pleadings are pending before the court;
3. No judgment has been entered in the case; and
4. No court order has been issued to stay the case.

## **APPENDIX M**

Adopt Circuit Court – Family Division Rule 1.32, as follows:

### **1.32 Dismissal of Cases Pending Without Action**

With the exception of a case which has been accepted for appeal by the New Hampshire Supreme Court, any non-criminal matter which has been pending without action for two calendar years from the date of the last court action may be dismissed by the court. Thirty days prior to dismissal the court shall send a notice of the pending dismissal to the last known address of all parties and counsel of record. A case may be considered “pending without action” in the following circumstances:

1. No court hearing has been scheduled or requested;
2. No pleadings are pending before the court;
3. No judgment has been entered in the case; and
4. No court order has been issued to stay the case.

## APPENDIX N

Adopt on a permanent basis Supreme Court Rule 48(2), which was amended on a temporary basis by Supreme Court order dated July 12, 2011, as follows (no changes are being proposed to the temporary rule now in effect):

(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.

## APPENDIX O

Adopt on a permanent basis Supreme Court Rule 48-A(2), which was amended on a temporary basis by Supreme Court order dated July 12, 2011, as follows (no changes are being proposed to the temporary rule now in effect):

(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.

## APPENDIX P

Adopt on a permanent basis Supreme Court Rule 56, which was amended on a temporary basis by Supreme Court order dated July 17, 2012, as follows (no changes are being proposed to the temporary rule now in effect):

### **Rule 56. Performance Evaluation of Judges.**

#### *(I) Administration and Implementation of a Performance Evaluation Program*

(A) The supreme court shall be responsible for the overall administration of a judicial performance evaluation program. On or before June 30 of each year, it shall prepare an annual report on the implementation and operation of the judicial performance evaluation program for public distribution and filing with the governor, the speaker of the house, the president of the senate and the chairpersons of the house and senate judiciary committees. The report shall include a summary of the number of evaluations performed by each court, the number of questionnaires distributed and returned, and, a summary of the overall evaluation results for each judge evaluated and all actions taken to correct inadequacies and deficiencies.

(B) A judicial performance evaluation advisory committee is established to advise the supreme court on the design and implementation of the judicial performance evaluation program. The members of the judicial performance evaluation advisory committee shall include: a supreme court justice designated by the supreme court, the chief justice of the superior court and the administrative judge of the circuit court, the chairpersons of the house and senate judiciary committees, the chair of the judicial council or his or her designee, the deputy attorney general, the chairperson of the New Hampshire Bar Association's committee on cooperation with the courts, the executive director of New Hampshire Public Defender, and a judicial branch employee designated by the supreme court who is involved in administering the judicial performance evaluation program. The judicial performance evaluation advisory committee shall meet periodically for the purpose of making recommendations to the supreme court on the following subjects:

(1) the design of questionnaires to be completed by attorneys, parties, witnesses, jurors, court personnel and others who have appeared before the judge being evaluated;

(2) the adoption of a protocol for making questionnaires available, including the number of questionnaires to be distributed, selecting the persons to receive questionnaires, distributing the questionnaires, and compiling the results of the questionnaires;

(3) the design of the self-evaluation form to be completed by the judge being evaluated; and

(4) the standards to be used in evaluating the performance of judges.

(C) The chief justice of the superior court and the administrative judges of the circuit court shall be responsible for implementing the judicial performance evaluation program approved by the supreme court in those courts. They shall have the authority and the duty to:

(1) consult with the supreme court about the process for compiling evaluation results for a judge and for determining the overall evaluation result for a judge;

(2) consult with the supreme court about the development or identification of suitable programs to assist judges who have not met the applicable judicial performance standards to do so;

(3) consult with the supreme court about the advisability of other administrative action to address the performance problems of any judge that are identified through the evaluation process or otherwise;

(4) conduct the evaluation of the judges serving on those courts; and

(5) determine the steps that the judge must take to improve his or her performance if his or her performance does not meet a performance standard or his or her overall performance is not satisfactory.

## (II) *Evaluation of Trial Court Judges*

### (A) *Persons Performing Evaluations; Frequency of Evaluations*

The chief justice of the superior court, or the chief justice's designee, shall evaluate each justice of the superior court a minimum of once every three years.

The administrative judge of the circuit court, or the administrative judge's designee, shall evaluate each full-time and part-time circuit court judge a minimum of once every three years.

A panel consisting of the chief justice of the supreme court and two associate justices of the supreme court shall evaluate the chief justice of the superior court and the administrative judge of the circuit court a minimum of once every three years.

(B) *Conduct of Evaluation*

(1) The judicial evaluation process is intended to evaluate a judge's performance in relation to the applicable judicial performance standards. The person performing the evaluation (the evaluator) shall determine whether the judge has met the applicable judicial performance standards. The evaluator shall also determine whether the judge's overall performance is satisfactory. If the judge has not met an applicable judicial performance standard, the evaluator shall identify the steps that the judge must take to improve his or her performance.

(2) The evaluator shall attempt to obtain comprehensive and balanced information from multiple sources to accurately assess the judge's performance during the evaluation period. The evaluation process of an individual judge shall include, but not be limited to, the following steps:

(1) review of complaints about the judge that have been docketed by the supreme court's committee on judicial conduct and that are public records under Rule 40;

(2) review of the results of the completed questionnaires of persons who appeared before the judge during the evaluation period;

(3) review of the self-evaluation form completed by the judge;  
and

(4) review of any complaints or inquiries about the judge received by the administrative judge or chief justice.

(C) *Results of Evaluation and Meeting with Judge Who Has Been Evaluated*

(1) The evaluator shall prepare a summary of the results of the evaluation, which describes the judge's performance in relation to the judicial performance standards and the judge's overall performance, and

which identifies any judicial performance standard that has not been met and sets forth the steps the judge must take to improve his or her performance.

(2) The evaluator shall meet with the judge who has been evaluated to discuss the results of the evaluation and to advise the judge of his or her overall performance. The evaluator shall also advise the judge whether he or she has met the applicable judicial performance standards, and, if not, identify the steps that the judge must take to improve his or her performance.

(3) At the conclusion of the meeting, the judge who has been evaluated shall sign the evaluation summary, indicating that he or she has been informed of the results of the evaluation and has been given a copy of the evaluation summary.

(4) Within 30 days of the meeting, the judge who has been evaluated may submit a written response to the evaluation. The response shall be kept with the evaluation summary.

*(D) Failure to Meet Judicial Performance Standards*

(1) If the evaluator concludes that a judge has failed to meet a judicial performance standard, he or she shall prepare a written summary identifying the performance standard that has not been met and specifying the steps that the judge must take to improve his or her performance and the time in which the steps must be taken. The chief justice or the administrative judge of the court on which the evaluated judge serves shall, to the extent possible, assist the judge to comply with the steps set forth in the evaluation summary for improving the judge's performance.

(2) If the overall performance of a judge has been determined not to be satisfactory, the judge shall be reevaluated within 18 months.

(3) If a judge has failed to take the steps to improve his or her performance specified in the evaluation summary, the chief justice or the administrative judge of the court on which the judge serves may take steps to correct the non-compliance, including administrative discipline, and may take whatever other steps are necessary to ensure compliance and/or may report the failure to the committee on judicial conduct.

*(III) Evaluation of Supreme Court Justices*

The supreme court shall design a questionnaire to be distributed every three years to a representative selection of attorneys and parties

who appeared before the court to assess the performance of the court during this period.

The court will adopt relevant objective appellate court performance standards and regularly evaluate its performance according to such standards.

Each justice shall complete a self-evaluation form designed to assess whether the justice has met the applicable judicial performance standards during the evaluation period.

The justices shall meet annually to evaluate each other's performance.

#### (IV) *Confidentiality*

(A) *General Rule.* Except as otherwise provided in this section, all records and information obtained and maintained during the judicial performance evaluation process shall be confidential and shall not be disclosed. The identity of persons who furnished information concerning judges under the program shall be confidential and shall not be disclosed.

#### (B) *Exceptions to Confidentiality Requirement.*

(1) *Disclosure to Judge Being Evaluated.* Information about the results of the questionnaires or other components of the evaluation process of an individual judge may be disclosed to the judge for the purpose of improving his or her judicial performance, except that the identity of persons furnishing information about the judge shall not be disclosed.

(2) *Disclosure to Other Judges Assisting in Evaluation Process.* The person performing the evaluation may share the results of the evaluation with other judges for the purpose of assisting in the evaluation process.

(3) *If A Judge Fails to Meet Judicial Evaluation Standards or Purposely Fails to Complete Improvement Programs.* If a judge fails to achieve an overall satisfactory level of performance on two consecutive performance evaluations, or if a judge purposely fails to complete the steps for improving his or her performance specified in the evaluation summary, the judge shall be deemed to have waived any right to confidentiality provided for by this rule, and the results of the judge's



evaluations shall become public, with the exception of the identity of persons furnishing information about the judge.

(4) *If A Judge is Being Considered or is Nominated for Another Judicial Position.* If a judge is being considered for another judicial position, the judge may authorize the release of the results of his or her judicial performance evaluations to the governor and to any agency or commission authorized to investigate the qualifications of judicial candidates, provided that they shall be required to keep the contents of the evaluations in strict confidence. Upon nomination of a judge, the results of his or her judicial performance evaluations shall be made available to the governor and executive council upon request. The contents of such evaluations shall be kept in strict confidence by the governor and executive council.

(5) *Report of Overall Evaluation Results.* The supreme court shall report the results of the judicial performance evaluation program in the annual report described in paragraph I above. This report shall include a summary of the overall evaluation results for each judge evaluated and all actions taken to correct inadequacies and deficiencies.

(V) *Retention of Records of Judicial Performance Evaluations*

The judicial performance evaluation summaries of a judge shall be retained while the judge remains in state judicial service.

## **APPENDIX Q**

Adopt on a permanent basis the Superior Court Sentence Review Division Rules, which were amended on a temporary basis by Supreme Court order dated February 25, 2013, as follows (no changes are being proposed to the temporary rule now in effect):

### **SENTENCE REVIEW DIVISION RULES**

1. (a) After notice and within thirty (30) days of imposition of a New Hampshire State Prison sentence by the Superior Court, the defendant may apply to have his or her sentence reviewed by the Sentence Review Division. Defendant's counsel has the duty to protect the defendant's interest by insuring that the defendant understands that:

(1) the defendant has a right to a review of any stand committed, deferred, or suspended state prison sentence imposed which is not mandated by law; and

(2) sentence review may be sought within 30 days of imposition of the sentence but not thereafter absent good cause shown; and

(3) if the defendant requests sentence review, the sentence may be increased, decreased, modified or affirmed.

(b) After notice and within thirty (30) days of imposition of a New Hampshire State Prison sentence by the Superior Court, the State may apply to have the sentence reviewed by the Sentence Review Division.

2. Only state prison sentences, whether stand committed, suspended or deferred, are subject to sentence review. Sentence review is not available for those sentences mandated by statute.

3. In any case in which a sentence is imposed that would allow a party to apply for review of the sentence by the Sentence Review Division, the Court, at the time of sentencing, shall provide the defendant and the prosecutor with an application for sentence review. The application shall state, and the parties shall be orally notified, that:

(a) the parties have a statutory right to a review of the sentence; and

(b) the Sentence Review Division may increase, decrease, modify or affirm any sentence entered by the Superior Court.

4. Application for sentence review may be made by filing a completed application form with either the Secretary of the Sentence Review Division, 45 Chenell Drive, Suite 1, Concord, New Hampshire, 03301, or with the Clerk of Court of the sentencing county.

5. When application for sentence for sentence review is made directly to the Clerk of the Superior Court, the Clerk shall immediately mail a copy of the application to the Secretary of the Sentence Review Division, along with notice of the date such application was filed with the Clerk.

6. The Secretary of the Sentence Review Division shall keep a record log in which shall be recorded the date the completed application for review was filed with the Secretary or Clerk, whichever was earlier. The Sentence Review Division record log shall be open for public inspection.

7. Any application for sentence review that is filed after thirty (30) days from the date of sentencing shall be rejected and returned with notice to all parties that the application is denied as untimely. There is no right to appeal the return of untimely requests for sentence review, except that the Sentence Review Division may, for good cause shown, decide, by concurrence of at least two members, to consider the merits of an untimely request for sentence review.

8. (a) Copies of the application for review of sentence filed by the defendant shall be forwarded by the Secretary of the Sentence Review Division to the following persons:

- (1) The sentencing judge;
- (2) The County Attorney or Attorney General;
- (3) The defendant's attorney of record; and,
- (4) The Chief Justice of the Superior Court.

(b) Copies of the application for review of sentence filed by the State shall be forwarded by the Secretary of the Sentence Review Division to the following persons:

- (1) The sentencing judge;
- (2) The defendant's attorney of record;
- (3) The defendant; and
- (4) The Chief Justice of the Superior Court.

9. (a) The Secretary shall contact the Clerk of the sentencing court to arrange for production to the Sentence Review Division of a transcript of the sentencing hearing and of the materials set out in Sentence Review Division Rule 16.

(b) The Secretary shall provide copies of the application, the transcript of the sentencing hearing, and all such materials to the members of the Sentence Review Division.

10. Each member of the Sentence Review Division shall review the application, transcript of the sentencing hearing, and such other materials as set out in Sentence Review Division Rule 16 and shall then inform the Secretary whether the member is requesting a hearing. Should none of the three members request a hearing, the Secretary shall issue a notice to the persons set out in Sentence Review Division Rule 8 that the sentence is affirmed without hearing. Should any member request a hearing, the Secretary shall issue a notice of hearing to the persons set out in Sentence Review Division Rule 8. Hearings before the Sentence Review Division shall normally be in accordance with the order the applications were recorded in the Sentence Review Division record log.

11. In those instances where the Sentence Review Division has scheduled a hearing on an application, on his or her own initiative or at the request of the Sentence Review Division, the sentencing judge may provide the Sentence Review Division with a statement of reasons for imposing the sentence under review. If submitted, such statement shall be furnished to the parties prior to the date of any hearing before the Sentence Review Division.

12. The filing of an application for sentence review does not stay execution of the sentence as originally imposed.

13. Sentences may be reviewed that were imposed prior to the effective date of RSA 651:58 (August 5, 1975) and for those sentences the thirty (30) day rule will not apply. Sentences may be reviewed even if the sentence to the State Prison has been suspended or deferred or if the time to be served is less than one year because of credit for pre-sentence confinement.

14. (a) Review may be sought for any state prison sentence resulting from a finding of guilty following trial, or as a result of entering a plea of guilty, or a finding of guilty following a plea of *nolo contendere*, where there is no agreement between the State and the defendant limiting the sentence to less than the maximum which could be imposed under the law (a so-called "naked plea").

(b) Sentences may also be reviewed following a re-sentencing if the original sentence has been set aside by judicial process other than by the Sentence Review Division.

(c) Review may not be sought for any sentence submitted to the sentencing judge where there is an agreement between the State and the defendant as to the sentence to be imposed in exchange for a plea (a so-called "negotiated plea"), or where there is an agreement between the State and the defendant limiting the sentence to less than the maximum which could be imposed under the law (a so-called "capped plea.") Before accepting any negotiated or capped plea, the sentencing judge shall confirm in writing or on the record the understanding of the parties that entry into such plea agreements results in waiver of the right to sentence review.

15. Upon hearing, the Division can act in any of the following ways:

(a) It may increase the sentence imposed by the sentencing judge;

(b) It may decrease the sentence imposed by the sentencing judge;

(c) It may otherwise modify the sentence; or,

(d) It may affirm the sentence.

16. The Sentence Review Division will only consider matters that are a part of the record of sentencing. In addition to a transcript

of the sentencing hearing, the Division will require the production of the following material if it was considered by the sentencing judge in the imposition of sentence:

(a) Presentence reports;

(b) Any other records, documents or exhibits preserved in the record of the sentencing hearing.

17. The Sentence Review Division will not consider any matter or development subsequent to the imposition of the sentence. Matters not to be considered include:

(a) Institutional adjustment;

(b) New social information;

(c) Institutional disciplinary actions pending or taken against the defendant;

(d) Work reports; or

(e) Inmate release plans.

18. If a hearing is scheduled, the defendant shall have the right to appear in person or by videoconference and to be represented by counsel. Counsel should ordinarily be trial counsel below. Court appointed counsel shall be reimbursed as provided by law. No sentence may be increased, decreased, or modified without the opportunity for the defendant to appear and be heard, in person or by videoconference, and the opportunity to be represented by counsel. The State may be represented by the County Attorney of the county wherein the sentence was imposed or by the Attorney General.

19. If the Sentence Review Division orders a different sentence, the Division shall issue a written order confirming the new sentence as modified.

20. Any time served prior to increase, decrease, or modification of the sentence shall be counted in calculating the sentence as increased, decreased, or modified.

21. The decision of the Sentence Review Division is final. The reasons for any change of sentence will be stated in a written order.

In reaching its decision, the Sentence Review Division will give consideration, but is not limited to, the following objectives of the New Hampshire Criminal Code sanctions:

- (a) Isolation of the offender from society to prevent criminal conduct during the period of confinement;
- (b) Rehabilitation of the convicted offender into a non-criminal member of society;
- (c) Deterrence of other members of the community who might have tendencies toward criminal conduct similar to those of the offender;
- (d) Deterrence of the defendant, himself or herself;
- (e) Reaffirmation of social norms for the purpose of maintaining respect for the norms themselves;
- (f) The individual characteristics of the defendant prior to the imposition of the sentence, except that information, which does not affirmatively appear on the record or in the judge's statement of reasons for the sentence, shall be excluded;
- (g) The facts and circumstances of the crime or crimes which affirmatively appear in the record of the proceedings; and
- (h) Statistical information concerning the sentences imposed for the same crime committed by other individuals in the State of New Hampshire.

22. The Secretary shall send the original of each final order to the Clerk of Court for the county in which sentence was imposed. The Secretary shall send copies of the final order to the sentencing judge, defendant, defense counsel, the Department of Corrections, and the County Attorney or the Attorney General's office.

23. The scope of review of the Sentence Review Division shall be:

- (a) The excessiveness or leniency of the sentence having regard for the nature of the offense, the protection of the public interest and safety, and the character of the offender; and
- (b) The manner in which the sentence was imposed, including

the sufficiency and accuracy of the information before the sentencing court.

24. Unless, after hearing, at least two members of the Sentence Review Division concur in increasing, decreasing, or otherwise modifying a sentence, the sentence imposed by the sentencing judge shall stand.



## **APPENDIX R**

Adopt on a permanent basis Supreme Court Rule 33(5), which was amended on a temporary basis by Supreme Court Order dated November 15, 2012 (no changes are being proposed to the temporary rule now in effect), as follows:

(5) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee of \$250.00; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court.

**APPENDIX S**

Adopt on a permanent basis Supreme Court Rule 49(I), which was amended on a temporary basis by Supreme Court Order dated November 15, 2012 (no changes are being proposed to the temporary rule now in effect), as follows:

(I) Fees

(A) Entry of Appeal or Cross-Appeal	\$180.00
(B) Petition for Original Jurisdiction	
(1) Original petition for writ of habeas corpus	\$ 0 (No fee)
(2) All other petitions for original jurisdiction	\$180.00
(C) (1) Certification of Record to Federal Courts	\$75.00
(2) Other Certifications and Certified Copies	\$5.00 plus \$ .50/page
(D) Certificate of Admission	\$5.00
(E) Application to Appear <i>Pro Hac Vice</i>	\$250.00

## APPENDIX T

Adopt on a permanent basis Superior Court Rule 19(e), which was amended on a temporary basis by Supreme Court Order dated November 15, 2012 (no changes are being proposed to the temporary rule now in effect), as follows:

(e) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee of \$250.00; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court.

**APPENDIX U**

Adopt on a permanent basis Superior Court Rule 169(III), which was amended on a temporary basis by Supreme Court Order dated November 15, 2012 (no changes are being proposed to the temporary rule now in effect), as follows:

(III) Fees

(A) Original Entries:

(1) Original Entry of any Action at Law or Equity except a petition for writ of habeas corpus; Original Entry of all Marital Matters, including Order of Notice and Guardian ad Litem Fee; Transfer; the filing of a foreign judgment pursuant to RSA 524-A; or any Special Writ	\$ 180.00
(2) Original Entry of a petition for writ of habeas corpus	\$ 0 (no fee)
(3) Counterclaim on Civil or Equity Matter (including set-off, recoupment, cross-claims and third-party claims)	\$ 180.00
(4) Cross-Petition for Divorce	\$ 180.00
(5) Motion to Bring Forward Civil/Equity (post judgment)	\$ 95.00
(6) Motion to Bring Forward a Domestic matter with stipulation	\$ 75.00
(7) Motion to Bring Forward a Domestic matter without stipulation	\$ 125.00
(8) Wage Claim Decision	\$ 50.00
(9) Marriage Waiver	\$ 60.00

(B) General and Miscellaneous

(1) Motion for Periodic Payments	\$ 25.00
(2) Petition to Annul Criminal Record	\$100.00
(3) Original Writ (form)	\$ 1.00
(4) Writ of Execution	\$ 25.00
(5) Petition for Ex Parte Attachment, Ex Parte Petition for Writ of Trustee Process	\$ 25.00
(6) Reissued Orders of Notice	\$ 25.00
(7) Application to Appear <i>Pro Hac Vice</i>	\$ 250.00
(C) Certificates and Copies	
(1) Certificates and Certified Copies	\$ 5.00
(2) Divorce Certificate (VSR) only	\$ 5.00
(3) Divorce Certificate, Certified Copy of Decree and if applicable, Stipulation, QDRO, USO, and other Decree-related Documents	\$ 25.00
(4) All Copied Material	\$ .50/page
(5) Certificate of Judgment	\$ 10.00
(6) Exemplification of Judgment	\$25.00

## **APPENDIX V**

Adopt on a permanent basis Circuit Court - District Division Rule 1.3(C)(5), which was amended on a temporary basis by Supreme Court Order dated November 15, 2012 (no changes are being proposed to the temporary rule now in effect), as follows:

(5) An applicant for permission to appear pro hac vice shall pay a non-refundable fee of \$250.00; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court.

## APPENDIX W

Adopt on a permanent basis Circuit Court – District Division Rule 3.3(I), which was amended on a temporary basis by Supreme Court Order dated November 15, 2012 (no changes are being proposed to the temporary rule now in effect), as follows:

### (I) Fees

#### (A) Original Entries:

Civil Writ of Summons or Counterclaim (including set-off, recoupment, cross-claims and third-party claims)	\$ 130.00
Replevin	\$ 120.00
Landlord/Tenant entry	\$ 100.00
Registration of Foreign Judgment	\$ 150.00
Small Claims Entry and Counterclaim, \$5000 or less (including set-off, recoupment, cross-claims and third-party claims)	\$ 72.00
Small Claims Transfer Fee	\$ 108.00
Small Claims Entry and Counterclaim, \$5001 to \$7500 (including set-off, recoupment, cross-claims and third-party claims)	\$ 127.00

#### (B) General and Miscellaneous

Motion for Periodic Payments	\$ 25.00
Petition to annul criminal record	\$ 100.00
Original writ	\$ 1.00
Writ of Execution	\$ 25.00
Petition for Ex Parte Attachment, or Writ of Trustee Process	\$ 25.00
Reissued Orders of Notice	\$ 25.00
Application to Appear <i>Pro Hac Vice</i>	\$ 250.00

#### (C) Certificates & Copies

Certificate of Judgment	\$ 10.00
Exemplification of Judgment	\$ 25.00
Certified Copies	\$ 5.00
All copied material (except transcripts)	\$ .50/page
Computer Screen Printout	\$ .50/page

## APPENDIX X

Adopt on a permanent basis Circuit Court – Probate Division Rule 19(E), which was amended on a temporary basis by Supreme Court Order dated November 15, 2012 (no changes are being proposed to the temporary rule now in effect), as follows:

(E) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee of \$250.00; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court.



**APPENDIX Y**

Adopt on a permanent basis Circuit Court – Probate Division Rule 169(IV), which was amended on a temporary basis by Supreme Court Order dated November 15, 2012 (no changes are being proposed to the temporary rule now in effect), as follows:

**(IV) OTHER:**

Defaults (RSA 548:5-a)	\$ 25.00/each occurrence
Citations/show cause (RSA 548:5-a and 550:2)	\$ 50.00/each occurrence
Duplicate Audio	\$ 25.00/each tape or CD
Application to Appear <i>Pro Hac Vice</i>	\$ 250.00
Ex parte Petition for Attachment,	
Ex Parte Petition for Writ of Trustee Process	\$ 25.00
Motion for Periodic Payments	\$ 25.00
Reissued Orders of Notice	\$ 25.00
Writ of Execution	\$ 25.00

## APPENDIX Z

Adopt on a permanent basis Circuit Court – Family Division Rule 1.21(D), which was amended on a temporary basis by Supreme Court Order dated November 15, 2012 (no changes are being proposed to the temporary rule now in effect), as follows:

D. An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee of \$250.00; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court.

**APPENDIX AA**

Adopt on a permanent basis Circuit Court – Family Division Rule 1.3(M), which was amended on a temporary basis by Supreme Court Order dated November 15, 2012 (no changes are being proposed to the temporary rule now in effect), as follows:

M. OTHER FEES:	
(1) Defaults in Minor Guardianship Actions	\$25.00/each occurrence
(2) Citations in Minor Guardianship Actions	\$50.00/each occurrence
(3) Duplicate Audio	\$25.00/each tape or CD
(4) Application to Appear Pro Hac Vice	\$250.00