

ADVISORY COMMITTEE ON RULES  
September 3, 2003

Supreme Court Conference Room  
Frank Rowe Kenison Supreme Court Building  
Concord, New Hampshire

Honorable Linda S. Dalianis, Chairman, called the meeting to order at 12:25  
p.m.

The following Committee members were present:

Robert L. Chase  
Hon. Linda S. Dalianis  
Hon. Robert L. Cullinane  
Alice Guay  
Hon. Richard A. Hampe  
Martin P. Honigberg, Esquire  
Hon. Philip Mangones  
Emily G. Rice, Esquire  
Raymond W. Taylor, Esquire

Also present were David S. Peck, Secretary to the Advisory Committee on  
Rules, and Margaret Haskett, staff.

On motion of Judge Cullinane, seconded by Mr. Chase, the Committee  
approved the minutes of the June 4, 2003 meeting as submitted.

With respect to action taken by the Supreme Court since the Committee's last  
meeting, David Peck reported that the Supreme Court issued several orders adopting  
all but one of the Committee's recommendations, either on a temporary or permanent  
basis, including amendments to the Professional Conduct Committee and Probate  
Court rules. Those amendments adopted on a temporary basis were re-referred to  
the Committee for a determination of whether they should be adopted on a  
permanent basis. In addition, the Court, after further amendment, adopted the  
Committee's recommendations to Superior Court Rule 64-B. Judge Dalianis reported  
that the Supreme Court announced that it was deferring going to a new system for

accepting appeals. She noted, however, that the court might reconsider its decision later in the year.

The Committee next discussed the status of items pending before the Committee and the following action was taken:

Relative to administrative orders, Attorney Rice reported that the subcommittee plans to present its suggestions to the Committee at its next meeting.

Relative to comments to the Professional Conduct Rules, David Peck reported that the New Hampshire Bar Ethics Committee is still working on preparing comments.

Relative to amendments to Superior Court Rule 78 pertaining to media access to court proceedings, Attorney Taylor distributed proposed amendments to Superior Court Rule 78. Following discussion and on motion of Attorney Taylor, and seconded by Judge Dalianis, the Committee voted to ask David Peck to prepare a similar rule for each court level and to send the amendments to Superior Court Rule 78 as well as the amendments made to other court level's rules pertaining to media access to court proceedings to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 50-B pertaining to the professional liability insurance certification requirement, the Committee discussed the comments received from various individuals. Following discussion, Judge Dalianis agreed to address the concerns raised with Jeannine McCoy, James DeHart and Eileen Fox and to report back to the Committee at its next meeting.

Relative to amendments to Supreme Court Rules 47, 48 and 48-A pertaining to fees paid to appointed counsel and guardians ad litem involving indigent clients, Judge Dalianis reported that the subcommittee on issues of legal fees for indigent

persons has completed its study and filed its report which will be distributed to Committee members prior to the next Committee meeting.

Relative to amendments to Supreme Court Rule 42(5)(m) pertaining to the Character and Fitness standards, David Peck reported that he is waiting for a response from the Character and Fitness Committee which is reviewing the amendments to Supreme Court Rule 42(5)(m).

Relative to amendments to Supreme Court Rules 12-D(2), 16(11), 21(1), 21(10), and 26(1), following a brief discussion, the Committee agreed to defer action on these amendments until its next meeting.

Relative to an amendment to District Court rules pertaining to copies of pleadings in district court, David Peck reported that the suggested amendment has already been adopted by the court and goes into effect October 1, 2003.

Relative to amendments to Superior Court Rule 98 pertaining to discovery in criminal cases, following discussion and on motion duly made and seconded, the Committee voted to send the amendments to Superior Court Rule 98, as contained in Appendix A of these minutes, to the Committee's next public hearing.

The Committee turned its discussion to the new items for consideration and the following action was taken:

Relative to amendments to Supreme Court Rule 56 (III) pertaining to evaluation of supreme court justices, which was referred by the Supreme Court to the Committee to determine whether said amendments should be adopted on a permanent basis, the Committee, following discussion and on motion duly made and seconded, voted to recommend adoption of the amendments to Supreme Court Rule

56 (III) on a permanent basis and to send said amendments, as contained in Appendix B of these minutes, to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 12(1) pertaining to supreme court records subject to public inspection, referred by the Supreme Court to the Committee to determine whether said amendments should be adopted on a permanent basis, the Committee, following discussion and on motion duly made and seconded, voted to send said amendments, as contained in Appendix C of these minutes, to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 48-B and Superior Court Rule 169 pertaining to fees in marital cases which were referred by the Supreme Court to the Committee to determine whether said amendments should be adopted on a permanent basis, the Committee, following discussion and on motion duly made and seconded, voted to send said amendments, as contained in Appendices D and E respectively of these minutes, to the Committee's next public hearing. With reference to the \$20.00 surcharge added by statute to some filing fees, the Committee asked David Peck to draft an amendment to include the fee in each court level's rules and to send said amendments to the Committee's next public hearing

Relative to amendments to court rules pertaining to entry of judgment and appeal bonds, following a brief discussion, Attorney Rice agreed to review these amendments and report back to the Committee at its next meeting.

Relative to amendments to New Hampshire Rules of Evidence Rule 609 pertaining to impeachment by evidence of conviction of crime, following discussion and on motion of Judge Mangones, seconded by Judge Cullinane, the Committee

voted to send said amendments, as contained in Appendix F of these minutes, to the Committee's next public hearing.

Relative to amendments to Superior Court Rule 36 and District Court Rule 1.10 pertaining to interrogatories, the Committee discussed concerns raised in Ms. Tammie Marston's July 1, 2003 letter. Following discussion and on motion duly made and seconded, the Committee voted to make no changes to Superior Court Rule 36 and District Court Rule 1.10 and to have David Peck inform Ms. Marston of the Committee's decision.

Relative to amendments to Supreme Court Rule 38 Canon 2, at the Supreme Court's request the Committee reviewed Supreme Court Rule 38 Canon 2 and following discussion, and on motion of Mr. Chase, seconded by Judge Hampe, voted not to recommend to the Supreme Court that any changes be made to said rule at this time.

Relative to amendments to Supreme Court Rule 55 pertaining to the public protection fund, following a brief discussion and on motion duly made and seconded, the Committee voted to table consideration of the amendments to Supreme Court Rule 55 for six months.

Relative to the ABA Report on Multijurisdictional Practice, following a brief discussion, Judge Dalianis agreed to chair a subcommittee to review the ABA report and to report back to the Committee in the next few months. Members of the subcommittee are: Hon. Linda S. Dalianis, Martin P. Honigberg, Esquire and Emily G. Rice, Esquire.

Relative to amendments to Supreme Court Rules 42(11) and 42(12) governing the admission to the New Hampshire Bar by lawyers admitted in Vermont and Maine,

following a brief discussion and on motion duly made and seconded, the Committee voted to send said amendments, as contained in Appendices G and H respectively of these minutes, to the Committee's next public hearing.

The Committee scheduled its next meeting for December 17, 2003 at 12:00 p.m., to be followed by a public hearing at 1:00 p.m.

No further business to come before the Committee, on motion duly made and seconded, the meeting adjourned at 2:47 p.m.

## APPENDIX A

Amend Superior Court Rule 98 C. by deleting said section and replacing it with the following section C:

### *C. Exchange of Information Concerning Trial Witnesses.*

(1) Not less than twenty (20) calendar days prior to jury selection or, in the case of a pretrial evidentiary hearing, not less than three (3) calendar days prior to such hearing, the state shall provide the defendant with a list of the names of the witnesses it anticipates calling at the trial or hearing. Contemporaneously with the furnishing of such witness list and to the extent not already provided pursuant to paragraph A(2)(i) of this rule the state shall also provide the defendant with all statements of witnesses the state anticipates calling at the trial or hearing. At this same time, the state also shall furnish the defendant with the results of New Hampshire criminal record checks for all of the state's trial or hearing witnesses other than those witnesses who are experts or law enforcement officers.

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

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

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

a summary of the grounds for each opinion, and provide a copy of any expert report relating to such expert.

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

## **APPENDIX B**

Adopt Supreme Court Rule 56 (III) on a permanent basis as set forth below;  
Rule 56 (III) was amended on a temporary basis by order dated June 2, 2003.

### *(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.

## APPENDIX C

Adopt Supreme Court Rule 12(1) on a permanent basis as set forth below;  
Rule 12(1) was amended on a temporary basis by order dated June 10, 2003.

### **(1) Supreme Court Records Subject to Public Inspection.**

(a) General Rule. In all cases in which relief is sought in the supreme court, all pleadings, docketed entries, and filings related thereto (hereinafter referred to as "case records") shall be available for public inspection unless otherwise ordered by the court in accordance with this rule.

(b) Exceptions. The following categories of case records are not available for public inspection:

(1) records of juvenile cases, including cases of delinquency, abuse or neglect, children in need of services, termination of parental rights, and adoption, which by statute are confidential;

(2) records of guardianship cases filed under RSA chapter 463, but only to the extent that such records relate to the personal history or circumstances of the minor and the minor's family, *see* RSA 463:9;

(3) records of guardianship cases filed under RSA chapter 464-A, but only to the extent that such records directly relate to alleged specific functional limitations of the proposed ward, *see* RSA 464-A:8;

(4) applications for a grand jury and grand jury records, which by statute and common law are confidential;

(5) records of other cases that are confidential by statute, administrative or court rule, or court order.

(c) Burden of Proof. The burden of proving that a case record or a portion of a case record should be confidential rests with the party or person seeking confidentiality.

(d) Notwithstanding anything in this rule to the contrary, the supreme court may make public any order or opinion of the

supreme court dismissing, declining, summarily disposing of, or deciding any case. Information which would compromise the court's determination of confidentiality, e.g., the name of a juvenile, shall be omitted or replaced by a descriptive term.

## **APPENDIX D**

Adopt Supreme Court Rule 48-B on a permanent basis as set forth below;  
Rule 48-B was adopted on a temporary basis by order dated June 10, 2003.

### **RULE 48-B. MEDIATOR FEES**

(1) Scope. The provisions of this rule shall apply only to proceedings in which the parties are ordered to participate in mediation under RSA 458:15-a.

(2) Fees.

(a) Indigent cases. In the event both parties are indigent, the mediator shall be paid a set fee of \$300.00 for his or her services if one or more sessions occur. The court may order each party to pay a proportional amount of said fee. The fee shall be paid from the special fund established pursuant to RSA 458:17-b and repaid by the parties in accordance with RSA 458:17-e.

(b) Other cases. In cases that do not qualify as indigent, the fee shall be \$60.00 per hour. The fee shall be a charge against the parties in a proportional amount as the court may determine.

(c) Missed sessions. In indigent cases, if the parties, or either of them, fail to appear for the first session with the mediator, the mediator shall be paid \$120.00 from the special fund in lieu of the \$300.00 set fee. In other than indigent cases, if the parties or either of them fail to appear for any session with the mediator, the mediator shall be paid \$120.00 for the missed session. The court may allot the responsibility for paying the mediator or reimbursing the state for fees for missed sessions between the parties, as justice requires.

## APPENDIX E

Amend Superior Court Rule 169 by adding a new subsection (V), so that said rule as amended shall state as follows:

### 169. FEES.

(I) The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.

(II) 32.8% of the entry fee paid in each libel and petition in marital cases (\$41.00) shall be deposited into the special fund established by RSA 458:17-b. Said fund is for the compensation of mediators, appointed pursuant to RSA 458:15-a, and guardians ad litem, appointed pursuant to RSA 458:17-a, when the parents are indigent.

(III) (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	\$ 125.00
(2) Original Entry of a petition for writ of habeas corpus	\$ 0 (no fee)
(B) Small Claim Transfer Fee	\$ 90.00
(C) Motion to Bring Forward (post judgment)	\$ 50.00
(D) Petition to Annul Criminal Record	\$ 50.00
(E) Wage Claim Decision	\$ 25.00
(F) Marriage Waiver	\$ 25.00
(G) Motion for Periodic Payments	\$ 15.00
(H) Original Writ (form)	\$ 1.00
(I) Divorce Certificate (VSR) only Divorce Certificate, Certified Copy of Decree and if applicable, Stipulation, QDRO, USO, and other Decree-related Documents	\$ 15.00

(J) Certificates and Certified Copies \$ 5.00

(K) All Copied Material \$ .50/page

(IV) On the commencement of any custody or support proceeding for which a fee is required, including libels for divorce with minor children, an additional fee of \$2.00 shall be paid by the petitioner.

(V) Pursuant to RSA 490:24, II, the sum of \$20.00 shall be added to the fees set forth in paragraphs (III)(A)(1) and (III)(C) above.

## **APPENDIX F**

Amend New Hampshire Rule of Evidence 609(a) by deleting said section and replacing it with the following:

(a) General rule. For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

## APPENDIX G

Adopt Supreme Court Rule 42(11) on a permanent basis as set forth below;  
Rule 42(11) was amended on a temporary basis by order dated August 27, 2003.

(11) An applicant who is domiciled in the United States, is of the age of 18 years, and meets the following requirements may, upon motion, be admitted to the practice of law without taking and passing the New Hampshire bar 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. The applicant shall:

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

(b) 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;

(c) Produce evidence of satisfactory completion of the Multistate Professional Responsibility Examination;

(d) Establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

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

(f) Establish that the applicant possesses the character and fitness to practice law in New Hampshire;

(g) 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

(h) Designate the clerk of the supreme court for service of process.

## APPENDIX H

Adopt Supreme Court Rule 42(12) on a permanent basis as set forth below;  
Rule 42(12) was amended on a temporary basis by order dated June 10, 2003.

(12) An applicant who is domiciled in the United States, is of the age of 18 years, and meets the following requirements may, upon motion, be admitted to the practice of law without taking and passing the New Hampshire bar 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. The applicant shall:

(a) Be licensed to practice law in the State of Maine and be an active member of the Maine bar;

(b) 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;

(c) Have graduated from a law school approved by the American Bar Association having a three (3) year course and requiring students to devote substantially all their working time to study, called a full-time law school; from a law school approved by the American Bar Association having a course of not less than four (4) school years equivalent in the number of working hours to a three (3) 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; or from a law school in an English-speaking, common law country having pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association. 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 shall have graduated from one or the other. Study in any law school which conducts its courses by correspondence or does not require attendance of its students at its lectures or classes shall not constitute compliance with the rule;

(d) Produce evidence of satisfactory completion of the Multistate Professional Responsibility Examination;

(e) Establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

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

(g) Establish that the applicant possesses the character and fitness to practice law in New Hampshire;

(h) Have completed at least fifteen hours of continuing legal education on New Hampshire practice and procedure in courses approved by the NHCLE Board within one year immediately preceding the date upon which the motion is filed and be certified by the NHCLE Board as satisfying this requirement; and

(i) Designate the clerk of the supreme court for service of process.