

ADVISORY COMMITTEE ON RULES
September 20, 2006

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

The meeting was called to order at 12:27 p.m.

The following Committee members were present:

Hon. Linda S. Dalianis
William F. J. Ardinger, Esquire
Mr. Robert Chase
Hon. R. Laurence Cullen
Alice Guay
Hon. Richard Hampe
Martin Honigberg, Esquire
Hon. Philip Mangones
Jennifer L. Parent, Esquire
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 Attorney Taylor, seconded by Judge Cullen, the Committee approved the minutes of the June 21, 2006 meeting, as amended.

With respect to action taken by the Supreme Court since the Committee's last meeting, David Peck reported that the Supreme Court adopted most of the proposals contained in the Committee's prior report with one exception. It retained the requirement that lawyers attend live presentations for one-half of their CLE credits. The court will review the rules contained in the Committee's recent annual report following the October 7th deadline for comments.

The Committee next discussed items still pending before it and the following action was taken:

Relative to the Rules of Civil Procedure and the Rules of Criminal Procedure, Attorney Honigberg reported that the subcommittee is currently reorganizing and simplifying the rules of civil procedure. They expect to have a draft version for this Committee's review by its December meeting. Judge Dalianis noted that while the Rules of Civil Procedure will be the same in the superior, probate and district courts, each court would also have certain rules that apply specifically to it. The Rules of Criminal Procedure are also being reviewed, but have not progressed as far.

Relative to Comments to Professional Conduct Rules, following a brief discussion on the public comments received to date, the Committee agreed to defer action on this item so that the Committee can consider comments received during the December 13, 2006 public hearing before making a recommendation to the Court.

Relative to District Court Rule 2.7 and the system-wide guardian ad litem guidelines, which were discussed during the June 21, 2006 public hearing agenda, and on which the Committee had not voted, the Committee took the following action:

On District Court Rule 2.7 pertaining to fines, following a discussion on recent amendments to the rule, and on motion of Attorney Taylor, seconded by Judge Cullen, the Committee voted to recommend to the Supreme Court that District Court Rule 2.7 be adopted as further amended by the Committee, and contained in Appendix A of these minutes.

On the system-wide guardian ad litem guidelines, this item was deferred until the Committee's next meeting.

Relative to amendments to the pro hac vice rules, Attorney Ardinger reported that his subcommittee should have its recommendations for the Committee's consideration at its December meeting.

Relative to a new Supreme Court Rule 58 pertaining to guidelines for public access to court records, there was a lengthy discussion concerning whether the commentary should be included with the rule. Following discussion, David Peck agreed to call Judge Smukler, Chair of the Public Access Committee, to inform him that Attorney Rice would be sending a letter to him setting out the Committee's questions. The Committee also agreed to include Supreme Court Rule 58 on its December public hearing agenda. Following receipt of public comment on the rule, the Committee will then consider whether to recommend its approval to the Supreme Court.

Relative to an amendment to Supreme Court Rule 38 pertaining to the Judicial Conduct Committee, following discussion, Attorney Taylor agreed to contact Judge Kelly about his concerns and to report Judge Kelly's recommendations to the Committee at its December meeting.

The Committee turned its attention to the new items before it and the following action was taken:

Relative to an amendment to N.H. Rules of Evidence Rule 609(2) pertaining to impeaching a witness, following a brief discussion, Judge Dalianis agreed to put this item on the court's next clerk's agenda and to report back to the Committee at its December meeting.

Relative to an amendment to Supreme Court Rule 42 pertaining to admission/bar requirements for pro bono attorneys, following a lengthy discussion on whether to recommend an amendment to the rule that provides for the admission on motion of retired out-of-state lawyers who wish to volunteer their legal services, the Committee established a subcommittee to consider the proposed rule change and

to report back to the Committee at its December meeting. The subcommittee members are: William F.J. Ardinger, Esquire, Chair; Judge R. Laurence Cullen and David S. Peck, Esquire.

Relative to amendments to Supreme Court Rule 38 Code of Judicial Conduct, Judge Dalianis reported that because the Supreme Court was concerned about the ethical implications of retired judges acting as private mediators, it asked Attorney Howard Zibel to draft an amendment to the Code of Judicial Conduct that addressed their concerns. The Court also requested that this Committee consider putting the proposed amendment, once drafted, on its December public hearing agenda for consideration. Following discussion, the Committee agreed to include the proposed amendment on the Committee's next public hearing agenda.

The Committee scheduled its 2007 meetings as follows: March 14, 2007 at 12:00 p.m., June 6, 2007 at 12:00 p.m., September 12, 2007 at 12:00 p.m. and December 12, 2007 at 12:00 p.m.

The next meeting of the Committee is scheduled for December 13, 2006 beginning at 10:00 a.m., followed by the public hearing at 1:00 p.m. A brief discussion about the public hearing followed. Because several rules on the agenda could generate a large number of individuals who wished to testify, the Committee agreed to encourage those testifying to also submit written comments to the Committee in advance or during the hearing.

No further business to come before the Committee, the meeting adjourned at 2:07 p.m.

APPENDIX A

Amend District Court Rule 2.7 by deleting said rule and replacing it with the following:

- I. In all cases, fines imposed by the Court shall be due and payable on the date imposed. In those cases where a defendant indicates an inability to pay forthwith, the defendant shall be required to complete an affidavit of resources, under oath, prior to leaving the courthouse. The affidavit shall be in the form set forth in appendix _____. The Court may consider such factors as the defendant's employment, good faith attempts to seek employment, spousal, family and partner income, savings, property ownership, credit lines and expenses including child support.
- II. In any case where the Court finds the ~~criminal~~ defendant indigent **or the defendant is unable to pay the fine on the date imposed**, the Court may defer payment of the fine or order periodic payment. Eligibility for appointed counsel shall not be conclusive on the issue of indigency for purposes of fine payment orders.
- III. In any case where a defendant ~~is found to be indigent or otherwise~~ proves an inability to pay a fine, the Court may allow the defendant to perform community service, pursuant to a plan submitted to and approved by the Court. Every hour of verified community service shall be applied against the fine at the rate of \$10.00 an hour.
- IV. Conduct which amounts to willful failure to pay any fine or perform community service as ordered, may be punishable as contempt of court or through the provisions of RSA 618:9.