

ADVISORY COMMITTEE ON RULES  
September 22, 2004

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

The meeting was called to order at 12:15 p.m.

The following Committee members were present:

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

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

On motion of Judge Cullinane, seconded by Attorney Honigberg, the Committee approved the minutes of the June 2, 2004 meeting.

With respect to action taken by the Supreme Court since the Committee's last meeting, David Peck reported that the Supreme Court adopted all of the recommendations for rules changes submitted by the Committee with the exception of Rules of Evidence Rule 609. Most of the rules will go into effect November 1, 2004.

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

Relative to comments to professional conduct rules, David Peck reported that this Committee is still waiting for the final report of the N.H. Bar Association's Ethics Committee. He noted that the N.H. Bar Association has posted drafts of the comments on its website.

Relative to the ABA Report on Multijurisdictional Practice pertaining to the foreign consultant issue, following a brief discussion, and on motion of Judge Hampe, seconded by Judge Cullinane, the Committee voted to send the proposed amendments to Professional Conduct Rules 5.5A and 5.5B, as contained in Appendices A and A-1 of these minutes, to the Committee's next public hearing.

Relative to the Rules of Civil Procedure, following a lengthy discussion on whether a study should be undertaken to review the rules of civil procedure, the Committee agreed that the subcommittee created at the last meeting should begin its review of the rules of civil procedure, adding additional members as needed.

Relative to amendments to the Rules of Professional Conduct Rule 1.6 pertaining to attorney/client privileges, the Committee asked David Peck to contact Judge Maher to see whether he plans to submit an amendment to the rule as a result of his December 31, 2003 letter to the Committee.

Relative to Committee membership, the Committee discussed filling the vacancy created by Ms. Merrill's resignation and agreed to contact Attorney James DeHart of the Professional Conduct Committee to see if he would share the applications he received from lay persons expressing an interest in serving on the Professional Conduct Committee. If Mr. DeHart has no applications, David Peck will publish an ad in local newspapers requesting that interested persons send resumes to the Committee for its review and recommendation to the Court. After the November elections, Judge Dalianis will again ask the House Speaker and the Governor if they would like to appoint members to the Committee.

Relative to limited scope legal assistance, following discussion the Committee asked Judge Dalianis and David Peck to draft an amendment to the rules that

permits the unbundling of legal services 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 and expenses, following discussion and review of Nina Gardner's June 1, 2004 memo to the Committee, the Committee asked Judge Dalianis and David Peck to revise the proposed amendments to Supreme Court Rules 47, 48 and 48-A to address concerns raised by Ms. Gardner and to report back to the Committee at its next meeting.

Relative to an amendment to Supreme Court Rule 51-A pertaining to approval of forms, following a brief discussion of Judge Maher's proposed amendment to the rule, on motion of Judge Dalianis, seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that said amendments to Supreme Court Rule 51-A be adopted as considered at its June 2004 public hearing and contained in Appendix B of these minutes.

Relative to amendments to Superior Court Rule 169 and District Court Rule 3.3 pertaining to records research fees, following discussion and on motion duly made and seconded, the Committee voted to recommend to the Supreme Court that amendments to Superior Court Rule 169 and District Court Rule 3.3 be adopted, as contained in Appendices C & D respectively of these minutes.

Relative to amendments to Professional Conduct Rules 5.5 and 8.5 pertaining to the unauthorized practice of law, the Committee voted to recommend to the Supreme Court that said amendments to Professional Conduct Rules 5.5 and 8.5 be adopted, as contained in Appendices E & F respectively of these minutes.

Relative to amendments to Supreme Court Rule 42 pertaining to filing deadlines, following discussion and on motion duly made and seconded, the Committee voted to make no changes to the filing deadlines contained in Supreme Court Rule 42(5)(e) at this time.

Relative to amendments to Probate Court Rule 49-A pertaining to continuances, on motion of Judge Dalianis, seconded by Judge Cullinane, the Committee voted to recommend to the Supreme Court that said amendments to Probate Court Rule 49-A be adopted on a permanent basis. In addition, noting a similar rule exists in the district court rules, the Committee voted to recommend to the Supreme Court that a similar amendment be adopted, as a technical amendment, as part of the superior court rules.

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

Relative to amendments to Supreme Court Rule 12-D pertaining to summary procedure on appeal, on motion of Judge Dalianis, seconded by Judge Cullinane, the Committee voted to recommend to the Supreme Court that section (4) of Supreme Court Rule 12-D be repealed on a permanent basis and that amendments to sections (1)(c), (3) and (6) of said rule be adopted on a permanent basis, as technical amendments and contained in Appendix G of these minutes.

Relative to amendments to Supreme Court Rule 32-A pertaining to counsel in guardianship and involuntary admission cases, on motion duly made and seconded, the Committee voted to send said amendments to Supreme Court Rule 32-A, as contained in Appendix H of these minutes, to the Committee's next public hearing.

Relative to amendments to Supreme Court Rule 42(5)(l) pertaining to the fee for the character and fitness investigation, following discussion and on motion of Attorney Honigberg, seconded by Judge Hampe, the Committee voted to recommend to the Supreme Court that said amendments to Supreme Court Rule 42(5)(l) be adopted on a permanent basis as further amended by the Committee and contained in Appendix I of these minutes. Judge Dalianis abstained from this vote.

Relative to amendments to Superior Court Administrative Rules Chapter 12 pertaining to marital masters rules, following a brief discussion the Committee asked Judge Mangones to discuss the proposed amendments with the superior court judges and to report back to the Committee at its next meeting.

Relative to the new appellate process – rules and forms, this item was tabled until the March 2005 meeting.

Relative to amendments to Supreme Court Rule 55 pertaining to public protection fund, this item was tabled until the December 2004 meeting.

Relative to an amendment to Supreme Court Rule 49 pertaining to the fee for bar admission, on motion of Judge Dalianis, seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that said amendment to Supreme Court Rule 49 be adopted on a permanent basis as a technical amendment and contained in Appendix J of these minutes.

Relative to amendments to District Court Rule 2.10 pertaining to timeliness for discovery, on motion of Judge Dalianis, seconded by Attorney Taylor, the Committee voted to send the amendments to District Court Rule 2.10, contained in Appendix K of these minutes, to the Committee's next public hearing.

Relative to miscellaneous rule suggestions, on motion of Judge Dalianis, seconded by Judge Cullinane, the Committee voted to recommend to the Supreme Court that proposed technical amendments to Supreme Court Rules 36 and 38, Superior Court Rules 118 and 132, Superior Court Administrative Rule 10-1 and Rules of Evidence Rule 104(d) be adopted as contained in Appendices L, M, N, O, P and Q of these minutes. In addition the Committee voted to recommend to the Supreme Court that it delete, by technical amendment, from all court rules any reference to the municipal courts.

Judge Dalianis then reviewed the proposed amendment to Supreme Court 42 pertaining to the Webster Scholar Program. She explained that the program is a joint venture for the Supreme Court, the N.H. Board of Bar Examiners and Franklin Pierce Law Center. Law students who satisfactorily complete it will be able to become members of the N.H. Bar through testing other than the conventional bar examination. Following a brief discussion of the material distributed by David Peck during the meeting, and on motion of Judge Cullinane, seconded by Mrs. Guay, the Committee voted to send the proposed amendment to Supreme Court Rule 42, as contained in Appendix R of these minutes, to the Committee's next public hearing.

Relative to bar admission reciprocity with Maine, Judge Dalianis informed members that the New Hampshire Supreme Court is waiting for the Maine Supreme Court's response.

Judge Dalianis updated members on the work being done by the Family Division Implementation Committee.

No further business to come before the Committee, the meeting adjourned at 3:05 p.m.

## APPENDIX A

Adopt new Professional Conduct Rule 5.5A as follows:

### **Rule 5.5A. LICENSING OF LEGAL CONSULTANTS**

#### (1) General Regulation as to Licensing

In its discretion, the supreme court may license to practice in this State as a legal consultant, without examination, an applicant who:

- (a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;
- (b) for at least five of the seven years immediately preceding his or her application has been a member in good standing of such legal profession and has actually been engaged in the practice of law in the said foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the said foreign country;
- (c) possesses the good moral character and general fitness requisite for a member of the bar of this State;
- (d) is at least twenty-six years of age; and
- (e) intends to practice as a legal consultant in this State and to maintain an office in this State for that purpose.

#### (2) Proof Required

An applicant under this Rule shall file with the clerk of the supreme court:

- (a) on a form provided an application for a license to practice in this State as a legal consultant;
- (b) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof, and as to his or her good standing as such attorney or counselor at law or the equivalent;
- (c) a letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the

judges of the highest law court or court of original jurisdiction of such foreign country;

(d) a duly authenticated English translation of such certificate and such letter if, in either case, it is not in English; and

(e) such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Section 1 of this Rule as the supreme court may require.

### (3) Reciprocal Treatment of Members of the Bar of this State

In considering whether to license an applicant to practice as a legal consultant, the supreme court may in its discretion take into account whether a member of the bar of this State would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission. Any member of the bar who is seeking or has sought to establish an office in that country may request the court to consider the matter, or the supreme court may do so *sua sponte*.

### (4) Scope of Practice

A person licensed to practice as a legal consultant under this Rule may render legal services in this State subject, however, to the limitations that he or she shall not:

(a) appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this State other than upon admission *pro hac vice* pursuant to applicable court rule;

(b) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;

(c) prepare:

(i) any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof, or

(ii) any instrument relating to the administration of a decedent's estate in the United States of America;

(d) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;

(e) render professional legal advice on the law of this State or of the United States of America (whether rendered incident to the preparation of legal



instruments or otherwise) except on the basis of advice from a person duly qualified and entitled (otherwise than by virtue of having been licensed under this Rule) to render professional legal advice in this State;

(f) be, or in any way hold himself or herself out as, a member of the bar of this State; or

(g) carry on his or her practice under, or utilize in connection with such practice, any name, title or designation other than one or more of the following:

(i) his or her own name;

(ii) the name of the law firm with which he or she is affiliated;

(iii) his or her authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of such country; and

(iv) the title “legal consultant,” which may be used in conjunction with the words “admitted to the practice of law in [name of the foreign country of his or her admission to practice]”.

## (5) Rights and Obligations

(a) Subject to the limitations set forth in Section 4 of this Rule, a person licensed as a legal consultant under this Rule shall be considered a lawyer affiliated with the bar of this State and shall be entitled and subject to:

(i) the rights and obligations set forth in the New Hampshire Rules of Professional Conduct or arising from the other conditions and requirements that apply to a member of the bar of this State under the supreme court rules governing members of the bar, including the obligation to comply with the requirements of an active member of the New Hampshire Bar Association to file an annual trust accounting certificate as set forth in Supreme Court Rule 50-A; and

(ii) the rights and obligations of a member of the bar of this State with respect to:

(A) affiliation in the same law firm with one or more members of the bar of this State, including by:

(I) employing one or more members of the bar of this State;

(II) being employed by one or more members of the bar of this State or by any partnership or professional corporation which includes members of the bar of this State or which maintains an office in this State; and

(III) being a partner in any partnership or shareholder in any professional corporation which includes members of the bar of this State or which maintains an office in this State; and

(B) attorney-client privilege, work-product privilege and similar professional privileges.

(b) Provided, however, that a person licensed as a legal consultant under this Rule shall not be required to comply with the minimum continuing legal education requirements of an active member of the New Hampshire Bar Association as specified in Supreme Court Rule 53.1.

#### (6) Disciplinary Provisions

A person licensed to practice as a legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this State and to this end:

(a) Every person licensed to practice as a legal consultant under these Rules:

(i) shall be subject to control by the supreme court and to warning, referral, public censure, reprimand, suspension, removal or revocation of his or her license to practice by the supreme court and/or the attorney discipline system, and shall otherwise be governed by Supreme Court Rules 37 and 37A; and

(ii) shall execute and file with the supreme court, in such form and manner as such court may prescribe:

(A) his or her commitment to observe the New Hampshire Code of Professional Conduct and the supreme court rules governing members of the bar to the extent applicable to the legal services authorized under Section 4 of this Rule;

(B) an undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure his or her proper professional conduct and responsibility;

(C) a written undertaking to notify the court of any change in such person's good standing as a member of the foreign legal profession referred to in Section (1)(a) of this Rule and of any final action of the professional body or public authority referred to in Section (2)(b) of this Rule imposing any disciplinary censure, suspension, or other sanction upon such person; and

(D) a duly acknowledged instrument, in writing, setting forth his or her address in this State and designating the clerk of such court as his or her agent upon whom process may be served, with like effect as if served personally upon him or her, in any action or proceeding thereafter brought against him or her and arising out of or based upon any legal services rendered or offered to be rendered by him or her within or to residents of this State, whenever after due diligence service cannot be made upon him or her at such address or at such new address in this State as he or she shall have filed in the office of such clerk by means of a duly acknowledged supplemental instrument in writing.

(b) Service of process on such clerk, pursuant to the designation filed as aforesaid, shall be made by personally delivering to and leaving with such clerk, or with a deputy or assistant authorized by him or her to receive such service, at his or her office, duplicate copies of such process together with a fee of \$10. Service of process shall be complete when such clerk has been so served. Such clerk shall promptly send one of such copies to the legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such legal consultant at the address specified by him or her as aforesaid.

(7) Fees, bar dues, and assessments

(a) An applicant for a license as a legal consultant under this Rule shall pay an application fee, which shall be equal to the fee set forth in Supreme Court Rule 49(I)(G), and a Character and Fitness investigation fee, which shall be equal to the fee set forth in Supreme Court Rule 49(I)(E)(2). A person licensed as a legal consultant shall pay such fees, bar dues, and assessments, including assessments for the public protection fund, as are required of an active member of the New Hampshire Bar Association by the Constitution and By-Laws of the New Hampshire Bar Association or Supreme Court Rule.

(b) Any license as a legal consultant granted pursuant to this Rule shall expire on July 31. It may be renewed annually by filing with the clerk of the supreme court on a form provided an application for a license to practice in this State as a legal consultant.

(8) Revocation of License

In the event that the supreme court determines that a person licensed as a legal consultant under this Rule no longer meets the requirements for licensure set forth in Section (1)(a) or Section (1)(c) of this Rule, it shall revoke the license granted to such person hereunder.

(9) Admission to Bar

In the event that a person licensed as a legal consultant under this Rule is subsequently admitted as a member of the bar of this State under the provisions of the Rules governing such admission, the license granted to such person hereunder shall be deemed superseded by the license granted to such person to practice law as a member of the bar of this State.

(10) Application for Waiver of Provisions

The supreme court, upon application, may in its discretion vary the application or waive any provision of this Rule where strict compliance will cause undue hardship to the applicant. Such application shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief.

## APPENDIX A-1

Adopt new Professional Conduct Rule 5.5B as follows:

### **Rule 5.5B. Temporary Practice by Foreign Lawyers**

(a) A lawyer who is admitted only in a non-United States jurisdiction shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the lawyer, or a person the lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(5) are governed primarily by international law or the law of a non-United States jurisdiction.

(b) For purposes of this grant of authority, the lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice

as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

## **APPENDIX B**

Adopt new Supreme Court Rule 51-A as follows:

### **RULE 51-A. APPROVAL OF FORMS**

(1) The supreme court shall establish such forms for all courts as are necessary for the effective administration of justice. *See* RSA 490:26-d. No form shall be promulgated or put into use generally in any court prior to its approval by the supreme court. No form shall be amended without the approval of the supreme court. The supreme court shall approve forms or amendments to forms by the issuance of orders, which shall be public.

(2) An administrative judge, the director of the administrative office of the courts, or a person designated by an administrative judge or the director, may submit proposed new forms or proposed amendments to approved forms to the supreme court for approval. The supreme court may require that any submission be accompanied by a written explanation of the purpose and need for the proposed form or amendment. The supreme court may approve, amend, or reject any proposal.

#### **Transition Provision**

All forms in use in any court upon the effective date of this rule may continue to be used for one year. Any such form that has not been approved by the supreme court by the end of said one-year period shall thereafter not be used.

**APPENDIX C**

Amend Superior Court Rule 169 by adding a new paragraph (VI), so that said Rule 169 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 Copie 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.

(VI) Records Research Fees:

(A) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.

(B) A fee of \$10.00 per request will be assessed for electronic (computer) searches of less than ten names.

(C) A fee of \$25.00 per request will be assessed for electronic (computer) searches of ten or more names.

(D) Extensive electronic (computer) searches requiring more than one hour will be assessed \$25.00 per additional hour or portion thereof.

(E) A fee of \$25.00 per hour or portion thereof will be assessed for manual searches. The fee is based on this hourly rate and not the number of names per request.

(F) Charges for requests requiring a combination of manual and electronic searches on the same party will be assessed according to the fee schedule for both categories.

EXAMPLE: One request for electronic search with seven names = \$10.00. Additional requirement that one or more of those seven names be manually researched as well = \$25.00 per hour or portion thereof. Assuming the manual research is completed in less than one hour, then the total fee = \$35.00.

## APPENDIX D

Amend District Court Rule 3.3 by deleting said rule and replacing it with the following:

### **Rule 3.3. Court fees**

#### **(I) Fees**

##### **(A) Original Entries:**

Civil writ of summons	\$ 75.00
Replevin	\$ 75.00
Landlord/Tenant entry	\$ 50.00
Registration of foreign judgment	\$ 100.00
Small claims entry	\$ 35.00

##### **(B) General and Miscellaneous**

Motion for Periodic Payments	\$ 15.00
Petition to annul criminal record	\$ 50.00
Original writ	\$ 1.00 each

##### **(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

#### **(II) Surcharge**

Pursuant to RSA 490:24, II, the sum of \$20.00 shall be added to the fees set forth in paragraph (I)(A) above.

#### **(III) Records Research Fees**

(A) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.

(B) A fee of \$10.00 per request will be assessed for electronic (computer) searches of less than ten names.

(C) A fee of \$25.00 per request will be assessed for electronic (computer) searches of ten or more names.

(D) Extensive electronic (computer) searches requiring more than one hour will be assessed \$25.00 per additional hour or portion thereof.

(E) A fee of \$25.00 per hour or portion thereof will be assessed for manual searches. The fee is based on this hourly rate and not the number of names per request.

(F) Charges for requests requiring a combination of manual and electronic searches on the same party will be assessed according to the fee schedule for both categories.

EXAMPLE: One request for electronic search with seven names = \$10.00. Additional requirement that one or more of those seven names be manually researched as well = \$25.00 per hour or portion thereof. Assuming the manual research is completed in less than one hour, then the total fee = \$35.00.

## **APPENDIX E**

Amend Professional Conduct Rule 5.5 by deleting said rule and replacing it with the following:

### **Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law**

- (a) A lawyer shall not practice law in a United States jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this State shall not:
  - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this State for the practice of law; or
  - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this State.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this State that:
  - (1) are undertaken in association with a lawyer who is admitted to practice in this State and who actively participates in the matter;
  - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this State or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
  - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this State or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
  - (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

- (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this State that:
- (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission, provided that if the lawyer intends to provide such services other than on a temporary basis, then the lawyer must obtain a certificate for limited admission to practice law in this State; or
  - (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.
- (e) A lawyer admitted in another United States jurisdiction who acts in this State pursuant to subparagraphs (c) or (d) shall:
- (1) be subject to the New Hampshire Rules of Professional Conduct and the disciplinary authority of the supreme court; and
  - (2) not hold himself or herself out as being admitted to practice in this State and shall not solicit clients in New Hampshire.
- (f) A lawyer admitted in another United States jurisdiction who intends to act in this State pursuant to subparagraph (d)(1) shall before providing legal services in this State other than on a temporary basis:
- (1) file with the clerk of the supreme court on a form provided an application for limited certificate of admission to practice law in this State;
  - (2) submit with the attorney's application for limited certificate of admission to practice law in this State an application fee and a signed sworn statement certifying that: (a) he or she is licensed and in good standing in a jurisdiction of the United States and has not been disbarred or suspended in any jurisdiction; (b) he or she provides services in this State only to his or her employer or its organizational affiliates; (c) these services are not those for which the forum requires pro hac vice admission; and (d) his or her employer is not engaged in the practice of law or provision of legal services.

- (3) An attorney having a limited certificate of admission to practice law granted pursuant to this subparagraph shall:
- (a) comply with the minimum continuing legal education requirements of an active member of the New Hampshire Bar Association as specified in Supreme Court Rule 53.1;
  - (b) comply with the requirements of an active member of the New Hampshire Bar Association to file an annual trust accounting certificate as set forth in Supreme Court Rule 50-A; and
  - (c) pay such fees, bar dues, and assessments, including assessments for the public protection fund, as are required of an active member of the New Hampshire Bar Association by the Constitution and By-Laws of the New Hampshire Bar Association or Supreme Court Rule.
- (4) Any limited certificate for admission to practice law granted pursuant to this subparagraph shall expire on July 31. It may be renewed annually by filing a new application for limited certificate of admission to practice law in this State pursuant to subparagraphs (g)(1) and (g)(2).
- (5) A lawyer shall not provide legal services in this State pursuant to subparagraph (d)(1):
- (a) following denial of the lawyer's application for limited certificate of admission to practice law in this State;
  - (b) while the lawyer's application for limited certificate of admission to practice law in this State is suspended; or
  - (c) between the date that the lawyer's application for limited certificate of admission to practice law in this State expires and the date upon which the lawyer files an application to renew the limited certificate of admission to practice law in this State.

## APPENDIX F

Amend Professional Conduct Rule 8.5 by deleting said rule and replacing it with the following:

### **Rule 8.5. Disciplinary Authority; Choice of Law; Application of Rules to Nonlawyer Representatives**

(A) *Disciplinary Authority.* A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(B) *Choice of Law.* In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

(C) *Application of Rules to Nonlawyer Representatives.* Rules 1.2, 1.3, 1.4, 1.14, 1.15, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 4.2, 4.3, 4.4, 8.2(a), and 8.4 of the Rules of Professional Conduct shall apply to persons who, while not lawyers, are permitted to represent other persons before the courts of this jurisdiction pursuant to RSA 311:1. The attorney discipline system shall have jurisdiction to consider grievances alleging violations of these Rules of Professional Conduct by nonlawyer representatives.

## APPENDIX G

Adopt Supreme Court Rule 12-D on a permanent basis as follows:

### **RULE 12-D. SUMMARY PROCEDURES ON APPEAL**

(1) Selection of Cases.

(a) By order of the court, consistent with the criteria set out at paragraph (5) below, any case may be set for oral argument before a panel of three justices (3JX panel).

(b) Any party may request or consent that a case be set for oral argument before a 3JX panel. The court will consider and act upon such request, based upon criteria set out at paragraph (5) below.

(c) The court may direct that the matter be submitted on briefs, without oral argument, to a 3JX panel. See Rule 18(1).

(d) Except as noted in this rule, the procedure for cases assigned to a 3JX panel shall be the same as otherwise provided in these rules. Any motions made in a case assigned to a 3JX panel shall be acted upon by the panel. The panel may, in its discretion, refer any such motion to the full court for resolution.

(2) Disposition after Argument Before Three Justices; Additional Briefing, etc.

(a) Any case which has been heard by a 3JX panel shall be decided by unanimous order of the three justices. If the panel cannot reach a unanimous decision, it shall direct that the case be decided by the full court. The panel may order that a case be decided by the full court in such other circumstances as it deems appropriate. The panel may, prior to determining that a unanimous decision cannot be reached, require additional briefing. If decision by the full court is ordered, the court may issue an additional order setting forth matters to be reargued or rebriefed.

(b) Unless the court orders otherwise, whenever a 3JX panel directs after oral argument that a case be decided by the full court, no further oral argument shall be held and the members of the court who were not on the 3JX panel shall listen to the recording of the 3JX oral argument before deciding the case.

(3) Nonprecedential Status of Orders. An order issued by a 3JX panel shall have no precedential value and shall not be cited in any pleadings or rulings in any court in this state; provided, however, that such order may be cited and shall be controlling with respect to issues of claim



preclusion, law of the case and similar issues involving the parties or facts of the case in which the order was issued.

(4) [Repealed.]

(5) Criteria for Selection of Cases for 3JX Panel. Cases suitable for oral argument before a 3JX panel include, but are not limited to:

(a) appeals involving claims of error in the application of settled law;

(b) appeals claiming an unsustainable exercise of discretion where the law governing that discretion is settled;

(c) appeals claiming insufficient evidence or a result against the weight of the evidence.

(6) Briefing, Argument, etc.

(a) In all cases selected for oral argument before a 3JX panel, briefs shall be limited to 35 pages, exclusive of the table of contents, tables of citations and any addendum containing pertinent texts of constitutions, statutes, rules, regulations and other such matters. Reply briefs shall be limited to 10 pages.

(b) Oral argument will be limited to five minutes per side. In the event of multiple parties on the same side, the court may determine, either upon its own motion or upon motion of a party, an appropriate amount of time for oral argument.

(7) Motion for Rehearing or Reconsideration. Motions for rehearing or reconsideration of any order assigning a case to a three-justice panel or of any order issued by a three-justice panel shall be governed by Rule 22.

## APPENDIX H

Adopt on a permanent basis, with stylistic amendments as set forth below, Supreme Court Rule 32-A, which was adopted on a temporary basis by supreme court order dated June 23, 2004, and which as amended shall provide as follows:

### **RULE 32-A. COUNSEL IN GUARDIANSHIP AND INVOLUNTARY ADMISSION CASES**

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

(2) A motion to withdraw as counsel on appeal in a guardianship case commenced by the filing of a petition pursuant to RSA 464-A:4 or RSA 464-A:12 or in an involuntary admission case commenced by the filing of a petition pursuant to RSA 135-C:36 must state reasons that would warrant the grant of leave to withdraw. Absent a showing of exceptional circumstances, the motion must be accompanied by a showing that new counsel has been appointed by the trial court or retained to represent the defendant on appeal.

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

(4) Indigent cases appealed to the supreme court must be accompanied by petitions for either initial assignment or continued assignment of counsel together with a current financial affidavit or a photocopy of same.

## **APPENDIX I**

Amend Supreme Court Rule 42(5)(l) by amending said subparagraph and adopting it as amended on a permanent basis as follows:

(l) The fee for the character and fitness investigation shall be in such amount as the supreme court shall from time to time determine. This sum shall be paid to the New Hampshire Supreme Court Character and Fitness Committee in addition to the fee paid to the clerk of the supreme court for the taking of the examination for admission to practice or for the filing of the motion for admission to practice without examination. Both fees shall be nonrefundable; provided, however, that if an application for admission on motion pursuant to Rule 42(10), 42(11), or 42(12) is denied by the court prior to the commencement of the character and fitness investigation by the Character and Fitness Committee, then the character and fitness investigation fee shall be refunded.

**APPENDIX J**

Adopt Supreme Court Rule 49 on a permanent basis as follows:

**RULE 49. FEES IN SUPREME COURT**

(A) Entry of Appeal	\$125.00
(B) Petition for Original Jurisdiction	
(1) Original petition for writ of habeas corpus	\$ 0 (No fee)
(2) All other petitions for original jurisdiction	\$125.00
(C) (1) Certification of Record to Federal Courts	\$75.00
(2) Other Certifications and Certified Copies	\$5.00 plus \$.50/page
(D) Bar Examination Fee	\$200.00
(E) Character and Fitness Investigation Fee	
(1) For Admission By Examination	\$ 125.00
(2) For Admission Without Examination	\$ 500.00
(F) Certificate of Admission	\$ 5.00
(G) Entry of Motion for Admission to Bar Without Examination	\$ 200.00

## **APPENDIX K**

Adopt on a permanent basis, with stylistic amendments, District Court Rule 2.10, which was amended on a temporary basis by supreme court order dated August 26, 2004, so that said rule as amended shall state as follows:

### **Rule 2.10. Discovery**

(A) Upon request, the prosecuting attorney shall furnish the defendant's attorney, or the defendant, if he has no attorney, with the following: (1) a copy of records of statements or confessions, signed or unsigned, by the defendant, to any law enforcement officer or his agent; (2) a list of any tangible objects, papers, documents or books obtained from or belonging to the defendant; and, (3) a statement as to whether or not the foregoing evidence, or any part thereof, will be offered at the trial.

(B) Not less than 14 days prior to trial, the State shall provide the defendant with a list of names of witnesses, including experts and reports, and a list of any lab reports, with copies thereof, it anticipates introducing at trial.

(C) Not less than 7 days prior to trial, the defendant shall provide the State with a list of names of witnesses, including experts and reports, and a list of any lab reports, with copies thereof, the defendant anticipates introducing at trial.

**APPENDIX L**

Amend Supreme Court Rule 36(5)(d) by substituting "20\_\_" for "19\_\_" so that said subsection as amended shall state as follows:

(d) AFFIDAVIT TO BE COMPLETED BY LAW STUDENT/ GRADUATE:

I certify that I have not, except as stated below and except for proceedings (if any) in which a record of conviction and sentence has been annulled by statute, ever been a party to any criminal proceedings which in New Hampshire would be classified as violations, misdemeanors, or felonies.

<u>Date</u>	<u>Court Name and Location</u>	<u>Nature of Proceeding</u>	<u>Disposition</u>
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\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Student or Graduate)

State of New Hampshire  
County of

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, to me personally known (or satisfactorily proven) to be the person whose name is affixed to this affidavit, and made oath that the statements therein contained are true to the best of his or her knowledge and belief.

\_\_\_\_\_  
Notary Public  
(My commission expires  
\_\_\_\_\_)

**APPENDIX M**

Amend Supreme Court Rule 38 by substituting the word "minimis" for "minimus" in the Terminology section (two places), in Canon 3E(1)(c), and in Canon 3E(1)(d)(3), so that said subsections, as amended, shall state:

TERMINOLOGY

....

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality in the mind of a reasonable disinterested person fully informed of the facts.

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

....

[Canon 3 E (1) (c) and (d)]



(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

**APPENDIX N**

Amend Superior Court Rule 118 by substituting "20\_\_" for "19\_\_" so that said rule as amended shall state as follows:

118. Every bill or petition shall contain, in the introductory part, the names, places of abode, and proper description of all parties to the proceeding. The form in substance shall be as follows:

SUPERIOR COURT

County of \_\_\_\_\_ Term, 20 \_\_\_\_

A. B. of etc., complains against C. D. of etc., and E. F. of etc., and says, etc.

The bill or petition may conclude "and thereupon the plaintiff prays," setting forth the special relief which he seeks, "and for such other relief as may be just". If an injunction or other special order pending the suit is desired, it shall be specifically asked for.

**APPENDIX O**

Amend Superior Court Rule 132 by substituting "20\_\_" for "19\_\_" so that said rule as amended shall state as follows:

132. Answers shall be entitled with the county in the margin, the title of the Court and case, and "The answer of," the party making it, in substance as follows:

SUPERIOR COURT

County of \_\_\_\_\_ Term, 20\_\_\_\_

A. B. & a. vs. C. D. & a.

The Answer of C. D., etc.

**APPENDIX P**

Amend Superior Court Administrative Rule 10-1 by deleting the term "(supp)", so said rule as amended shall state as follows:

**Rule 10-1. Waiver of Filing Costs.**

Under RSA 499:18-b, in cases where a litigant has been found qualified as an indigent by New Hampshire Legal Assistance, but referred to an outside attorney because of conflict of interest or other reason, all filing costs shall be waived by the Clerk of Court without the necessity of a Court order. In order for an attorney to secure such waiver, it will be sufficient if the pleadings are signed in the following manner:

For: NEW HAMPSHIRE LEGAL ASSISTANCE

By: \_\_\_\_\_  
Name of Private Attorney  
Address

## **APPENDIX Q**

Amend Evidence Rule 104(d) by substituting "cross-examination" for "crossexamination" so that said paragraph as amended shall state as follows:

(d) *Testimony by accused.* The accused does not, by testifying upon a preliminary matter, subject himself or herself to cross-examination as to other issues in the case.

## APPENDIX R

Amend Supreme Court Rule 42 by adding a new section (13), and renumbering current sections (13) and (14), so that Rule 42(13), (14) and (15) shall state as follows:

(13)(a) 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 after taking and passing a variant of the New Hampshire bar examination to consist of rigorous, repeated and comprehensive evaluation of legal skills and abilities, the criteria for which will be established by the supreme court, and which will amount to more than the twelve hours of testing required for the conventional bar examination. The applicant shall:

(i) Have, within the year immediately preceding the date upon which the motion is filed, successfully completed, to the satisfaction of the board of bar examiners, the Webster Scholar Program offered at the Franklin Pierce Law Center in Concord, New Hampshire, and be certified by the board of bar examiners as satisfying this requirement;

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

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

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

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

(14) An applicant who has failed the New Hampshire bar examination within five years of the date of filing a motion for admission without examination shall not be eligible for admission on motion. An applicant who is not permitted to retake the New Hampshire bar examination pursuant to Rule 42(6) shall not be eligible for admission on motion. An applicant who has resigned from the New Hampshire bar shall not be eligible for admission on motion, but may be eligible for readmission upon compliance with the requirements of Rule 37(12-a).

(15) In addition to anything required above, the supreme court may require any applicant under this rule to complete such applications or submit such information as it deems relevant.