ADVISORY COMMITTEE ON RULES
September 7, 2005

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:
Hon. Linda S. Dalianis
William F.J. Ardinger, Esquire
Mr. Robert Chase
Hon. R. Laurence Cullen
Alice Guay
Hon. Richard Hampe
Martin P. Honigberg, Esquire
Hon. Philip Mangones
Emily G. Rice, Esquire
Hon. Robert H. Rowe
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 Hampe, seconded by Mr. Chase, the Committee approved the minutes of the June 1, 2005 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 the Committee's recommendation to make landlord/tenant appeals discretionary and issued an order making the recommendation effective October 15, 2005. In addition, the Supreme Court expanded this Committee's membership to include an individual to be designated by the New Hampshire Bar Association.

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

Relative to the Rules of Civil and Criminal Procedures, in Attorney Honigberg's absence Judge Dalianis reported that Attorney Honigberg's biggest obstacle is locating a Wang computer to retrieve the original version of the rules so they can be used by his subcommittee.

Relative to the comments to the Professional Conduct Rules, Judge Dalianis asked David Peck to contact the New Hampshire Bar's Ethics Committee to learn when to expect their recommendations on the comments to the Professional Conduct Rules.

Relative to amendments to Superior Court Administrative Rule 1-6 pertaining to records research fees, following discussion and on motion of Representative Rowe, seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that Superior Court Administrative Rule 1-6 be adopted on a temporary basis, as contained in Appendix A of these minutes, and further to send said amendments to the rule to the Committee's next public hearing to determine whether they should be adopted on a permanent basis. David Peck agreed to prepare similar rules for the other courts.

Attorney Rice joined the meeting.

Relative to Supreme Court Rules 48 and 48-A governing fees for appointed counsel and guardians ad litem, following a brief discussion of Judge Maher's concerns, on motion of Judge Mangones, seconded by Attorney Rice, the Committee voted to recommend to the Supreme Court that Supreme

Court Rules 48 & 48-A be adopted as further amended by the Committee, and contained in Appendix B and C respectively of these minutes.

Relative to the proposed rules pertaining to the limited representation by lawyers to clients, following a discussion of the revised draft of these rules suggested as a result of comments received during the June 1, 2005 public hearing, on motion of Judge Mangones, seconded by Judge Hampe, the Committee voted to recommend to the Supreme Court that the proposed rules pertaining to limited representation by lawyers to clients be adopted as further amended by the Committee, and contained in Appendix D through Q of these minutes.

Judge Cullen and Attorney Honigberg joined the meeting during the following discussion on Supreme Court Rule 53.

Relative to proposed amendments to Supreme Court Rule 53 pertaining to the MCLE rules, a lengthy discussion followed on whether: (1) to eliminate the separate ethics requirement and fold it into the general CLE requirement, and (2) to eliminate the requirement that 50% of the CLE requirement be met by lawyers attending live presentations. On the question of eliminating the separate ethics requirement, on motion of Judge Mangones, seconded by Mrs. Guay, the Committee voted to recommend to the Supreme Court that the court keep the ethics requirement.

On the question of whether to amend the rule to delete the requirement that 50% of the CLE requirement must be met by attending live presentations of approved courses, the Committee's vote was 6 to 5 in favor of deleting the requirement.

Judge Dalianis turned the discussion back to the Rules of Civil Procedure and Attorney Honigberg confirmed his need for a Wang computer to retrieve the rules. Attorney Ardinger agreed to contact a few sources to see if he could locate a Wang computer.

The Committee next discussed new items and the following action was taken:

Relative to District Court Rule 4.29 pertaining to a small claims mediation policy, the Committee discussed in detail various concerns raised by Representative Rowe and Judge Edwin Kelly. Following discussion and on motion of Judge Dalianis, seconded by Judge Hampe, the Committee voted to further amend District Court Rule 4.29, as contained in Appendix R of these minutes, and to send said rule to the Committee's next public hearing.

Relative to Superior Court Rule 72 pertaining to findings of fact and rulings of law in non-jury cases, the Committee agreed to defer action until it had received recommendations from the superior court.

Relative to the proposed proportional discovery rule, Judge Mangones reported that the subcommittee formed by Chief Justice Lynn to consider this matter has met once. A proposed rule is being drafted and will be discussed by the subcommittee at its October meeting. It will then be forwarded to this Committee for consideration at its December meeting.

Relative to Supreme Court Rule 50-A pertaining to trust accounting compliance certificates, following discussion and on motion of Attorney Rice, seconded by Attorney Taylor, the Committee voted to recommend to the Supreme Court that Supreme Court Rule 50-A be further amended, as

contained in Appendix S of these minutes, and further that it be considered as a technical amendment.

The next meeting of the Committee is scheduled for December 7, 2005, at 12:00 p.m., to be followed by a public hearing beginning at 1:00 p.m.

The Committee briefly discussed the results of the professional liability insurance survey conducted by the N.H. Bar.

No further business to come before the Committee, the meeting adjourned at 1:43 p.m.

APPENDIX A

Amend Superior Court Administrative Rule 1-6 by adding a new subparagraph (l) to paragraph IV, so that paragraph IV as amended reads as follows:

IV. To perform the following acts and issue such orders as provided for in the superior court rules, in addition to those rules where the clerk's authority is already specifically delineated:

(a) To enter default and continue for judgment pursuant to Rule 14.

(b) Upon withdrawal of counsel to set a date for the filing of a new appearance pursuant to Rule 20.

(c) To discontinue cases pursuant to Rule 52.

(d) To allow the withdrawal of court documents pursuant to Rule 56.

(e) To enter final judgment pursuant to Rule 74.

(f) In conjunction with the presiding justice, to enter scheduling orders pursuant to Rule 96-A.

(g) To enter orders regarding service by publication pursuant to Rule 128 and Rule 180.

(h) To enter default pursuant to Rule 131 and Rule 139.

(i) To dismiss marital cases which have been pending for two years pursuant to Rule 210.

(j) To waive the waiting period in marital cases pursuant to Rule 207.

(k) To non-suit or dismiss non-jury cases which have been pending for three years pursuant to Rule 168.

(l) To waive the records research fee in Rule 169 when a request for record information is made by a member of the

media consistent with the public's right to access court records under the New Hampshire Constitution.

The signature of the clerk or the attorney deputy clerk taking any action enumerated in paragraph IV shall appear on the appropriate document involved along with the statement "Acting pursuant to Superior Court Administrative Rule 1-6." In the event that a motion to reconsider or an objection is filed concerning the action taken, the matter shall be scheduled for a hearing before a justice.

APPENDIX B

Amend Supreme Court Rule 48 by deleting said section and replacing it with the following:

RULE 48. COUNSEL FEES AND EXPENSES -- OTHER INDIGENT CASES

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

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

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

(a) Time properly chargeable to case: $60.00 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 to and from court shall be compensable; otherwise, travel 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: $1700.

(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: $1200;

(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: $1700.

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

(h) Appeals to the supreme court in all juvenile cases and any matters within the subject matter jurisdiction of the probate court: $2000.

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

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. All petitions 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX C

Amend Supreme Court Rule 48-A by deleting said section and replacing it with the following:

RULE 48-A. GUARDIANS AD LITEM FEES -- INDIGENT CASES

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

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

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

(a) Time properly chargeable to case: $60.00 per hour. Travel time to and from court shall be compensable; otherwise, travel 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 of minor cases pursuant to RSA chapters 463 or 464-A: $1,400.

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. All petitions 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.

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

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

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

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

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

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

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

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

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

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

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the

close of the case. The court may allow late filing for good cause shown, when justice so requires.

APPENDIX D

Amend Superior Court Rule 14 by amending its title, designating each paragraph thereof as a separate subsection, and by adding a new last paragraph, so that Rule 14 as amended shall provide as follows:

APPEARANCES – GENERAL, SPECIAL, AND LIMITED

14. (a) The names of the attorneys or parties, who conduct each cause, shall be entered upon the docket; and if the defendant shall neglect to enter an appearance within seven days after the return day of the writ, he shall be defaulted, and judgment shall be rendered accordingly; and no such default shall be stricken off, except by agreement, or by order of the Court upon such terms as justice may require, upon motion and affidavit of defense, specifically setting forth the defense and the facts on which the defense is based.

(b) Special appearances shall be deemed general thirty days after the return day of the action, unless a special plea or motion to dismiss is filed within that time.

(c) No person who is not a lawyer will be permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, unless of good character and until there is on file with the Clerk: (1) a power of attorney signed by the party for whom he or she seeks to appear and witnessed and acknowledged before a Justice of the Peace or Notary Public, constituting said person his or her attorney to appear in the particular action; and (2) an affidavit under oath in which said person discloses (a) all of said person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (b) all instances in which said person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, and (c) all prior proceedings in which said person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

(d) *Limited Appearance of Attorneys*. To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney

providing limited representation to an otherwise unrepresented litigant may file a limited appearance on behalf of such unrepresented party; provided, however, that although not prohibited, the provision of limited representation to a client who is involved in litigation and who is entitled as a matter of law to the appointment of counsel is discouraged. The limited appearance shall state precisely the scope of the limited representation, and the attorney's involvement in the matter shall be limited only to what is specifically stated. The requirements of Superior Court Rule 15(a), (b) and (c) shall apply to every pleading and motion signed by the limited representation attorney. An attorney having filed a limited appearance, who later files a pleading or motion outside the scope of the limited representation (and without filing a subsequent or amended limited representation appearance) shall be deemed to have entered an appearance for the purposes of that new filing, and these rules pertaining to limited representation attorneys shall not apply to such filing. An attorney who signs a writ, petition, counterclaim, cross-claim or any amendment thereto which is filed with the court, will be considered to have filed a general appearance and, for the remainder of that attorney's involvement in the case, shall not be considered as a limited representation attorney under these rules; provided, however, if such attorney properly withdraws from the case and the withdrawal is allowed by the Court, the attorney could later file a limited appearance in the same matter.

APPENDIX E

Amend Superior Court Rule 15 by deleting it and replacing it with the following:

15. (a) All pleadings and the appearance and withdrawal of counsel shall be signed by the attorney of record or his associate or by a pro se party. Names, addresses and telephone numbers shall be typed or stamped beneath all signatures or papers to be filed or served. No attorney or pro se party will be heard until his appearance is so entered.

(b) The signature of an attorney to a pleading constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief there is a good ground to support it; and that it is not interposed for delay.

(c) If a pleading is not signed, or is signed with an intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading had not been filed.

(d) Other than limited representation by attorneys as allowed by Rule 14(d) and Professional Conduct Rule 1.2(f)), no attorney shall be permitted to withdraw that attorney's appearance in a case after the case has been assigned for trial or hearing, except upon motion to permit such withdrawal granted by the Court for good cause shown, and on such terms as the Court may order. Any motion to withdraw filed by counsel shall set forth the reason therefor but shall be effective only upon approval by the Court. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the attorney's services.

(e) *Automatic Termination of Limited Representation.* Any limited representation appearance filed by an attorney, as authorized under Professional Conduct Rule 1.2(f)) and Rule 14(d) of this Court, shall automatically terminate upon completion of the agreed representation, without the necessity of leave of Court, provided that the attorney shall provide the Court a "withdrawal of limited appearance" form giving notice to the Court and all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a limited appearance who seeks to withdraw prior to the completion of the limited representation stated in the limited appearance, however, must comply with Rule 15(d).

(f) *Pleading Prepared for Unrepresented Party*. When an attorney provides limited representation to an otherwise unrepresented party, by drafting a document to be filed by such party with the Court in a proceeding in which (1) the attorney is not entering any appearance, or (2) the attorney has entered a limited appearance which does not include representation regarding such document, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement **"This pleading was prepared with the assistance of a New Hampshire attorney."** The unrepresented party must comply with this required disclosure. Notwithstanding that the identity of the drafting attorney need not be required to be disclosed under this rule, by drafting a pleading to be used in court by an otherwise unrepresented party, the limited representation attorney shall be deemed to have made those same certifications as set forth in Rule 15(b) despite the fact the pleading need not be signed by the attorney.

APPENDIX F

Amend Superior Court Rule 21 by deleting the first paragraph and replacing it with a new first paragraph, so that Rule 21 as amended shall provide as follows:

> 21. Copies of all pleadings filed and communications addressed to the Court shall be furnished forthwith to all other counsel or to the opposing party if appearing *pro se*. When an attorney has filed a limited appearance under Rule 14(d) on behalf of an opposing party, copies of pleadings filed and communications addressed to the Court shall be furnished both to the opposing party who is receiving the limited representation and to the limited representation attorney. After the limited representation attorney files that attorney's "withdrawal of limited appearance" form, as provided in Rule 15(e), no further service need be made upon that attorney. All such pleadings or communications shall contain a statement of compliance herewith.
>
> A no contact order in a domestic violence, stalking, or similar matter shall not be deemed to prevent either party from filing appearances, motions, and other appropriate pleadings, through the Court. At the request of the party filing the pleading, the Court shall forward a copy of the pleading to the party or counsel on the other side of the case. Furthermore, the no contact provisions shall not be deemed to prevent contact between counsel, when both parties are represented.

APPENDIX G

Amend District Court Rule 1.3 by deleting said rule and replacing it with the following:

Rule 1.3. Attorneys.

A. Anyone addressing the Court or examining a witness shall stand. No-one should approach the bench to address the Court except by leave of the Court.

B. No attorney shall be compelled to testify in any case in which he is retained, unless he shall have been notified in writing five days previous to the commencement of the trial that he will he summoned as a witness therein, and unless he shall have been so summoned previous to commencement of the trial.

C. (1) An attorney, who is not a member of the Bar of this State, shall not be allowed to engage in the trial or hearing in any case, except on application to appear *pro hac vice*, which will not ordinarily be granted unless a member of the Bar of this State is associated with him or her and present at the trial or hearing.

(2) An attorney who is not a member of the Bar of this State seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

(a) the applicant's residence and business address;

(b) the name, address and phone number of each client sought to be represented;

(c) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;

(d) whether the applicant: (i) has been denied admission *pro hac vice* in this State; (ii) had admission *pro hac vice* revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;

(e) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such

proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(f) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application); and

(g) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this State within the preceding two years; the date of each application; and the outcome of the application.

(h) In addition, unless this requirement is waived by the district court, the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at any trial or hearing.

(3) The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that such admission:

(a) may be detrimental to the prompt, fair and efficient administration of justice;

(b) may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(c) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(d) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

D. (1) No person who is not a lawyer will be permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, unless of good character and until there is on file with the Clerk: (a) a power of attorney signed by the party for whom he or she seeks to appear and witnessed and acknowledged before a Justice of the Peace or Notary Public, constituting said person his or her attorney to appear in the particular action; and (b) an affidavit under oath in which said person discloses: (i) all of said person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute); (ii) all instances in which said person

has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives; and (iii) all prior proceedings in which said person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

(2) *Limited Appearance of Attorneys.* To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney providing limited representation to an otherwise unrepresented litigant may file a limited appearance on behalf of such unrepresented party; provided, however, that although not prohibited, the provision of limited representation to a client who is involved in litigation and who is entitled as a matter of law to the appointment of counsel is discouraged. The limited appearance shall state precisely the scope of the limited representation, and the attorney's involvement in the matter shall be limited only to what is specifically stated. The requirements of District Court Rule 1.3(E) shall apply to every pleading and motion signed by the limited representation attorney. An attorney having filed a limited appearance, who later files a pleading or motion outside the scope of the limited representation (and without filing a subsequent or amended limited representation appearance) shall be deemed to have entered an appearance for the purposes of that new filing, and these rules pertaining to limited representation attorneys shall not apply to such filing. An attorney who signs a writ, petition, counterclaim, cross-claim or any amendment thereto which is filed with the court, will be considered to have filed a general appearance and for the remainder of that attorney's involvement in the case, shall not be considered as a limited representation attorney under these rules; provided, however, if such attorney properly withdraws from the case and the withdrawal is allowed by the Court, the attorney could later file a limited appearance in the same matter.

E. (1) All pleadings and the appearance and withdrawal of counsel shall be signed by the attorney of record or an associate or by a pro se party. Names, addresses and telephone numbers shall be typed or stamped beneath all signatures on papers to be filed or served. No attorney or pro se party will be heard until an appearance is so entered.

The signature of an attorney to a pleading constitutes a certificate that the pleading has been read by the attorney; that to the best of the attorney's knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

If a pleading is not signed, or is signed with an intent to defeat this rule, it

may be stricken and the action may proceed as though the pleading had not been filed.

(2) *Pleading Prepared for Unrepresented Party.* When an attorney provides limited representation to an otherwise unrepresented party, by drafting a document to be filed by such party with the Court in a proceeding in which (a) the attorney is not entering any appearance, or (b) the attorney has entered a limited appearance which does not include representation regarding such document, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement **"This pleading was prepared with the assistance of a New Hampshire attorney."** The unrepresented party must comply with this required disclosure. Notwithstanding that the identity of the drafting attorney need not be required to be disclosed under this rule, by drafting a pleading to be used in court by an otherwise unrepresented party, the limited representation attorney shall be deemed to have made those same certifications as set forth in Rule 1.3.E.(1) despite the fact the pleading need not be signed by the attorney.

F. When any party shall change attorneys during the pendency of the action, the name of the new attorney shall be entered on the record.

G. Whenever the attorney of a party withdraws an appearance in a civil case and no other appearance is entered, the Clerk shall notify the party by mail of such withdrawal, and unless the party appears pro se or through counsel by a date fixed by the Court, the Court may take such action as justice may require.

H. In a criminal case, whenever the Court approves the withdrawal of appointed defense counsel, the Court shall appoint substitute counsel forthwith and notify the defendant of said appointment by mail.

I. (1) Other than limited representation by attorneys as allowed by Rule 1.3.D.(2), and Professional Conduct Rule 1.2(f)), no attorney shall be permitted to withdraw that attorney's appearance in a case after the case has been scheduled for trial or hearing, except upon motion to permit such withdrawal granted by the Court for good cause shown, and on such terms as the Court may order. Any motion to withdraw filed by counsel shall clearly set forth the reason therefore and contain a certification that copies have been sent to all other counsel or opposing parties, if appearing pro se, and to counsel's client at the client's last known address, which shall be fully set forth within the body of the motion. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the attorney's services.

Upon receipt of a motion to withdraw, the Clerk shall schedule a hearing before the Court. Notice by mail shall be sent to all counsel of record, or parties if unrepresented by counsel, and to the client of withdrawing counsel, at the

client's last known address as set forth in the motion.

If withdrawing counsel's client fails to appear at said hearing, the Court may, in its discretion, and without further notice to said client, order the trial date continued or make such other order as justice may require.

(2) *Automatic Termination of Limited Representation.* Any limited representation appearance filed by an attorney, as authorized under Professional Conduct Rule 1.2(f)) and Rule 1.3.D.(2) of this Court, shall automatically terminate upon completion of the agreed representation, without the necessity of leave of Court, provided that the attorney shall provide the Court a "withdrawal of limited appearance" form giving notice to the Court and all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a limited appearance who seeks to withdraw prior to the completion of the limited representation stated in the limited appearance, however, must comply with Rule 1.3.I.(1).

APPENDIX H

Amend District Court Rule 1.3-A by deleting and replacing the first paragraph, and by correcting the spelling of "similar" in the second paragraph, so that Rule 1.3-A as amended shall provide as follows:

Rule 1.3-A. Pleadings – copies to all parties

Copies of all pleadings filed and communications addressed to the Court shall be furnished forthwith to all other counsel or to the opposing party if appearing pro se. When an attorney has filed a limited appearance under Rule 1.3.D.(2) on behalf of an opposing party, copies of pleadings filed and communications addressed to the Court shall be furnished both to the opposing party who is receiving the limited representation and to the limited representation attorney. After the limited representation attorney files that attorney's "withdrawal of limited appearance" form, as provided in Rule 1.3.I.(2), no further service need be made upon that attorney. All such pleadings or communications shall contain a statement of compliance herewith.

A no contact order in a domestic violence, stalking, or similar matter shall not be deemed to prevent either party from filing appearances, motions, and other appropriate pleadings, through the Court. At the request of the party filing the pleading, the Court shall forward a copy of the pleading to the party or counsel on the other side of the case. Furthermore, the no contact provisions shall not be deemed to prevent contact between counsel, when both parties are represented.

APPENDIX I

Amend Probate Court Rule 14 by amending the title and adding a new third paragraph, so that Rule 14 as amended shall state as follows:

RULE 14. APPEARANCES – *General, Special, and Limited*

Any party may appear before the court in person, or by any citizen of good character, or by an attorney authorized to practice in the courts of this state; provided, however, that no person who is not a lawyer will be permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself until there is on file with the Register: (1) a power of attorney signed by the party for whom he or she seeks to appear and witnessed and acknowledged before a Justice of the Peace or Notary Public, constituting said person his or her attorney to appear in the particular action; and (2) an affidavit under oath in which said person discloses (a) all of said person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (b) all instances in which said person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, and (c) all prior proceedings in which said person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court. The person so appearing shall file with the Register a written appearance notice giving his name, his residence, the matter in which he appears, the name of the person or persons for whom he appears and their respective mailing addresses, and the Register shall enter the appearance on the docket. In contested matters, the notice of appearance shall be forwarded to the adverse party by the party so appearing and certification of such shall be made to the court. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

Any Party may appear Pro Se, or be represented by an Attorney. Attorneys and Pro Se Parties shall enter an Appearance Form before filing Pleadings or personally appearing before the Court. An attorney-in-fact shall attach a copy of the Power of Attorney and affidavit to the Appearance Form. No Appearance Form shall be required to be filed by the Petitioner, or if represented, by the Petitioner's Attorney or by a guardian ad litem, except as required by the previous paragraph of this rule.

Limited Appearance of Attorneys. To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney providing limited representation to an otherwise unrepresented litigant may file a

limited appearance on behalf of such unrepresented party; provided, however, that although not prohibited, the provision of limited representation to a client who is involved in litigation and who is entitled as a matter of law to the appointment of counsel is discouraged. The limited appearance shall state precisely the scope of the limited representation, and the attorney's involvement in the matter shall be limited only to what is specifically stated. The requirements of Probate Court Rule 15 shall apply to every pleading and motion signed by the limited representation attorney. An attorney having filed a limited appearance, who later files a pleading or motion outside the scope of the limited representation (and without filing a subsequent or amended limited representation appearance) shall be deemed to have entered an appearance for the purposes of that new filing, and these rules pertaining to limited representation attorneys shall not apply to such filing.

The Appearance Form shall identify the Attorney, or Pro Se Party's name, address, the matter in which the Person appears and the name and address of the Party or Parties for whom the Person appears.

Copies of the Appearance Form shall be forwarded to all Parties, or if represented, to their Attorneys by the Party so appearing. A statement of compliance shall accompany all Appearance Forms.

The filing of an Appearance shall not constitute a general objection or denial. Any objections or denials must be raised in a separate Pleading. A Special Appearance shall be deemed a General Appearance thirty (30) days after the Return Day of the action, unless a motion to dismiss on jurisdictional grounds is filed within that time.

APPENDIX J

Amend Probate Court Rule 15 by deleting it and replacing it with the following:

Rule 15. EXECUTION OF PLEADINGS

(A) All Petitions shall be signed by the Petitioner, except that Petitions requesting equitable relief may be signed by the Petitioner or the Petitioner's Attorney. All bonds, inventories and accounts shall be signed by the Fiduciary. Motions and other Pleadings may be signed by the Party, the Party's Attorney or the attorney's associate. Names shall be typed, stamped or printed beneath all signatures on papers to be filed or served.

The signature of any Person to a Petition, Motion, or other Pleading constitutes a certification that he or she has read the Pleading; that to the best of his or her knowledge, information and belief there is a good ground to support the Pleading; and that it is not interposed for delay.

If a Petition, Motion, or other Pleading is not signed, it may be stricken and the action may proceed as though it had not been filed.

(B) **Pleading Prepared for Unrepresented Party.** When an attorney provides limited representation to an otherwise unrepresented party, by drafting a document to be filed by such party with the Court in a proceeding in which (1) the attorney is not entering any appearance, or (2) the attorney has entered a limited appearance which does not include representation regarding such document, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement **"This pleading was prepared with the assistance of a New Hampshire attorney."** The unrepresented party must comply with this required disclosure. Notwithstanding that the identity of the drafting attorney need not be required to be disclosed under this rule, by drafting a pleading to be used in court by an otherwise unrepresented party, the limited representation attorney shall be deemed to have made those same certifications as set forth in Rule 15(A) despite the fact the pleading need not be signed by the attorney.

APPENDIX K

Amend Probate Court Rule 20 by adding a new subsection 20 A.5 and by deleting and replacing subsections 20 A.3 and 20 A.4 as follows:

3. **Attorney for any other party and Guardian ad Litem.** Other than limited representation by attorneys as allowed by Rule 14 and Professional Conduct Rule 1.2(f)), an Attorney for any other party and Guardian ad Litem shall file a motion to withdraw with the Register and certify that a copy of the motion has been forwarded to the Party for whom the Attorney appears at such Party's last known address and to all other Parties. In cases scheduled for a hearing, no motion to withdraw shall be granted except for good cause shown. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the Attorney's services. A Withdrawal is not effective until the motion to withdraw is granted by the Court.

4. **Attorney for Respondent.** Other than limited representation by attorneys as allowed by Rule 14 and Professional Conduct Rule 1.2(f)), an Attorney for Respondent shall file a motion to withdraw with the Register and certify that a copy of the motion has been forwarded to the Party for whom the Attorney appears at such Party's last known address and to all other Parties.

(a) In cases scheduled for a hearing, no motion to withdraw shall be granted except for good cause shown. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the Attorney's services. A Withdrawal is not effective until the motion to withdraw is granted by the Court.

(b) Whenever an Attorney is allowed to withdraw an Appearance, and no other Appearance is contemporaneously entered, the Register shall notify the Party by mail of such withdrawal, and, unless the Party appears pro se or by an Attorney by a date fixed by the Court, any contested matter shall proceed as though that Party has defaulted and does not wish to be heard.

5. **Automatic Termination of Limited Representation.** Any limited representation appearance filed by an attorney, as authorized under Professional Conduct Rule 1.2(f)) and Rule 14 of this Court, shall automatically terminate upon completion of the agreed representation, without the necessity of leave of Court, provided that the attorney shall provide the Court a "withdrawal of limited appearance" form giving notice to the Court and all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a limited appearance who seeks to withdraw prior to the completion of the limited representation stated in the

limited appearance, however, must comply with either 3. or 4., above, as may be applicable.

APPENDIX L

Amend Probate Court Rule 21 by deleting it and replacing it with the following:

Rule 21. PLEADINGS - *Copies to all Parties*

Any Person filing a Pleading or correspondence with the Court shall forthwith furnish copies to all Attorneys, Pro Se Parties appearing of record, and to all Persons Beneficially Interested, unless excused by the Court for good cause shown. When an attorney has filed a limited appearance under Rule 14 on behalf of an opposing party, copies of pleadings filed and communications addressed to the Court shall be furnished both to the opposing party who is receiving the limited representation and to the limited representation attorney. After the limited representation attorney files that attorney's "withdrawal of limited appearance" form, as provided in Rule 20.A.5., no further service need be made upon that attorney. All such Pleadings shall contain a statement of compliance. This rule shall not apply to any Pleading for which orders of notice are issued and served upon the parties.

APPENDIX M

Amend Professional Conduct Rule 1.2 by deleting said rule and replacing it with the following:

Rule 1.2. Scope Of Representation And Allocation Of Authority Between Client And Lawyer

(a) Subject to paragraphs (c), (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) *Limited Representation.* A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. In providing limited representation, the lawyer's responsibilities to the client, the court and third parties remain as defined by these Rules as viewed in the context of the limited scope of the representation itself; and court rules when applicable.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) It is not inconsistent with the lawyer's duty to seek the lawful objectives of a client through reasonably available means, for the lawyer to accede to reasonable requests of opposing counsel that do not prejudice the rights of the client, avoid the use of offensive or dilatory tactics, or treat opposing counsel or an opposing party with civility.

(f) *Limited Representation in Litigation.* In addition to requirements set forth in Rule 1.2(c),

(1) a lawyer may provide limited representation to a client who is or may become involved in a proceeding before a tribunal (hereafter referred to as litigation), provided that the limitations are fully disclosed and explained, and the client gives informed consent to the limited representation. The form set forth in subsection (g) of this rule has been

created to facilitate disclosure and explanation of the limited nature of representation in litigation. Although not prohibited, the provision of limited representation to a client who is involved in litigation and who is entitled as a matter of law to the appointment of counsel is discouraged.

(2) a lawyer who has not entered an applicable limited appearance, and who provides assistance in drafting pleadings, shall advise the client to comply with any rules of the tribunal regarding participation of the lawyer in support of a pro se litigant.

(g) *Sample form.*

CONSENT TO LIMITED REPRESENTATION

Limited Representation

To help you in litigation, you and a lawyer may agree that the lawyer will represent you in the entire case, or only in certain parts of the case. "Limited representation" occurs if you retain a lawyer only for certain parts of the case.

When a lawyer agrees to provide limited representation in litigation, the lawyer must act in your best interest and give you competent help. However, when a lawyer and you agree that the lawyer will provide only limited help,

- the lawyer **DOES NOT HAVE TO GIVE MORE HELP** than the lawyer and you agreed.
- the lawyer **DOES NOT HAVE TO HELP** with any other part of your case.

If you and a lawyer have agreed to limited representation in connection with litigation, you should complete this form and sign your name at the bottom. Your lawyer will also sign to show that he or she agrees. If you and the lawyer both sign, the lawyer agrees to help you by performing the following **limited services**:

1. ☐ Provide you general advice about your legal rights and responsibilities in connection with potential litigation concerning:

_____

_____

which advice shall be provided as:

☐ consultation at a one-time meeting, or

☐ consultation at an initial meeting and further meetings, telephone calls or correspondence (by mail, fax or email) as needed, or as requested by you

2. ☐ Assist in the preparation of your court or mediation matter regarding _____

_____ by:

[Case name]

☐ explaining court procedures

☐ reviewing court papers and other documents prepared by or for you

☐ suggesting court papers for you to prepare

☐ drafting the following court papers for your use:
_____
_____

☐ legal research and analysis regarding _____

☐ preparation for court hearing regarding _____
_____; or

☐ preparation for mediation

☐ other: _____
_____
_____
_____

3. ☐ Representing you in Court regarding _____,
[Case name]

but only for the following specific matter(s):

☐ Motion for
_____

☐ Temporary hearing

☐ final hearing

☐ trial

☐ other:
_____
_____
_____

4. ☐ Other limited service:_____

_____

Consent

I have read this Consent to Limited Representation Form and I understand what it says. As the lawyer's client, I agree that the legal services specified above are the **only** legal help this lawyer will give me. **I understand and agree that:**

- the lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me any more legal help
- the lawyer is not promising any particular outcome
- because of the limited services to be provided, the lawyer has limited his or her investigation of the facts to that necessary to carry out the identified tasks with competence and in compliance with court rules
- if the lawyer goes to court with me, the lawyer does not have to help me afterwards, unless we both agree in writing

I agree the address below is my permanent address and telephone number where I may be reached. I understand that it is important that my lawyer, the opposing party and the court handling my case, if applicable, be able to reach me at this address. I therefore agree that I will inform my lawyer or any Court and opposing party, if applicable, of any change in my permanent address or telephone number.

A separate fee agreement ☐ was ☐ was not also signed by me and my lawyer.

_____	_____
[print or type your name] **Client's Name**	[print or type your full mailing street/apartment address]
_____	_____
[sign your name]	[print or type City, State and Zip Code]
_____	_____
Date	[print or type your Phone Number]
_____	_____
[print or type your name] **Lawyer's Name**	[print or type name of law firm]
_____	_____
[sign your name]	[print or type Street, City, State and Zip Code]
_____	_____
Date	[print or type your Phone Number]

NH Comment to Rule 1.2

1. This rule differs from the ABA Model Rule by:

Deleting the last two sentences of ABA Model Rule 1.2 (a).

Adding a new second sentence to 1.2(c).

Adding new subsections 1.2(e), 1.2(f), and 1.2(g).

2. The deleted sentences of ABA Model Rule 1.2 (a) provide as follows:

"A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify."

The Committee believes that the particular binding client decisions articulated in the third sentence of Rule 1.2(a) are by no means exclusive. There will obviously be other important client decisions that will be binding upon the lawyer depending upon the fact specific circumstances of any representation. The Committee certainly agrees that the Model Rule sentences correctly state those particular client decisions that are binding upon the lawyer. The Committee also believes, however, that specifically including these in the Rule may be wrongly construed by a lawyer to be the ***only*** binding decisions that can be made by a client. A lawyer must always carefully consider all client requests or decisions, in light of all relevant factors, including but not limited to, the particular fact pattern, type of representation, a client's social and economic considerations, and the scope of representation and earlier decisions reached during the representation. *See, e.g., Restatement Third, The Law Governing Lawyers,* § 21 ("Allocating the Authority to Decide Between a Client and a Lawyer"), § 22 ("Authority Reserved to a Client"), and § 23 ("Authority Reserved to a Lawyer") (2000).

3. The second sentence of Rule 1.2(c) confirms that lawyers providing limited representation are bound by all professional responsibility rules. The rule also recognizes that these ethical obligations will need to be interpreted, or analyzed, within the context of the limited representation. One example of such an obligation could be the duty, under Rule 1.1(c)(3), to "develop a strategy, in collaboration with the client, for solving the legal problems of the client." A client who retains an attorney for limited purposes may simply want the lawyer to research and provide the applicable law in a specific area, thereby making Rule 1.1(c)(3) inapplicable. Conversely, the lawyer's duty pursuant to Rule 4.1(a) not to make false statements to third persons is the type of fundamental obligation that would remain applicable regardless of the limits placed on the scope of representation.

4. The added provision in Rule 1.2 (e), restates a rule revision that has been adopted (in various forms) in several other states. The Committee believes, especially in light of a growing concern by New Hampshire practicing lawyers for the professionalism of lawyers, that it is appropriate to make a distinction between following client objectives during representation, and the general civility and professionalism expected by all practicing New Hampshire attorneys. The lawyer should also be guided by The New Hampshire Lawyer Professional Creed, adopted April 4, 2001, by the New Hampshire Bar Association Board of Governors (which can be found under "NH Practice Guidelines" on the Bar's website, www.nhbar.org).

APPENDIX N

Adopt a new Professional Conduct Rule 6.5 as set forth below:

Rule 6.5 Nonprofit and Court-Annexed Limited Legal Service Programs

(a) A lawyer who, under the auspices of a program sponsored by the New Hampshire Bar Association, a nonprofit organization or court, provides one-time consultation with a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2) above, Rule 1.10 is inapplicable to a representation governed by this Rule.

(c) Rules 1.6 and 1.9(c) are applicable to a representation governed by this Rule.

New Hampshire Comment to Rule 6.5

1. New Hampshire's version differs from the ABA Model Rule as follows:

a. Application of this Rule in (a) is limited to a "one time consultation with a client" instead of the ABA's version "short-term limited legal services to a client."

b. Section (c) is added.

2. The change in (a) is intended to give the attorney some clarity as to the scope of this Rule. This Rule relaxes certain of the normal conflicts limitations to allow this important pro bono service. This Rule applies only under circumstances where it is not reasonably possible for the attorney to otherwise comply with normal conflict of interest record check procedures. Therefore, the situation where an attorney provides repeated services for the same client, and not a "one time consultation", would not permit any deviation from the normal conflicts rules.

3. The addition of Section (c) is intended simply to emphasize the attorney's continuing responsibility to maintain confidences under Rule 1.6, and the attorney's duties to a former client under Rule 1.9(c). This inclusion raises this language, already contained in ABA Comment [2], to Rule status.

4. The value of the services rendered to the public in this pro bono context is important enough to justify carving out a special exception to the normal conflicts rules applicable in general client representation. In this special context, not even the protective "screening" rules, such as those adopted in 1.11(b), were employed.

5. Should a lawyer participating in a one-time consultation under this Rule later discover that the lawyer's firm was representing or later undertook the representation of an adverse client, the prior participation of the attorney will not preclude the lawyer's firm from continuing or undertaking representation of such adverse client. But the participating lawyer will be disqualified and must be screened from any involvement with the firm's adverse client. *See* ABA Comment [4].

APPENDIX O

Amend Professional Conduct Rule 1.16 by deleting it and replacing it with the following:

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with the applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) As a condition to termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice of the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by law.

(e) The representation of a lawyer having entered a limited appearance as authorized by the tribunal under a limited representation agreement under Rule 1.2(f)(1), shall terminate upon completion of the agreed representation, without the necessity of leave of court, upon providing notice of completion of the limited representation to the court.

APPENDIX P

Amend Professional Conduct Rule 4.2 by adding a new sentence to the end of the rule, so that Rule 4.2 as amended shall provide as follows:

Rule 4.2. Communication With Person Represented by Counsel

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 1.2(f)(1) is considered to be unrepresented for purposes of this Rule, except to the extent the limited representation lawyer provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation lawyer.

APPENDIX Q

Amend Professional Conduct Rule 4.3 by adding a sentence to the end of said rule, so that Rule 4.3 as amended shall state as follows:

Rule 4.3. Dealing With Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

APPENDIX R

Amend District Court Rule 4.29, which was adopted on a temporary basis by order dated July 13, 2005, as set forth below and adopt said rule, as amended, on a permanent basis:

Rule 4.29. District Court Small Claims Mediation Policy

(A) Purpose. The District Court establishes these small claims mediation rules to increase access to justice; to increase parties' satisfaction with the outcome; to reduce future litigation by the same parties; to make more efficient use of judicial resources; and to expand dispute resolution resources available to the parties.

(B) Definitions. For the purpose of this rule, the following definitions apply.

(1) Mediation. Mediation is a process in which a mediator facilitates settlement discussions between parties.

a. The mediator has no authority to make a decision or impose a settlement upon the parties.
b. The mediator attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions.
c. Any settlement is entirely voluntary.
d. In the absence of settlement, the parties lose none of their rights to a resolution of their dispute through litigation.

Mediation is based upon principles of communication, negotiation, facilitation and problem solving that emphasizes:

a. The needs and interest of the parties
b. Fairness
c. Procedural flexibility
d. Privacy and confidentiality
e. Full disclosure
f. Self determination

(2) Mediator. An impartial person who facilitates discussions between the parties to a mediation. The role of the mediator includes but is not limited to assisting the parties in identifying issues, reducing obstacles to communication, and providing the parties an opportunity for each to be heard in a dignified and thoughtful manner. The mediator's focus will be on encouraging and supporting the parties' presentations to and reception from one another allowing them to find a resolution that is appropriate.

(3) Party. Any person whose name is designated on the record as plaintiff or defendant and their attorney or any other person who has filed an appearance.

(C) Mediator Qualifications. Mediators shall satisfy the qualifications and criteria specified by the Supreme Court. Minimum qualifications include: completion of a 20-hour mediation process training; two years experience as a mediator or equivalent experience, and an understanding of civil and landlord/tenant law is helpful.

All mediators serving as small claims mediators shall contract with the Administrative Office of the Courts for a term of one year.

(D) Referral of cases to mediation. Small Claims cases may be referred to mediation where requested by any party and all remaining parties indicate that they desire to proceed with mediation.

(E) Mediator Assignment. The Administrative Judge of the District Court shall determine the mediation needs for each District Court. Assignment of mediators shall be based on the mediator needs of each court.

Each District Court shall schedule small claims cases and allocate mediator(s) in a manner that accommodates the small claims case load in their court.

(F) Payment of mediator fees. Small Claims mediators shall be paid on a per case fee set by the Supreme Court. Payments shall be made out of the Mediator Fund established by the court. No additional fees or reimbursements shall be made.

(G) Disclosure of Conflict. Upon receipt of a notice of appointment in a case, the mediator shall disclose any circumstances likely to create a conflict of interest, the appearance of conflict of interest, a reasonable inference or bias or other matter that may prevent the process from proceeding as scheduled.

(1) If the mediator withdraws, has a conflict of interest or is otherwise unavailable, another mediator shall be appointed by the court.

(2) The burden of disclosure rests on the mediator. After appropriate disclosure, the mediator may serve if both parties so desire. If the mediator believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.

(H) Impartiality. Impartiality shall be defined as freedom from favoritism or bias in word, action and appearance.

(1) Impartiality implies a commitment to aid all parties, as opposed to an individual party, when moving toward an agreement. A mediator shall be impartial and shall advise all parties of any circumstances bearing on possible bias, prejudice or impartiality.

(2) A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of the proposed options for settlement.

(3) A mediator shall withdraw from mediation if the mediator believes the mediator can no longer be impartial.

(4) A mediator shall not give or accept a gift, request, favor, loan, or any other item of value to or from a party, attorney or any other person involved and arising from the mediation process.

(I) Prohibitions. A mediator shall not provide counseling or therapy to any party during the mediation process nor shall a mediator who is an attorney represent either party, or give legal advice during or after the mediation.

The mediator shall not use the mediation process to solicit or encourage future professional services with either party.

(J) Self determination. A mediator shall assist the parties in reaching an informed and voluntary settlement. Decisions are to be made voluntarily by the parties.

(1) A mediator shall not coerce or unfairly influence a party into a settlement agreement and shall not make a substantive decision for any party to a mediation process.

(2) A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation.

(3) A mediator shall promote consideration of the interest of persons affected by actual or potential agreements who are not present during a mediation.

(4) The mediator shall promote mutual respect amongst the parties throughout the process.

(K) Professional Advice. A mediator shall only provide information the mediator is qualified by training or experience to provide.

(1) When a mediator believes a non represented party does not understand or appreciate how an agreement may adversely effect legal rights or obligations, the mediator shall advise the participants to seek independent legal counsel.

(2) While a mediator may point out a possible outcome of the case, under no circumstances may a mediator offer a personal or professional opinion as to how the court in which the case is filed will resolve the dispute.

(L) Confidentiality. A mediator shall preserve and maintain the confidentiality of all mediation proceedings. Any communications made during the mediation which relates to the controversy mediated, whether made to the mediator or a party, or to any other person present at the mediation is confidential.

(1) A mediator shall keep confidential from the other parties any information obtained in an individual caucus unless the party to the caucus permits disclosure.

(2) All memoranda, work products and other materials contained in the case file of a mediator are confidential. The mediator shall render anonymous all identifying information when materials are used for research, training or statistical compilations.

(3) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceedings except for any of the following:

a. Where the parties to the mediation agree in writing to waive the confidentially.

b. When a subsequent action between the mediator and a party to
the mediation for damages arises out of the mediation.
c. Where there are threats of imminent violence to self or others.
d. Where reporting is required by state law.

(M) Inadmissibility of Mediation Proceeding. Mediation proceedings under this rule are non-binding and shall not impair the right of the litigants to demand a trial. Any settlement reached at mediation shall be binding on the parties and entered as a judgment. Information, evidence or the admission of any party shall not be disclosed or used in any subsequent proceeding.

(1) Statements made and documents prepared by a party, attorney, or other participant in the aid of such proceedings shall be privileged and shall not be disclosed to any court or construed for any purpose as an admission against interest.

(2) All mediation proceedings are deemed settlement conferences as prescribed by court rule and the Rules of Evidence. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there has been a mediation proceeding.

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

(4) A mediator shall not be called as a witness in any subsequent proceeding relating to the parties' negotiation and participation except as set forth in Section N of this rule.

(N) Concluding Mediation. If an agreement is reached during the mediation process, the parties shall reduce their agreement to a written memoranda on the points on which agreement has been reached, and the memoranda shall be reviewed and signed by all parties before the mediation ends.

If an agreement is not reached during the mediation process, the mediator shall notify the court that the mediation failed to resolve the issue in conflict.

(O) Immunity. The parties must recognize that the mediator will not be acting as legal advisor or legal representative. They must further recognize that, because the mediator is performing quasi-judicial functions and is performing under the auspices of the District Court, each such mediator has immunity from suit, and shall not be called as a witness in any subsequent proceeding relating to the

parties' negotiations and participation except as set forth in Section N of this rule.

(P) Implementation. The Administrative Judge of the District Court shall be responsible for designating an implementation schedule for the small claims mediation program. Initially, each county shall have at least one District Court designated to provide small claims mediation. The program shall be implemented in the remaining courts on a scheduled developed by the Administrative Judge for the District Court.

(Q) Removal from list of small claims mediators. Certification to mediate Small Claims Cases in the District Court confers no vested rights to the mediator, but is a conditional privilege that is revocable.

(1) At any time during the period of certification, upon notice and opportunity to be heard, a small claims mediator who is found to have engaged in conduct that reflects adversely on his/her impartiality or in the performance of his/her duties as a mediator, or is found to have persistently failed to carry out the duties of a mediator, or is found to have engaged in conduct prejudicial to the proper administration of justice, shall be removed from the list of certified small claims mediators.

(2) All complaints regarding a mediator's performance shall be forwarded to the NH Judicial Branch Alternative Dispute Resolution Administrator who will investigate the complaint. The Administrator will give notice and opportunity for all parties to be heard and make recommendations to the Administrative Judge of the District Court regarding what action, if any, will be taken by the Administrative Judge.

(3) All Small Claims mediators must inform the Judicial Branch Alternative Dispute Resolution Administrator and Administrative Judge of the District Court within 30 days of a change in circumstances such as a conviction of a felony or loss of professional license. Small Claims mediators who are convicted of a felony or misdemeanor involving moral turpitude, or who have a professional license revoked, shall be denied certification.

APPENDIX S

Amend Supreme Court Rule 50-A(1) by deleting the first full paragraph of said section and replacing it with the following:

> (1) In order to assure compliance with the requirements of Rule 50 and in order to ascertain that the records and accounts described in Rule 50 are properly maintained, all attorneys licensed to practice in the State of New Hampshire, whether in private practice or not, other than those in inactive status, shall individually or through their firm organizations file an annual Certificate of Compliance and, unless they have filed a Notice of Declination under Rule 50(1)F, Authorization to Financial Institutions on or before August 1st of each year. For purposes of this rule, an attorney shall not be considered to be "in inactive status" if the attorney's New Hampshire Bar Association membership status was active *at any time* during the one-year period beginning on June 1 of the year preceding the reporting year and ending on May 31 of the reporting year. The Certificate of Compliance shall certify to one of three things:

A. That the attorney does not maintain a trust account and does not have in his possession any assets or funds of clients;

B. That client funds maintained by the attorney are held in accounts in full compliance with the requirements of Rule 50; or

C. That the attorney is willing to submit to a spot compliance audit to his trust accounts at his own expense.