

ADVISORY COMMITTEE ON RULES

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

September 10, 2008

The meeting was called to order at 12:20 p.m.

The following Committee members were present:

Hon. Linda S. Dalianis
William F.J. Ardinger, Esquire
Mr. Robert L. Chase
Hon. R. Laurence Cullen
Mrs. Edda Cantor
Mrs. Alice Guay
Hon. Richard A. Hampe
Martin P. Honigberg, Esquire
Hon. Paul McEachern
Jennifer L. Parent, Esquire
Emily Rice, Esquire
Raymond Taylor, Esquire

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

On motion of Judge Dalianis, seconded by Judge Cullen, the Committee approved the minutes of the June 11, 2008 meeting, as amended.

Relative to action taken by the Supreme Court since the last meeting, David Peck reported that the Committee's annual report was filed with the Court. They, in turn, issued an order requesting that public comments on the report's various recommendations be filed with the Court by October 15, 2008.

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

Relative to amendment to Supreme Court Rule 38 pertaining to the Code of Judicial Conduct, following a brief discussion, it was agreed that the

Committee's judicial members would review the questions posed by the subcommittee and forward their recommendations to David Peck by November 15 for distribution to Committee members before its December meeting.

Relative to the Rules of Civil Procedure and the Rules of Probate Administration, the Committee reviewed the recommendations contained in Mr. Peck's June 22, 2008 memo to members. On motion of Judge Dalianis, seconded by Judge Cullen, the Committee approved, with the exception of the alternative dispute resolution procedures, the changes suggested to the Rules of Civil Procedure as contained in Mr. Peck's memo.

The Committee next discussed how it should proceed to integrate the rules into uniform rules for all court levels. Judge Dalianis suggested that each court have a separate set of rules, but that the first section of those rules would be as uniform as possible for each court beginning with the rules of civil procedure, followed by the rules of criminal procedure. Those rules would, in turn, be followed by whatever rules were pertinent to a particular court level. All rules would be sequentially numbered. If certain rules are not needed in one or more court level, those numbers would be reserved. Judge Dalianis suggested that subcommittees be formed for each court level to assist Mr. Peck in this project. The following subcommittees were established: Attorney Taylor for the superior court; Judge Hampe and Patricia Quigley for the probate court; and Judge Cullen for the district court. It was agreed that the superior court subcommittee would begin the process followed by the district court, then the probate court. In addition, Attorney Honigberg agreed to work

with David Slawsky to prepare an article for the *Bar News* explaining the status of this project.

Relative to an amendment to Superior Court Rule 98 pertaining to discovery in criminal cases, Judge Cullen reported on his subcommittee's recommendations, and on motion of Judge Cullen, seconded by Judge Dalianis, the Committee voted to recommend no changes to Superior Court Rule 98 at this time. The Committee asked Judge Cullen and his subcommittee to submit its recommendations in writing so that Mr. Peck can notify the legislative committee of the action taken by this Committee.

Relative to amendments to Family Division Rules, during discussion Judge Dalianis informed Committee members that during the Court's conference yesterday, it agreed to adopt the suggested changes contained in Judge Kelly's August 14, 2008 e-mail to her. The Committee agreed that if Judge Kelly is in agreement, these amendments to the Family Division Rules should be sent to the Committee's December public hearing.

Relative to an amendment to Rules of Professional Conduct Rule 8.5(c) pertaining to application of rules to non-lawyer representatives, following discussion, Judge Cullen agreed to contact Michael Brauer to obtain further information and to report back to this Committee at its December meeting.

Relative to notice of the issuance of subpoenas, following a brief discussion, the subcommittee agreed to further consider the issue and report back to the Committee at its December meeting.

Relative to amending the guardian ad litem fees, following a review of Nina Gardner's September 2, 2008 memo to David Peck and on motion of

Judge Dalianis, seconded by Judge Cullen, the Committee voted to recommend no changes to the guardian ad litem fees at this time.

Relative to amendments to the criminal rules of procedure, following discussion, and on motion of Judge Dalianis, seconded by Judge Hampe, the Committee voted to approve the changes suggested by Judge Kelly and Chief Justice Lynn contained in their July 2, 2008 and July 10, 2008 e-mail respectively, and to turn them over to Mr. Peck for inclusion into the uniform rules for the courts.

Relative to amending the Judicial Conduct Committee procedures, following discussion, and on motion duly made and seconded, the Committee referred Judge Cappiello's July 8, 2008 email to the subcommittee for consideration.

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

Relative to juror orientation, Chief Justice Lynn's June 9, 2008 letter was referred to Mr. Peck for inclusion into the uniform rules.

Relative to amendments to miscellaneous temporary rules, following a brief discussion, and on motion duly made and seconded, the Committee voted to send amendments to Supreme Court Rules 8(1), 9(1), 10(1)(a), 11(2)(j), 15, 16(2), 26, 37(9)(d), 42(2), 42(5)(e), 49(I), 59 and transcript order form contained in Supreme Court Rule 7 Notice of Discretionary Appeal form and Supreme Court Rule 7 Notice of Mandatory Appeal form; Superior Court Rules 71 and 80; District Court Rules 1.19 and 4.27; Probate Court Rules 78-A and 80 and

Family Division Rules 1.11 and 1.12 to the Committee's December public hearing to determine whether they should be adopted on a permanent basis.

Relative to amendments to Supreme Court Rule 55 pertaining to public protection fund, following discussion and on motion duly made and seconded, the Committee voted to send said rule to the Committee's December public hearing agenda.

Relative to Superior Court Rule 170 pertaining to alternative dispute resolution, following a brief discussion, the Committee agreed to defer action on this rule until its next meeting.

The Committee scheduled its 2009 meetings as follows: March 4, June 3, September 9 and December 9. All meetings will take place at the Supreme Court beginning at 12:00 p.m.

No further business to come before the Committee, the meeting was adjourned at 1:40 p.m.