

NEW HAMPSHIRE SUPREME COURT  
ADVISORY COMMITTEE ON RULES

Minutes of Meeting of September 9, 2009

Supreme Court Conference Room  
Frank Rowe Kenison Supreme Court Building  
One Charles Doe Drive  
Concord, NH 03301

The meeting was called to order at noon by Justice Carol Ann Conboy, Committee Chair. The following committee members were present: Gina B. Apicelli; William F. J. Ardinger, Esq.; Edda Cantor; Robert L. Chase; Hon. R. Laurence Cullen; Hon. Richard A. Hampe; Martin P. Honigberg, Esq.; Hon. Diane Nicolosi; Emily G. Rice, Esq.; Jennifer L. Parent, Esq.; Raymond W. Taylor, Esq.; and, Hon. Carol Ann Conboy. Also present were: David S. Peck, Esq., Secretary to the Committee; and Irene Dalbec, Assistant to Justice Conboy.

The Committee addressed the agenda items as follows:

1. Approval of Minutes

Upon motion made and seconded, it was unanimously voted to approve the minutes of the Committee's June 3, 2009 meeting.

2. Action Taken Since Last Meeting

Attorney Peck reported that the Committee's annual report was accepted by the Supreme Court, and posted for public comment.

3. Status of Pending Items

(a) Rules of Civil Procedure, Criminal Procedure, and Probate Administration

With regard to the proposed Rules of Civil Procedure, Attorney Taylor reported that the Superior Court rules have been completed but will need to be reviewed once the District and Probate rules have been completed. Judge Hampe reported that draft Probate rules should be completed by the Committee's December 2009 meeting. Judge Cullen reported that draft District Court rules should be completed by the Committee's December 2009 meeting.

With regard to the proposed Rules of Criminal Procedure, the Committee agreed that the consolidated format was more desirable than separate rules for the Superior and District Courts. Attorney Taylor stated that he hoped to have the draft completed by the Committee's December 2009 meeting.

The Committee agreed that the goal is to have all the proposed rules ready to be posted for public comment following the Committee's March 2010 meeting, with an eventual effective date of July 1, 2011. This timetable will allow for the submission of any legislation which may be necessary.

- (b) 2007-25, Rules of Professional Conduct, Rule 8.5(c) pertaining to application of rules to nonlawyer representatives.

With regard to the issue raised by letter from Mr. Michael Brauer relating to police prosecutors, the Committee agreed with Judge Cullen's recommendation that he initiate the collection of data to determine whether a rule change is necessary. He will report back at the next meeting.

- (c) 2008-013, Judicial Conduct Committee Procedures

Judge Nicolosi reported that the subcommittee chaired by Attorney Russell Hilliard is working on a review of the procedures.

- (d) 2007-001, Superior Court Rule 170 pertaining to Alternative Dispute Resolution.

After discussion, and upon motion made and seconded, the Committee voted unanimously to reconsider its vote taken at its June 2009 meeting to place the amendments to Superior Court rules 170 and 170-A, as contained in Appendix B of the minutes, on the agenda for the December 2009 public hearing. Following a second motion made and seconded, the Committee voted unanimously to not place said amendments on that agenda. The Committee concluded that it is desirable to allow more time for assessment of the current temporary rules. In connection with that assessment, it was also suggested that the subcommittee charged with this task wait for at least another three months before circulating a survey.

- (e) Family Division Rules.

With regard to written comment from CASA suggesting a possible amendment to Family Division Rule 1.14, Gina Apicelli reported that CASA has withdrawn its request that the rule be amended. She stated

that CASA is satisfied that its concerns are addressed by the February 2008 Memorandum of Understanding between CASA and the N.H. Guardian ad Litem Board.

(f) 2008-023, Probate Court Procedures.

Judge Hampe will report at the next meeting regarding the “best practices” suggestions from HALT.

(g) 2009-005, Supreme Court Rule 37(3)(b) pertaining to PCC quorum.

After extended discussion, and upon motions made and seconded, the Committee voted unanimously (with abstention by Attorney Honigberg and Attorney Parent as to both motions) not to recommend the two rule revisions suggested by the Professional Conduct Committee pertaining to votes by less than a quorum and participation by members telephonically or electronically.

4. New Items

(a) 2009-008, Comments to Code of Judicial Conduct Rule 2.2.

Chief Justice Broderick’s email shall be considered as comment on proposed amendments to the Code of Judicial Conduct, which will be on the agenda of the Committee’s December 2009 public hearing.

(b) 2009-009, Superior Court Rule 57-A pertaining to custody and return of documents and materials filed in camera in trial courts.

The Committee agreed that Attorney Taylor’s proposed rule be referred to the Administrative Council for consideration and comment by the administrative judges of each court. Attorney Peck is requested to prepare a memorandum to the Council.

(c) 2009-010, District Court rule 2.5A pertaining to plea by mail.

The Committee agreed that the rule change suggested by Patrick Ryan, District Court Administrator, be put on the public hearing agenda for December 2009.

(d) 2009-011, Superior Court rule 78-B pertaining to duplication of audio tapes.

The Committee agreed that Attorney Peck should coordinate with Judge Lynn and Judge Kelly as to Judge Lynn’s minor revision to the

proposed amendment, and that their agreed upon language be placed on the agenda for the December 2009 public hearing.

- (e) 2009-012, District Court Rule 1.9(D), Probate Court Rule 40, Family Division Rule 1.25(G) pertaining to subpoena notice.

On motion made and seconded, the Committee voted unanimously to place these proposed amendments on the agenda for the December 2009 public hearing.

5. Next Meeting

The next meeting is scheduled for December 9, 2009 at 12:00 p.m., with public hearing scheduled for the same date at 1:00 p.m.

6 Meeting Schedule for 2010

It was agreed that the 2010 meetings will occur on the following dates: March 10, June 9 (along with a public hearing), September 8, and December 8.

The meeting was adjourned at 2:00 p.m.