

RULE 51. RULE-MAKING PROCEDURES

Amendment recommended by Subcommittee

1. Scope and Purpose. These procedures are adopted to aid the Supreme Court in discharging its rulemaking responsibilities in the areas of procedure in all courts and shall apply to all amendments or additions to such rules. The purpose of court rules is to provide necessary governance of court procedure and practice and to promote justice by ensuring a fair and expeditious process. In discharging its rulemaking responsibility, the New Hampshire Supreme Court seeks to ensure:

- (a) Minimal disruption to court practice by limiting the frequency of rule changes;
- (b) Rules are regularly reviewed to consider **and reflect** current developments, needs, and changes;
- (c) Adoption and amendment of rules proceed in an orderly, **transparent and uniform manner**;
- (d) The public, the bench and the bar receive notice and an opportunity to comment on proposed rule suggestions;
- (e) Adequate notice of adoption, effective date and **revisions** to the rules;
- (f) The rules are clear, definite in application and consistent with each other.

2. Definitions.

(a) "Advisory Committee on Rules" is the Committee established by this rule to assist the Supreme Court in discharging its rulemaking responsibilities.

(b) "Rule suggestion" is a suggestion for a rule change or a new rule that has been submitted to the Chair of the Advisory Committee on Rules **for consideration by the Committee.**

(c) "Proposed rule" is a new rule or rule amendment that the Committee has recommended to the Court and which the Court has ordered published for comment or hearing before the Committee or the Court.

3. The Advisory Committee on Rules

(a) *Membership.* The Committee shall be composed of seventeen members as follows:

(1) One active or retired judge of the Supreme Court shall be appointed by the Supreme Court and shall serve as the Chair of the Committee;

(2) One active or retired judge of the Superior Court shall be appointed by the Supreme Court;

(3) Two active or retired judges from the Circuit Court shall be appointed by the Supreme Court;

(4) Two attorneys shall be appointed by the Supreme Court.

(5) Three laypersons shall be appointed by the Supreme Court.

(6) One member shall be appointed by the Governor.

(7) The president of the senate, or the president's designee.

(8) The speaker of the house, or the speaker's designee.

(9) One clerk or court administrator from the Superior Court shall be appointed by the Supreme Court.

(10) One clerk or court administrator from the Circuit Court shall be appointed by the Supreme Court.

(11) One member of the New Hampshire Bar Association Board of Governors and one member of the Committee on Cooperation with the Courts shall be designated by the president of the New Hampshire Bar Association.

(12) The General Counsel of the Attorney Discipline Office or his or her designee.

(b) Members, except for the member appointed by the Governor and the designees of the Senate President and Speaker of the House, shall serve three year terms, and shall be limited to a maximum of three full terms. Initial appointments shall be for staggered terms: one third of the members for three years; one third of the members for two years and one third of the members for one year. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor.

(c) The terms of the Governor's appointee, and of the Speaker of the House and the President of the Senate or their designees shall be coterminous with their terms of office.

(d) A vacancy on the committee shall occur:

(1) When a member has served three full terms;

(2) When a member ceases to be a member by resignation or otherwise;

(3) When a clerk or administrator ceases to hold the office which he or she held at the time of appointment;

- (4) When a lawyer ceases to be admitted to practice in the courts of this state or is appointed to judicial office;
- (5) When a layperson becomes a lawyer or a judge;
- (6) When a New Hampshire Bar Association Board of Governors member ceases to be a member of the Board of Governors or when the Committee on Cooperation with the Courts representative ceases to be a member of the Committee on Cooperation with the Courts.

(e) Members appointed by the Governor and the president of the New Hampshire Bar Association shall serve at the pleasure of the appointing authority.

(f) The Secretary of the Committee shall be the Clerk of the Supreme Court or any other person designated by the Supreme Court.

(g) *Responsibilities.* The Committee shall have the following responsibilities:

- (1) To receive and assess all rule suggestions and proposed rules referred by the Chair of the Committee;

- (2) To hold at least two public meetings per year and provide sufficient notice of any proposed rules or rule amendments being considered by the Committee at its public meetings;

- (3) To receive and review all comments submitted to the Committee on a rule suggestion or proposed rule;

- (4) To consider the entire body of rules for which it is responsible by periodically reviewing each separate set of rules;

- (5) In furtherance of its responsibilities to assess suggested rules and rule amendments and to periodically review each separate set of rules, the Committee may appoint subcommittees, which may include non-members of the Committee, which shall report their findings to the full Committee;

- (6) To include in any submission to the Court a report of any written comments received by the Committee from the courts, judges, bar or the public;

(7) To retain for a minimum of six years, as matters of public record, all rule suggestions, proposed rules, and all Committee reports, agendas, minutes and notices of public hearing;

(8) To maintain a **public** webpage on the judicial branch website.

(h) *February 1 and August 1 Reports to the Court.*

(1) On or before February 1 and on or before August 1 of each year, the Committee shall **file with the Clerk of the Supreme Court** a report of any proposed rules, rule suggestions, or a report indicating that the Committee has determined that no changes are necessary during the reporting period.

(2) Each report shall include a summary of the Committee's reasons for the proposed rule and rule suggestions.

(3) For each proposed rule or rule suggestion, the Committee shall advise the Clerk of the Supreme Court whether it recommends a hearing before the full Court.

4. Initiation of Rules Change by Rule Suggestion.

(a) Any party may submit to the Supreme Court a suggestion to adopt, amend or repeal a court rule. The proponent of the suggestion shall submit the suggestion to the Secretary of the Committee and the submission should include the following, to the extent possible:

(1) The text to be adopted, amended or repealed. If the suggestion is to amend an existing rule, the text of the existing rule should be included. The proponent should indicate text to be deleted with a ~~strike through~~, and **[bold and brackets]** should be used to indicate any suggestion to add text; and

(2) A letter or cover sheet providing the following information:

(i) *Name of Proponent*: the name of the person or group suggesting the rule change and the proponent's mailing address, telephone number and email address;

(ii) *Purpose*: the reason or necessity for the suggested rule, including whether it creates or resolves any conflicts with statutes, case law, or other court rules;

(iii) *Expedited Consideration*: whether the proponent believes that exceptional circumstances justify expedited consideration of the suggested rule;

(iv) *Hearing*: Whether the proponent requests a hearing before the Committee regarding the suggested rule.

(b) The Chair shall review the suggestion to determine whether it is clearly stated and provides sufficient information. If the Chair determines that a rule suggestion is unclear or is otherwise insufficient, the Chair may accept the suggestion notwithstanding its noncompliance; or ask the proponent to submit additional information.

(c) If the Chair accepts the rule suggestion, he or she shall direct the Secretary to add the suggestion to the agenda of the next meeting of the Committee. If the proponent of a rule suggestion accepted by the Chair has requested a hearing, the Secretary shall add the suggestion to the next public hearing of the Committee.

5. Court Consideration of Recommended Rules Changes.

(a) Upon receipt of a report from the Committee, the Clerk of the Supreme Court shall distribute copies of any proposed rule suggestion as well as any subcommittee or secretary reports pertaining to such proposed rules or rule suggestions, together with an invitation for comments, as follows:

- (1) Copies to the New Hampshire Bar Association and such publications as the Court deems appropriate;
- (2) Copies to such other persons and places as the Chief Justice may direct.

(b) At the Court's discretion, and prior to public comment, the invitation may call for comment on the proposed rules or rule suggestions to be filed with the **Secretary of the Committee**. Unless the Court determines that a shorter period is necessary, a period of at least 30 days shall be allowed for comment. All comments shall be available for public review.

(c) The Court may hold a hearing on a proposed rule at a time and in a manner specified by the Court. The Court may designate one or more justices to conduct the hearing.

6. Special Cases.

(a) The Chair may, as set forth in paragraph IV(3)(A), refer a rule suggestion directly to the Court, rather than to the Committee.

(b) If the Chair, upon review of a proposed rule or rule suggestion, concludes that the proposed rule or rule suggestion is technical, or would implement a change required by statute that permits no discretion in the drafting of the language of the rule or rule amendment, the Chair may submit the proposed rule or rule suggestion directly to the Court with a recommendation that it be adopted on a permanent basis without further notice or opportunity for public comment.

(c) If the Chair, upon review of a proposed rule or rule suggestion, concludes that exceptional circumstances justify expedited consideration of the suggestion, the Chair may submit the suggested rule or rule amendment directly to the Court.

(1) The submission shall include the basis for Chair's conclusion that the Court should take immediate action on the request.

(2) If the Court agrees that circumstances justify expedited consideration of the proposed rule or rule suggestion, the Court shall afford such notice and opportunity for comment and hearing as may be practicable. The Court shall post to the judicial branch website and distribute the proposed rule or rule suggestion, together with an invitation for comments, as follows:

- (i) Copies to the New Hampshire Bar News;
- (ii) Copies to members of the Advisory Committee on Rules; and
- (iii) Copies to such other persons and places as the Chief Justice may direct.

(d) All comments on the proposed rule or rule suggestion shall be submitted in writing to the Supreme Court by the deadline specified by the Court. All comments shall be available for public review.

7. Final Action by the Supreme Court, Publication and Effective Date

(a) After considering any comments or written or oral testimony received regarding a proposed rule or rule suggestion, the Court may adopt, amend or reject the proposed rule or rule suggestion or take such other action as the Court deems appropriate.

(b) The effective date of all new rules or amendments shall be as ordered by the Court.

(c) The adopted rules shall be posted on the **Court's website** and an announcement of such publication shall be made in the New Hampshire Bar News.