

Comment on Proposed Changes to Rule 51
By Andre Bisasor

Honorable Patrick E. Donovan, Chair
Advisory Committee on Rules
New Hampshire Supreme Court
1 Charles Doe Drive
Concord, NH 03301

Dear Rules Committee (hereinafter “Committee”):

Enclosed are my comments¹ regarding proposed changes to NH Supreme Court Rules 51, which govern the advisory committee on rules and the rule-making policies of the NH supreme court.

Objection to Certain Proposed Changes to Rule 51

1. Proposal #2022-013 proposes several changes to NH Supreme Court Rule 51(hereinafter “Rule 51”).
2. Two documents are included in proposal 2022-013
 - a. The first document is dated 10-18-22. This document outlines the actual changes to Rule 51 with proposed language and strikethroughs.
 - b. The second document is dated 11-30-22. This contains a summary of the proposed changes outlined in the 10-18-22 document. This document was dated as of only a week or so ago. NB: Evidently, no one in the public would have known of this until after a week ago and one would have to be frequently checking the rules committee webpage, such as on every day, to even know that this was an item on the agenda for this meeting.
 - c. The agenda for this meeting was evidently published on 10-26-22 (according to the public hearing notice. Presumably this item was not contained in it, since the explanatory second document is dated 11-30-22. The agenda now posted on the website must have been an updated agenda, modified recently.
 - d. NB: The updating of the agenda was also done again yesterday where a new item (C) was placed under new business. See screenshot below of new version on webpage.

¹ NB: As a brief introduction, it should be noted that I have a background in business/management/organizational consulting including process improvement and strategy development for organizations (including as well two advanced/graduate degrees in the areas of business/management and also further postgraduate credentials in management). There are others, like me, who are involved with the courts that can also provide valuable expertise or input. Input or participation should not be from persons that are all lawyers. In fact, there should be an effort (or a more concrete effort) by the committee to seek out those who are not lawyers who can bring a different perspective and lens to such matters. In many instances, there are process implications for these proposals that may not be contemplated in any actual rules proposal. I have a concern that there are blindspots that are not being addressed. By allowing for a more broad-based vetting process, it will allow more opportunity for such blindspots to be uncovered. It would behoove the committee to avail itself more of such input from the public, and not just members of the NH bar, including from those who have expertise in organizational issues/process blueprinting issues such as myself or others with such background and education, among others as well. I also have additional background in Christian ministry and education in theology, hermeneutics, literary analysis, linguistics, as well as professional background and training in negotiation, conflict resolution and alternative dispute resolution, in which field I was a pioneer of ground-breaking academic programming in negotiation theory and practice in an Ivy League context including but not limited to the application/intersection of negotiation theory and practice to/with race & minority issues. I am also a civil rights advocate that promotes and teaches negotiation as an empowerment tool for minorities and for under-resourced urban youth. I also have some limited experience with both the NH supreme court (and some of its committees such as the ADO and PCC) as well as with NH superior court, both as a self-represented litigant and as a non-lawyer representative for others.

3. NEW BUSINESS

(A) 2022-013 Supreme Court Rule 51

(B) 2022-014 Voluntary Corporations Formed for the Purpose of Providing Professional Legal Services to the Poor (RSA 292:1-a)

(C) Justice Donovan will provide an update on the Court action taken on rule amendments recommended by the Committee

4. PROPOSED 2023 MEETING DATES

Friday, March 10, 2023

Friday, June 2, 2023

Friday, September 15, 2023

Friday, December 8, 2023

- e. The prior version, as of 12-7-22 did not have (C) on it. See screenshot below of prior version on webpage.

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- f. This means that there was an update to the agenda without there being any indication that there was an update.
- g. In other instances, in the past, any updates were posted in a separate supplement (i.e., see agenda items posted for the 6-3-22 meeting).
3. The second document dated 11-30-22 contains the following summary of the proposed changes outlined in the 10-18-22 document.
- “The proposed amendments to Supreme Court Rule 51 are intended to remove redundant and unnecessary language in an effort to clarify and streamline the Court’s rulemaking and amendment process. For example, language in Rule 51(d)(2)(B) has been stricken because it imposes obligations that appear to be beyond the Committee’s mission or capacity. Because proposed rule amendments are posted on the Judicial Branch website, the Advisory Committee should not be tasked with the obligation to “identify, and solicit comment from, those who are likely to be most affected by, or interested in a suggested rule or rule amendment.” Posting the proposed amendments and invitations for comment on the website ensures that members of the bar and public will be notified as to any proposed rule or rule amendment and that the rulemaking process remains transparent. In addition, the formality of distributing copies of proposed rules or rule amendments together with an invitation for comments to legislative leaders is unnecessary given that members of the legislature are, and will remain, standing members of the Advisory Committee. Regardless, members of the committee cannot recall receiving comments from these parties in recent memory. Accordingly, the proposed amendment seeks to reduce the administrative resources needed to comply with the current mandate. Finally, the proposed amendments enhance the current rule docketing process employed by the Court for seeking and accepting comments on the Court’s website.”
4. There are several problems or issues with these proposed changes, in particular the change that involves the following portion: “*For example, language in Rule 51(d)(2)(B) has been stricken because it imposes obligations that appear to be beyond the Committee’s mission or capacity. Because proposed rule amendments are posted on the Judicial Branch website, the Advisory Committee should not be tasked with the obligation to “identify, and solicit comment from, those who*

are likely to be most affected by, or interested in a suggested rule or rule amendment.” Posting the proposed amendments and invitations for comment on the website ensures that members of the bar and public will be notified as to any proposed rule or rule amendment and that the rulemaking process remains transparent”.

5. First, simply posting information on the rules committee webpage is not adequate notice to the public. Most of the regular public are not aware of this webpage [NB: This is not even its own website, but it is a webpage buried several levels within the large judicial branch website]. I say this from experience because neither my wife nor myself knew of this webpage until only recently and which was only discovered by me while I was conducting research on google trying to find something else, and a docket material link to proposal 2022-001, buried within the committee docket material subpage of the webpage, came up as one out of several thousand hits on google. This discovery was only by accident and random. I am not a typical member of the public. Although I am not a lawyer, I am highly educated, and I am intensely involved in more than one appeals in NH supreme court and more than one NH superior court litigation, either as a self-represented litigant and/or as a non-lawyer representative for my family, starting in or around 2017 to the present. This includes one NH circuit court matter and three NH superior court cases as well as the two ADO complaints and about 5 or 6 appeals to the NH supreme court (which were either initiated by myself or my wife or initiated by other opposing parties). I try my best to pay attention to matters that are relevant to the legal matters that I am involved in and to keep up to date on such matters. Yet despite those active efforts by me, I had have never heard of this webpage before for the past 5 plus years until around June of this year. I was never told by anyone about this webpage. I have never seen any advertising or promotion or announcement of this webpage anywhere before, including on the public bulletin boards in NH courts for public information or announcements. It would have been almost impossible for me to have discovered this webpage on my own, except that I recently just happened to be doing some intense legal research on the internet and combing through several hundred random hits regarding another topic that I was researching. It is safe to say that the majority of the public would not be able to discover this webpage randomly and by accident in the way that I did. It would be unfair to the public to rely primarily on this buried webpage as a way to inform the public of any announcements or hearings of the rules committee.
6. Second, the practice of emailing announcements to the NH bar email list is not adequate either. The NH bar is only comprised of lawyers². This by no means represents the larger public, who will be affected by these rule changes. As you know, there are a growing number of self-represented litigants involved in NH courts and this would not reach any of them.
7. There is no other promotion or announcement made by the rules committee.
8. At the very least, Rule 51(d)(2)(B) allows for a process for ensuring that, at a minimum, parties most affected by a proposal can be identified and contacted.
9. This task should not be burdensome to the committee. This is part of the solemn responsibility of the committee. Moreover, to make things more efficient, a person on the committee, such as the secretary, could be designated with overseeing or accomplishing that task. Alternatively, a working group of more than one committee member could be assigned on a rotating basis, from time to time, to focus on this task. Similarly, to further makes easier, the drafters of rule proposals (who submit proposals to the committee) could be required to include, as part of any proposal, a list of potential affected parties, to assist the

² It should also be noted that I am not a member of the NH bar. It appears that the only means by which the committee announces a meeting to the public is via the NH bar members email list (other than its webpage). But the public is larger than the NH bar email list. So, for example, there is no way I would have known about the March 2022 meeting where 2022-001 proposal was first presented. Similarly, I could not have otherwise known about the 6-3-22 meeting or that the 2022-001 rule change proposal would be discussed at that 6-3-22 meeting. I only discovered that there was a hearing, after inquiring with the NHSC clerk about a related issue, who then directed me to the committee’s secretary, who then eventually emailed me on the late evening of 6-2-22 to inform me of a committee meeting the very next day of 6-3-22 at 12.30pm. I then promptly made a request for reasonable accommodation early the next morning at about 6.43am on 6-3-22, which allowed several hours of time to accommodate my request to attend by phone for the 12.30pm meeting, but I was denied. It should be noted that, pursuant to Rule 51, also I should have been contacted directly by the committee prior to the meeting, given that there were two documents included in the #2022-001 proposal that referenced my very name as an impacted party, but I was not so contacted. This resulted in the proposal being voted on and approved without my public input, comment or participation.

committee in identifying such parties as maybe relevant or necessary. Thus, there are several ways to streamline this responsibility to make it more efficient and easier to accomplish. It does not need to be stricken. It should not be stricken.

10. Otherwise, by removing this requirement, it would effectively consign the provision of input on rule changes to a very elite group of people.
11. I get that there could be the inclination to want to limit public participation in order to control how things proceed in the committee hearings. Wanting to control such a thing is understandable. But to do so in a way that limits those who can provide public input does equate with public accountability and is not in the interest of transparency nor for the benefit of the public and the taxpayer.
12. I realize that the folks that are in control of these matters could feel as though they can or should be able to do whatever they want to do and do not care much for what the little guy from the public, like me, has to say. But it is then better to simply come out and say that these things are not subject to public accountability and that no input is needed from the public, and let it be clear that these things are intended to be controlled by an elite or select few and chosen, who wield power and authority over the rest of us, as de facto overlords who are sovereign and are above public accountability, rather pay lip service to the concept or idea or principle of public accountability or give pretense to it, but never really intend to allow the public, to really be involved.
13. This lip service is evidenced by the fact that Rule 51 was and is not being followed, thus violating this rule. And now to add fuel to the fire, now comes this proposal out of nowhere seeking to remove the requirement.
14. The only attempt to reach the public is by NH bar email (which the public is not a part of as only NH lawyers are on that list) and a webpage (that the public does not know about). On information and belief, there is no other promotion of the rules committee webpage or any public attempt to inform the public about this public accountability mechanism of the court rules and court processes (which affects or has the potential to affect every member of the public). It is not posted in the various trial courts for the average Joe to read.
15. In particular, Rule 51 was not followed with respect to my wife and me. No one from the committee contacted me or my spouse as directly impacted parties (where it was clear we were affected parties because our names were noted in the documents attached to the #2022-001 proposal), in violation of Rule 51 (2) which states: "The Advisory Committee on Rules shall have the following responsibilities: (A) To receive and assess all suggested rule and rule amendments referred by the Chair of the Committee; (B) To identify, and solicit comment from, those who are likely to be most affected by, or interested in, a suggested rule or rule amendment".
16. The rules committee webpage states:

To provide for input from the public, as well as the bench and bar, the Supreme Court has established a seventeen-person Advisory Committee on Rules and has adopted procedures for amending or adding to rules in all the New Hampshire courts.
17. Rule 51 states the following:
 - (2) Responsibilities. The Advisory Committee on Rules shall have the following responsibilities:
 - (B) To identify, and solicit comment from, those who are likely to be most affected by, or interested in, a suggested rule or rule amendment;
 - (D) To hold public hearings to receive comment from any member of the public, bench or the bar on the suggested rule and rule amendments when the Committee believes it is appropriate to obtain additional information beyond the input it received from interested persons pursuant to subsection (d)(2)(B);
18. Both of the above references place emphasis on the importance of public input and public comment. By keeping Rule (d)(2)(B), it comports with both the spirit and letter of Rule 51. Moreover, Rule (d)(2)(B) was placed there originally for a distinct and critical purpose. Removing it now would be violative of that critically important purpose and intent.

Request for Public Comment on Proposed Changes to Rule 51

19. I would like to request that I be allowed to make brief comments at the end of this hearing after the new business part of the agenda is concluded. In most public hearings, there is typically an open comment from the public section that is facilitated at the very end. This would be of no harm to the process.
20. While I was finalizing arrangements for remote attendance at this hearing, it came to my attention yesterday afternoon, by Ms. Maryann Dempsey, the ADA coordinator, that there will be not be allowed any public comment on proposal changes to Rule 51 (#2022-013), which is under the new business part of the agenda.
21. I am not certain why, since I am attending this hearing by phone, I should not be able to make a public comment on this proposal. This meeting is one of only two public hearing meetings (out of 4 meeting total per year), where the public will be allowed any comment at all, with the next public hearing with public comment occurring in June of next year (which is 7 months from now).
22. Even though the Rule 51 matter is under new business, it has evidently been part of a new subcommittee and attendant deliberations thereof, without any public notice that such a subcommittee was formed and working on the subject at hand (which seems strange). It is also strange that it is not clear that the author of the proposal is not made clear unless it is implied that the author is the committee chair along with the other two members of the subcommittee.
23. NB: There was no announcement at the last meeting in September 2022 about any such proposal or any such formation of a subcommittee (which includes Justice Donovan, and two others).
24. Given the limited opportunities for the public to make comments at only two meetings per year, it should be allowed to make comment if a member of the public has indicated that they so desire.
25. I am not requesting to participate in the discussion between members of the committee. But simply at the end of the new business part of the meeting, I am requesting to be allowed to make some brief initial comments for consideration on the Rule 51 matter. There is nothing in the rules that prohibit this. Moreover, there is nothing in Rule 51 that prohibits public comment on the new business part of the agenda at a public hearing meeting of the rules committee. Similarly, it is my understanding, in reviewing past meeting minutes of the committee, that public comment has been made at the end of a public hearing meeting, inclusive of new business.
26. Moreover, since there is no other opportunity for comment until June 2023, and since there will be another meeting before that in March 2023, then it is possible that the committee could vote on the proposal in the next meeting in March 2023, without any public comment at a hearing.
27. NB: Similarly, once the proposal is docketed and presented as new business at any hearing, the matter could then be fast-tracked to the NH supreme court before any chance of public comment at a hearing of the rules committee.
28. These scenarios could serve as tactical obstacles to allowing public input and comment on certain proposals that are less popular or that are likely to draw opposition from certain members of the public such as myself.
29. This could allow for any meaningful or timely public comment to be circumvented altogether.
30. This is what kind of happened with proposal 2022-001 which was pushed through and ruled on with lightning speed and without allowing any public comment in a prior hearing before setting it to a vote by the committee.
31. Moreover, these scenarios could allow for tactical game-rigging to avoid public comment from people like me.
32. To be clear, I have the distinct impression that my comments are not welcome at this committee, especially from the chair. This prohibition of my commenting on Rule 51 further feeds that impression.
33. Similarly, the following further feeds this impression.
 - a. This proposed rule change seems to have been triggered by my complaints raised previously wherein I have stated that:

“no one from the committee contacted me or my spouse as directly impacted parties (where it was clear we were affected parties because our names were noted in the documents attached to the #2022-001 proposal), in violation of Rule 51 (2) which states: “The Advisory Committee

on Rules shall have the following responsibilities: (A) To receive and assess all suggested rule and rule amendments referred by the Chair of the Committee; (B) To identify, and solicit comment from, those who are likely to be most affected by, or interested in, a suggested rule or rule amendment”.

- b. Similarly, I raised complaints³ in several filings in other appeals regarding this issue, including in or around July 2022 as well as in or around October 2022.
 - c. For example, in an email to the committee and the committee chair, on July 9, 2022, I stated:

“This is also to formally inform this committee that I believe that I have been discriminated against by this committee or its representatives or assigns. I was blocked from attending the June 3, 2022 committee hearing and my request for accommodation was unreasonably denied. I have also been treated dismissively by the committee and/or its representatives and I believe that I have not been treated with the respect, dignity and due regard as others have been treated by the committee and that I was intentionally prevented from or cut out of receiving notice about the proposal 2022-001 and/or the June 3, 2022 hearing even though my name was directly mentioned in the proposal documents for 2022-001 and **even though NH Supreme Court Rule 51 explicitly requires that an active attempt be made to identify and inform those persons or members of the public that may or would be affected by the proposal.** This seems to suggest that an active attempt to push through rule changes that may affect current litigation before the NH supreme court and to possibly the influence the outcome thereof. Both proposal 2022-001 and proposal 2022-003 may affect current litigation before the NH supreme court and these proposal were made by parties who are party to such litigation before the NH supreme court. It would be manifestly unfair to allow such proposals to be granted and rules changes to be adopted without hearing from me or other directly affected persons. This is especially the case where questions of law are at the center of such supreme court litigation which is the case in this instance. This smacks of game-rigging.”
 - d. Then suddenly on 10-18-22, evidently a subcommittee report was drafted and subsequently posted to the webpage, seeking to remove from Rule 51 the requirement that an active attempt be made to identify and inform those persons or members of the public that may or would be affected by rule proposals submitted or made to the committee.
 - e. It can be deduced that the reason for this is due to my complaints or were triggered because of my complaints.
34. The bottom line is that I understand that I am being prevented from giving public comment on proposed changes to Rule 51. The changes affect me. This rule 51, in particular Rule d(2)(B), and non-adherence to it, has affected me on proposal #2022-001. This was to my harm and injury. This change would only further harm me and others like me. The ADO engaged in surreptitious gamesmanship by drafting/submitting a rules change proposal to the committee, in particular 2022-001, without informing me or my wife. It is a clear fact that my wife and myself were affected parties for that proposal, but we were not contacted, which led to our harm and injury.

Thank you for your consideration.

Sincerely,

/s/Andre Bisasor

Andre Bisasor

679 Washington Street #8-206

Attleboro MA 02703

Dated: December 9, 2022

³ It should also be noted that, in July 2022, I also filed a federal lawsuit against defendants including the rules committee and its chair wherein this issue was also raised. A federal judge has issued an order indicating the plausibility of my claims subject to further information and response by the defendants. See Anderson et al v. Donovan et al, Civil No. 22-cv-264 in NH federal district court.