



**THE STATE OF NEW HAMPSHIRE  
SUPREME COURT  
ADVISORY COMMITTEE ON RULES**

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Loretta S. Platt, Secretary

January 3, 2021

Timothy A. Gudas  
Clerk of Court  
New Hampshire Supreme Court  
One Charles Doe Drive  
Concord, NH 03301

Dear Clerk Gudas:

Supreme Court Rule 51 requires the Supreme Court Advisory Committee on Rules (Committee) to submit to the Court, on or before February 1 and August 1 of each year, "a report of any proposed rules or amendments." Rule 51(d)(3). Pursuant to that rule, I hereby submit on behalf of the Committee the report that is due on or before February 1, 2021.

The Committee held a public hearing and meeting on September 11, 2020 and a public hearing and meeting on December 18, 2020. As discussed below, the Committee voted to recommend adoption of a proposed amendment to Supreme Court Rule 42(XI)(f), and to recommend repeal of or amendments to a number of court rules, all as technical amendments.

Although not required to do so by the plain language of Supreme Court Rule 51, I am also including in this report those proposals considered by the Committee in 2020 that the Committee voted not to recommend. The Committee voted not to recommend adoption of proposals to amend Supreme

Court Rule 24, Supreme Court Rule 42(IV)(a)(3), and New Hampshire Rule of Criminal Procedure 12.

The Committee did not recommend that the Supreme Court hold a public hearing on any of the proposed rule amendments included in this submission.

## I. Proposed Amendments Recommended for Adoption

### A. Supreme Court Rule 42(XI)(f) – Admission to the Bar on Motion

2020-002. At its March 6, 2020 meeting, the Committee discussed this proposal to amend Supreme Court Rule 42(XI)(f), submitted by Sherry Hieber, which would eliminate the provision that prohibits applicants who have failed the bar examination four times from being eligible for admission by motion without examination. Upon motion made and seconded, it was voted to put the proposed amendment out for public comment and hearing. The Committee held a public hearing on this proposal on September 11, 2020. The Committee received no written comments from the bench, bar, or public on the proposal, and no one appeared at the public hearing.

Following the public hearing, the Committee was informed that the Board of Bar Examiners supports adoption of the amendment. Thereafter, the Committee voted to recommend that the Court adopt the proposed amendment as set forth in Appendix A.

### B. Technical Amendments

#### 1. Superior Court Administrative Rule 6-3 – Uniform Act on Paternity

2020-005. At its September 11, 2020 meeting, the Committee considered this proposal to repeal Superior Court Administrative Rule 6-3, regarding the Uniform Act on Paternity, submitted by Attorney David Peck. The Committee voted to create a subcommittee to review, among other things, this proposal. The subcommittee recommended to the full Committee at its December 18, 2020 meeting that this proposal be deemed a technical change that may be submitted directly to the Court. See Sup. Ct. R. 51(c)(3). The Committee agreed this proposal was a technical change and to submit it to the court as set forth in Appendix B.

#### 2. Superior Court Administrative Rules 7-1 to 7-5 – Marital and Divorce Proceedings

2020-005. At its September 11, 2020 meeting, the Committee considered this proposal to repeal Superior Court Administrative Rules 7-1 to 7-5, regarding marital and divorce proceedings, submitted by Attorney David Peck. The Committee voted to create a subcommittee to review, among other things, this proposal. The subcommittee recommended to the full Committee at its December 18, 2020 meeting that this proposal be deemed a technical change that may be submitted directly to the Court. See Sup. Ct. R. 51(c)(3). The Committee agreed this proposal was a technical change and to submit it to the court as set forth in Appendix C.

### 3. Superior Court Administrative Rule 9-1 – Procedure Under Rule 13

2020-005. At its September 11, 2020 meeting, the Committee considered this proposal to repeal Superior Court Administrative Rule 9-1, regarding procedure under Rule 13, submitted by Attorney David Peck. The Committee voted to create a subcommittee to review, among other things, this proposal. The subcommittee recommended to the full Committee at its December 18, 2020 meeting that this proposal be deemed a technical change that may be submitted directly to the Court. See Sup. Ct. R. 51(c)(3). The Committee agreed this proposal was a technical change and to submit it to the court as set forth in Appendix D.

### 4. District Division Rule 1.8-A – Continuances and Postponements

2020-005. At its September 11, 2020 meeting, the Committee considered this proposal to amend the title of District Division Rule 1.8-A to add the phrase “and motions for recusal,” submitted by Attorney David Peck. The Committee voted to create a subcommittee to review, among other things, this proposal. The subcommittee recommended to the full Committee at its December 18, 2020 meeting that this proposal be deemed a technical change that may be submitted directly to the Court. See Sup. Ct. R. 51(c)(3). The Committee agreed this proposal was a technical change and to submit it to the court as set forth in Appendix E.

### 5. District Division Rule 3.11 - Motions (Applicable to Cases Filed On or After the Implementation of Electronic Filing in Civil Cases in the District Division)

2020-005. At its September 11, 2020 meeting, the Committee considered this proposal to amend the listing in the Table of Contents for District Division Rule 3.11 (Applicable to Cases Filed On or After the Implementation of Electronic Filing in Civil Cases in the District Division) to make it consistent with the heading of said Rule 3.11, submitted by Attorney David Peck. The

Committee voted to create a subcommittee to review, among other things, this proposal. The subcommittee recommended to the full Committee at its December 18, 2020 meeting that this proposal be deemed a technical change that may be submitted directly to the Court. See Sup. Ct. R. 51(c)(3). The Committee agreed this proposal was a technical change and to submit it to the court as set forth in Appendix F.

#### 6. District Division Rules 4.1 to 4.13 – Small Claims Actions

2020-005. At its September 11, 2020 meeting, the Committee considered this proposal, submitted by Attorney David Peck, to adopt District Division Rules 4.1 to 4.13 on a permanent basis. The Committee voted to create a subcommittee to review, among other things, this proposal. The subcommittee recommended to the full Committee at its December 18, 2020 meeting that this proposal be deemed a technical change that may be submitted directly to the Court. See Sup. Ct. R. 51(c)(3). The Committee agreed this proposal was a technical change and to submit it to the court as set forth in Appendix G.

#### 7. Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing 11 – Filing A Document that is Entirely Confidential

2020-005. At its September 11, 2020 meeting, the Committee considered this proposal to amend the Comment that follows Rule 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing to update citations in the Comment, submitted by Attorney David Peck. The Committee voted to create a subcommittee to review, among other things, this proposal. The subcommittee recommended to the full Committee at its December 18, 2020 meeting that this proposal be deemed a technical change that may be submitted directly to the Court. See Sup. Ct. R. 51(c)(3). The Committee agreed this proposal was a technical change and to submit it to the court as set forth in Appendix H.

#### 8. Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing 12 – Filing A Document Which Contains Confidential Information

2020-005. At its September 11, 2020 meeting, the Committee considered this proposal to amend the Comment that follows Rule 12 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing to update citations in the Comment, submitted by Attorney David Peck. The Committee voted to create a subcommittee to review, among other things, this proposal. The subcommittee recommended to the full Committee at its December 18, 2020 meeting that this proposal be deemed a technical change that may be

submitted directly to the Court. See Sup. Ct. R. 51(c)(3). The Committee agreed this proposal was a technical change and to submit it to the court as set forth in Appendix I.

## II. Proposed Amendments Not Recommended for Adoption

### A. Supreme Court Rule 24

2020-001. At its March 6, 2020 meeting, the Committee considered a submission regarding Supreme Court Rule 24, which governs the issuance of mandates. The submission did not contain specific language that was being proposed for amendment. The Committee voted to take no action upon the submission regarding Rule 24.

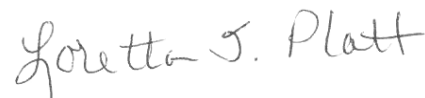
### B. Supreme Court Rule 42(IV)(a)(3)

2020-007. At its September 11, 2020 meeting, the Committee considered this proposal to amend Rule 42(IV)(a)(3) on a temporary basis so as to extend “diploma privilege” to applicants in 2020 to the New Hampshire bar, as set forth in Appendix J. The Committee voted not to recommend adoption of the proposed amendment (Attorney Albee abstained from the vote).

### C. New Hampshire Rule of Criminal Procedure 12

2020-009. At its December 18, 2020 meeting, the Committee considered this proposal to amend Rule 12 relative to the State’s disclosure obligation under Brady v. Maryland, 373 U.S. 83 (1963) and State v. Laurie, 139 N.H. 325 (1995), as set forth in Appendix K. The Committee voted not to recommend adoption of the proposed amendments.

Respectfully submitted,



Loretta S. Platt  
Secretary

## **APPENDIX A**

Amend Supreme Court Rule 42(XI)(f) as follows (proposed deletions are in strikethrough format):

(f) An applicant who has failed the New Hampshire bar examination within five years of the date of filing a motion for admission without examination shall not be eligible for admission by motion. ~~An applicant who is not permitted to retake the New Hampshire bar examination pursuant to Rule 42(VIII)(c) shall not be eligible for admission by motion.~~ An applicant who has resigned from the New Hampshire bar shall not be eligible for admission by motion, but may be eligible for readmission upon compliance with the requirements of Rule 37(15).

## **APPENDIX B**

Repeal Superior Court Administrative Rule 6-3 (Uniform Act on Paternity) in its entirety.

## **APPENDIX C**

Repeal Superior Court Administrative Rules 7-1 to 7-5 (Marital and Divorce Proceedings) in their entirety.



**APPENDIX D**

Repeal Superior Court Administrative Rule 9-1 (Procedure Under Rule 13) in its entirety.

## **APPENDIX E**

Amend the title of District Division Rule 1.8-A, and the listing for Rule 1.8-A in the Table of Contents of the District Division Rules, as follows (proposed additions are in **[bold and brackets]**; proposed deletions are in ~~striketrough~~ format):

Rule 1.8-A. Continuances and postponements **[and motions for recusal]**

## **APPENDIX F**

Amend the listing for Rule 3.11 in the Table of Contents of the District Division Rules (Applicable to Cases Filed On or After the Implementation of Electronic Filing in Civil Cases in the District Division), as follows (proposed additions are in **[bold and brackets]**; proposed deletions are in ~~striketrough~~ format):

Rule 3.11. Motions[-**General**]

## **APPENDIX G**

Adopt District Division Rules 4.1 to 4.13 (Small Claims Actions) on a permanent basis.

## APPENDIX H

Amend the Comment that follows the text of Rule 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing as follows (proposed additions are in **[bold and brackets]**; proposed deletions are in ~~strikethrough~~ format):

### Comment

These provisions are intended to ensure that confidential documents are accessible, upon filing, only to the court and its staff, to the parties and their attorneys or the parties' authorized representatives, and to others authorized to perform service of process. Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. *See, e.g., Associated Press v. State of N.H.*, 153 N.H. 120 (2005); *Petition of Keene Sentinel*, 136 N.H. 121 (1992); *see also* District Division Rule 1.26; Family Division Rule 1.30; Probate Division Rule 169-A; Superior Court Rule ~~(Civil) 203~~ **[13B(e)]**; Superior Court Rule ~~(Criminal) 169-A~~ **[New Hampshire Rule of Criminal Procedure 50(e)]**.

## APPENDIX I

Amend the Comment that follows the text of Rule 12 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing as follows (proposed additions are in **[bold and brackets]**; proposed deletions are in ~~strikethrough~~ format):

### Comment

These provisions are intended to ensure that confidential information contained within documents is accessible, upon filing, only to the court and its staff, to the parties and their attorneys or the parties' authorized representatives, and to others authorized to perform service of process. Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. *See, e.g., Associated Press v. State of N.H.*, 153 N.H. 120 (2005); *Petition of Keene Sentinel*, 136 N.H. 121 (1992); *see also* District Division Rule 1.26; Family Division Rule 1.30; Probate Division Rule 169-A; Superior Court Rule ~~(Civil) 203~~ **[13B(e)]**; Superior Court Rule ~~(Criminal) 169-A~~ **[New Hampshire Rule of Criminal Procedure 50(e)]**.

## APPENDIX J

**NOTE: The Committee voted not to recommend adoption of this proposed amendment.**

Amend Supreme Court Rule 42(IV)(a)(3) on a temporary basis as follows

(proposed deletions are in ~~strikethrough~~ format):

### IV. General Requirements for Admission to Bar

(a) Eligibility. Every applicant for admission to the New Hampshire bar shall be required:

- (1) to comply with all provisions of this rule;
- (2) to file all application forms prescribed by the board, respond to all requests of the board, the committee, their designees, and the staff of the Office of Bar Admissions, for information deemed relevant to the application for admission, and to pay all prescribed fees related to the application for admission;
- ~~(3) to meet one of the following requirements:~~
  - ~~(A) to pass the bar examination; or~~
  - ~~(B) to satisfy the requirements for admission by transferred UBE score set forth in paragraph X; or~~
  - ~~(C) to satisfy the requirements for admission without examination set forth in Rule 42(XI); or~~
  - ~~(D) to satisfy the requirements for admission after successful completion of the Daniel Webster Scholar Honors Program set forth in Rule 42(XII);~~
- (4) to pass the Multistate Professional Responsibility Examination;
- (5) to be at least 18 years of age;
- (6) to satisfy the educational requirements set forth in Rule 42(V); and
- (7) to establish his or her character and fitness to practice law to the committee and to the court.

## APPENDIX K

**NOTE: The Committee voted not to recommend adoption of these two proposed amendments.**

1. Amend New Hampshire Rule of Criminal Procedure 12(b)(3) as follows (proposed additions are in **[bold and brackets]**; proposed deletions are in ~~striketrough~~ format):

(3) *Dispositional Conferences.* The purpose of the dispositional conference is to facilitate meaningful discussion and early resolution of cases.

(A) Unless the State does not intend to make a plea offer, in which case it shall so advise the defendant within the time limits specified herein, the State shall provide a written offer for a negotiated plea, in compliance with the Victim's Rights statute, RSA 21-M:8-k, to the defense, no less than fourteen (14) days prior to the dispositional conference. The defense shall respond to the State's offer no later than ten (10) days after receipt.

(B) The judge shall have broad discretion in the conduct of the dispositional conference.

(C) The State, defendant, and defendant's counsel, if any, shall appear at the dispositional conference. The State and the defendant shall be represented at the dispositional conference by an attorney who has full knowledge of the facts and the ability to negotiate a resolution of the case. Counsel shall be prepared to discuss the impact of known charges being brought against the defendant in other jurisdictions, if any.

(D) If a plea agreement is not reached at the dispositional conference, the matter shall be set for trial. The court may also schedule hearings on any motions discussed during the dispositional conference. Counsel shall be prepared to discuss their availability for trial or hearing as scheduled by the court.

**[(E) At the first dispositional conference, when both the prosecutor and defense counsel are present, the judge shall issue an oral and written order to the prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963), *State v. Laurie*, 135 N.H. 325 (1995), and their progeny, and the possible consequences of violating such order under applicable law. The prosecution shall confirm it has**



**provided discovery consistent with its disclosure obligation and that it understands the consequences of a failure to do so.]**

~~(E)~~ **[(F)]** Evidence of conduct or statements made during the dispositional conference about the facts and/or merits of the case is not admissible as evidence at a hearing or trial.

~~(F)~~ **[(G)]** If the case may involve expert testimony from either party, both sides shall be prepared to address disclosure deadlines for: all results or reports of physical or mental examinations, scientific tests or experiments or other reports or statements prepared or conducted by the expert witness; a summary of each such expert's qualifications; rebuttal expert reports and qualifications; and expert depositions. Except for good cause shown, the failure of either party to set expert witness disclosure deadlines at the dispositional conference may be grounds to exclude the expert from testifying at trial.

2. Amend New Hampshire Rule of Criminal Procedure 12(a) by inserting new subparagraph 12(a)(1-A) as follows (proposed additions are in **brackets**):

**[(1-A) At the first dispositional conference, when both the prosecutor and defense counsel are present, the judge shall issue an oral and written order to the prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under Brady v. Maryland, 373 U.S. 83 (1963), State v. Laurie, 135 N.H. 325 (1995), and their progeny, and the possible consequences of violating such order under applicable law. The prosecution shall confirm it has provided discovery consistent with its disclosure obligation and that it understands the consequences of a failure to do so.]**