

**NEW HAMPSHIRE SUPREME COURT
ADVISORY COMMITTEE ON RULES**
Minutes of Friday, March 10, 2023 Meeting
NH Supreme Court
Supreme Court Courtroom
1 Charles Doe Drive
Concord, NH 03301

The meeting was called to order at 12:34 p.m. by Justice Donovan, Committee Chair. He welcomed new members Sheriff Mark Brave and Representative Robert J. Lynn.

The following Committee members were present:

Abigail Albee, Esq., Sheriff Mark Brave, Justice Patrick E. Donovan, Hon. R. Laurence Cullen, Hon. Michael H. Garner, Sean P. Gill, Esq., Jeanne Herrick, Esq., Charles Keefe, Esq., Derek D. Lick, Esq., Susan Lowry, Esq., Representative Robert J. Lynn, Senator Donna M. Soucy, and Charles Stewart. Lorrie Platt, Esq., Secretary to the Committee, and Lisa Merrill, Recording Secretary, were also present.

1. ITEMS PENDING BEFORE THE COMMITTEE

(A) 2022-001 Supreme Court Rule 37(20)

Attorney Lick reviewed the report of the subcommittee (Attorney Lick, Attorney Gill, Attorney Greene, and Attorney Platt) noting that the proposed changes incorporate a balance between public access and confidentiality. The proposed amendment defines the ADO public file relating to grievances and referrals and increases access to it to correspond with the public access given to court files.

The amendment excludes confidential information in the file relating to an attorney's client when a non-client initiates the grievance against the respondent attorney.

Justice Donovan thanked the subcommittee for their work and asked for comments. Attorney Albee proposed reordering Section 20(a)(1) and Section 20(a)(2) of the proposal so that the rule first defines the contents of the public file and then sets forth the exclusions. She also suggested that the amendment indicate that copying charges would be at a rate established by the Administrative Office of the Courts.

On motion by Attorney Lick and seconded by Representative Lynn, the Committee voted to (1) revise the amendment to incorporate the changes proposed by Attorney Albee set forth above; (2) establish a 60-day period for the receipt of public comment; and (3) add it to the June 2, 2023 public hearing agenda. Attorney Lowry abstained.

(B) 2022-006 NH Rule of Professional Conduct 3.8

Attorney Herrick provided a brief update on the work of the subcommittee. The subcommittee has discussed whether the rule must be in the context of the professional conduct rules. Given the different perspectives received from prosecutors and defense counsel, the subcommittee will need more time to prepare a report.

Justice Donovan thanked Attorney Herrick, Attorney Gill, and Attorney Keefe for their work. The subcommittee will provide an update at the Committee's June 2 meeting.

(C) 2022-013 Supreme Court Rule 51

Justice Donovan provided a summary of the subcommittee's written report. The proposed changes streamline the description and duties of the Advisory Committee on Rules.

On motion by Attorney Lick and seconded by Attorney Gill, the committee unanimously approved making the draft available for public comment for a period of sixty days.

Mr. Stewart suggested establishing a new subparagraph (d) in Rule 51(4) that specifies a deadline to submit written comments to the Rules Committee, using the language in the proposed Rule 51(6)(d) as a model. Committee members agreed that this revision should be made.

On motion by Representative Lynn and seconded by Senator Soucy, Committee members unanimously agreed to incorporate the changes proposed by Mr. Stewart and to issue an order inviting public comment for a period of 60 days.

(D) 2022-014 Voluntary Corporations Formed for the Purposes of Providing Professional Legal Services to the Poor

Justice Donovan suggested the formation of a subcommittee to study proposed rule changes. Members include Attorney Gill, Representative Lynn, and Attorney Herrick.

2. NEW BUSINESS

(A) 2022-015 Supreme Court Rule 42 (XIII)(a)

Justice Donovan provided a summary of a requested rule change that would create a general exemption for inactive attorneys exempting them from the requirement that newly-admitted members of the bar take the Practical Skills Course within two years of admission. The current rule allows attorneys to request a waiver from the Practical Skills requirement.

On motion by Mr. Stewart and seconded by Representative Lynn, the Committee unanimously voted to issue an order inviting public comment for a period of 60 days.

(B) 2022-002 New Hampshire Rules of Criminal Procedure

Justice Donovan referenced the January 13, 2023, letter from the Resident Communications Committee at the NH State Prison. Committee members discussed the letter's lack of specificity regarding requested rule changes.

Justice Donovan will respond to the Resident Communications Committee asking for additional information.

No action was required of the Committee.

(C) 2023-004 New Hampshire Rule of Evidence 1101(b) – Applicability of Rules of Evidence

(D) 2023-005 New Hampshire Rule of Evidence 804(b) Exceptions to Rule Against Hearsay – Statement of A Deceased Person

The Committee discussed the proposed rule changes submitted by Circuit Court Administrative Judge David King. Representative Lynn observed that, although the exemption proposed in 2023-004 appeared very limited (exempting probable cause hearings in involuntary emergency admission cases from the Rules of Evidence), the proposal should be included on the June public hearing agenda to allow for expansive public input.

On motion by Mr. Stewart and seconded by Senator Soucy, the Committee unanimously voted to establish a 60-day period for the receipt of public comment; and to add the proposals to the June 2, 2023 public hearing agenda.

3. MATTERS REFERRED BY JUSTICE DONOVAN TO THE COURT PURSUANT TO SUPREME COURT RULE 51(c)(3)

(A) 2023-001 Supplemental Rules of the Circuit Court for Electronic Filing

(B) 2023-003 Supreme Court Rule 48-B

(C) 2023-006 Supreme Court Rule 48

Justice Donovan summarized for the Committee the above-referenced requested rule amendments that had been submitted since its last meeting and that he had referred to the Supreme Court pursuant to Supreme Court Rule 51(c)(3).

On motion by Sheriff Brave and seconded by Attorney Keefe, the Committee unanimously voted to adjourn the meeting at 1:32 p.m.

Respectfully submitted,

Lisa Merrill, Recording Secretary