

**NEW HAMPSHIRE SUPREME COURT
ADVISORY COMMITTEE ON RULES**

Minutes of Friday, September 15, 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. The following Committee members were present:

Abigail Albee, Esq., Hon. R. Laurence Cullen, Hon. N. William Delker, Justice Patrick E. Donovan, Sean P. Gill, Esq., Jeanne Herrick, Esq., Derek Lick, Esq., Susan Lowry, Esq., Terri Peterson, Senator Donna Soucy, Janet Spalding, and Charles Stewart. Hon. Michael Garner participated via remote conferencing. Timothy Gudas, Secretary to the Committee, and Lisa Merrill, Recording Secretary, were also present.

Paula Lewis, Director of Business Operations for the NH Bar Association, was present for part of the meeting.

1. ITEMS STILL PENDING BEFORE THE COMMITTEE

A. 2022-007, New Hampshire Rule of Criminal Procedure 11(c)

The Committee previously voted to add the proposed rule amendment to the agenda for the December 8, 2023 public hearing. No action was needed or taken.

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

Attorney Gill reviewed the report of the subcommittee (Attorney Gill, Representative Lynn, and Attorney Herrick), noting that many states have established criteria for legal service organizations. The subcommittee recommended that the Court adopt a rule establishing similar criteria.

In response to Judge Delker's inquiry, the subcommittee will reach out to RSA 292:1-a organizations currently offering legal services to obtain their feedback on the subcommittee's proposed rule.

On motion by Judge Delker and seconded by Mr. Stewart, the Committee voted unanimously to establish a 60-day period for the receipt of public comments and to add it to the December 8, 2023 public hearing agenda. Judge Garner abstained.

2. NEW BUSINESS

A. 2023-009, New Hampshire Rule of Criminal Procedure 15(b)(3)

Judge Delker proposed a change to New Hampshire Rule of Criminal Procedure 15(b)(3) to require all motions in limine be filed 15 days before the final pretrial conference, which would allow sufficient time for an objection to be filed and for the pleadings to be reviewed by the court. The current rule is five days. After discussion, and on motion by Judge Delker, and seconded by Attorney Lowry, the Committee unanimously agreed to add the proposed change to the public hearing agenda on December 8, 2023. Judge Garner abstained.

B. 2023-010, Supreme Court Rule 48-A

Justice Donovan referred the proposed rule change directly to the Court, which has adopted the amendment as a technical one.

C. 2023-011, New Hampshire Rule of Evidence 504

Justice Donovan referred the proposed rule change directly to the Court, which has adopted the amendment as a technical one.

D. 2023-012, New Hampshire Rules of Criminal Procedure 1-19

Justice Donovan referenced the August 18, 2023 letter from Superior Court Chief Justice Tina Nadeau, Circuit Court Administrative Judge David King, and Circuit Court Deputy Administrative Judge Susan Ashley regarding amendments to Rules 1-19. He noted that most changes were not substantive. On motion by Attorney Albee and seconded by Senator Soucy, the Committee voted unanimously to establish a 30-day public comment period and to add it to the December 8, 2023 public hearing agenda. Judge Garner abstained.

Separately, Judge Delker raised possible changes to Rule 11 of the Rules of Criminal Procedure, noting that the “court shall personally address the defendant” portion of the rule was often waived during COVID. Justice Donovan suggested that the Superior Court submit a proposal to the Committee for its consideration.

E. 2023-013, Circuit Court – Family Division Rules 3.3 and 3.13

Circuit Court Deputy Administrative Judge Susan Ashley requested that the Committee consider a change to Rule 3.3 and the addition of Rule 3.13 to align with discovery and pleadings in delinquency cases. With no discussion, and on motion by Attorney Gill and seconded by Mr. Stewart, the Committee

voted unanimously to establish a 60-day public comment period and to add it to the public hearing agenda on December 8, 2023. Judge Garner abstained.

3. ADDITIONAL BUSINESS

A. IOLTA, Supreme Court Rule 50

Justice Donovan summarized previous discussions about measures to “sweep” IOLTA accounts to protect against bank failures. He asked Paula Lewis from the New Hampshire Bar Association to address the Committee with an update. Ms. Lewis reported that the Bar has been in discussions with Bank of New Hampshire and several law firms. The bank is ready to conduct testing of its proposed “sweep” solution, but the law firms expressed concern that their participation in the testing would place them in noncompliance with the requirements of Supreme Court Rule 50. Justice Donovan proposed that the firms approach the Attorney Discipline Office with questions and advice concerning Rule 50 compliance issues because the Rules Committee has no authority to provide such advice.

Attorney Lick volunteered to draft an amendment to Rule 50 in anticipation of conversations that law firms may have with the Attorney Discipline Office. He will prepare a draft for discussion at the December meeting.

B. Supreme Court Rule 42

Justice Donovan reviewed the background regarding a previous change to Rule 42(X) with respect to the four-attempt limit on passing the bar exam. As a result of that change, an applicant who has failed the bar exam four times is ineligible to re-take the exam and is ineligible for admission by transferred UBE score, but may be eligible for admission by motion. On behalf of a concerned citizen, Senator Soucy raised the issue of eliminating the four-attempt limit entirely and asked that the Committee address the issue. Attorney Lowry asked how many individuals fail the exam four times. All agreed that questions could be best answered by Sherry Hieber, General Counsel for the Office of Bar Admissions.

On motion by Senator Soucy and seconded by Attorney Lick, the Committee voted unanimously to place it on the December 8, 2023 agenda and will request the presence of Attorney Hieber. Judge Garner abstained.

4. REMAINING 2023 MEETING DATES

Friday, December 8, 2023

5. PROPOSED 2024 MEETING DATES

Friday, March 8, 2024

Friday, June 14, 2024

Friday, September 13, 2024

Friday, December 13, 2024

On motion by Ms. Spalding and seconded by Justice Donovan, the Committee voted to adjourn. Judge Garner abstained.

The meeting adjourned at 1:19 p.m.