

REPORT OF THE SUBCOMMITTEE

DOCKET 2024-001

Supreme Court Rule 54(4)

The Subcommittee met, by way of a Teams Meeting, on the afternoon of April 10th. Justice Donovan, Judge Delker and Attorney Jeanne Herrick appeared and we invited Attorney Steven Endres to discuss his submission and his supplemental correspondence dated March 27, 2024. As outlined in his correspondence, Attorney Endres counted approximately 400 “active” administrative orders issued by the Administrative judges in the trial courts. The vast majority of these orders address judicial assignments, bail commissioner appointments and have nothing to do with court rules. Nonetheless, some of these orders include substantive procedural directives that, to some extent, are regulated by court rules.

For example, New Hampshire Rule of Criminal Procedure 6(a)(2) requires that probable cause hearings be held within 10 days if a defendant is in custody and 30 days following arraignment if the defendant is not in custody. District Court Administrative Order, on the other hand, requires a probable cause hearing within 20 days if a defendant is not detained. Other examples of such conflicts are included in Attorney Endres correspondence.

The Subcommittee discussed several issues regarding the trial courts’ administrative order process, including the publication of these orders in a manner by which practitioners and self-represented litigants (SRLs) can locate, identify and search the orders by content. The current process also lacks communication with the Supreme Court, the only court with rule-making authority and a lack of oversight or direction when an order implicates, contradicts or undermines existing court rules or decisions made by either the Supreme Court or its Advisory Committee on Court Rules. The Subcommittee understands the need for administrative orders, particularly when gaps occur between a court rule and existing circumstances in any given court. We also realize that, given that the vast majority of these orders address ministerial measures, such as assigning judges or the appointment and revocation of bail commissioners, oversight by the Administrative Council, the Supreme Court or the Rules Committee is unnecessary and time-consuming.

Of note, Judge Howard has already formed a team to organize, create a meaningful table of contents and coordinate the publication of superior court administrative orders on the Judicial Branch website. The Subcommittee recommends that the circuit court engage in a similar process, which should include a determination as to whether any given order remains in effect.

Following the meeting, Subcommittee members shared possible amendments to Rule 54(4) and reviewed a proposal from Judge Howard. However, the Subcommittee decided input from the circuit court is necessary before deciding what language should be included. Judge Garner subsequently reviewed the proposed rule amendment with Judges King and Ashley, who approved the subcommittee’s proposal.

Rule 54. Administrative Judges And Administrative Council.

1) There is hereby established as follows the position of administrative judge and an administrative council for the judicial branch.

(2) The chief justice of the superior court, appointed as provided by law, shall be the administrative judge of the superior court. There shall be an administrative judge and a deputy administrative judge for the circuit court, both of whom shall be appointed by the chief justice of the supreme court, with the concurrence of a majority of the supreme court, for a term to be stated in the order of appointment, but subject to the pleasure of the appointing authority.

(3) An administrative council is established to facilitate communications among the various courts and the administrative office of the courts. Membership on the council shall consist of the chief justice of the supreme court or his or her designee, the chief justice of the superior court, the administrative judge and deputy administrative judge of the circuit court, and the director of the administrative office of the courts. The administrative council shall meet regularly maintaining a flexible agenda, providing the opportunity to exchange views, measure progress, resolve conflicts, work toward uniformity of procedure among courts to the extent possible[, **review proposed rule changes, review certain administrative orders,**] and make recommendations to the supreme court [**or its advisory committee on rules**]. The administrative council shall keep the supreme court apprised of matters being considered by the council and shall meet periodically with the supreme court to enhance the effective and efficient administration of the judicial branch.

(4) Role and Responsibilities of the Administrative Judge. The administrative judge (or, upon the unavailability of the administrative judge of the circuit court, the deputy administrative judge) has general supervisory responsibility for the administration, operation and improvement of the court in order to provide for the expeditious disposition of all cases over which the court has jurisdiction, subject to the policies, rules, orders and guidelines established by the supreme court. The administrative judge (or, upon the unavailability of the administrative judge of the circuit court, the deputy administrative judge), in addition to the foregoing, shall, when not in conflict with part II, article 73-a of the New Hampshire Constitution, have such duties and responsibilities as may be conferred by statute.

Without limiting the foregoing, the responsibilities of the administrative judge (or, upon the unavailability of the administrative judge of the circuit court, the deputy administrative judge) include the following:

(a) Exercising supervisory powers over judges, clerks, registers and court personnel;

(b) The employment and discharge of all personnel in accordance with budgetary and personnel rules and regulations, collective bargaining agreements and such policies as have been established by the supreme court;

(c) Issuing superior court or circuit court administrative orders as may be required from time to time to carry out the responsibilities of the office; [**provided, however, that such administrative orders shall be consistent with the policies, rules, orders and guidelines established by the supreme court and, with respect to administrative orders affecting rules of procedure, reviewed by the administrative council at its next regularly scheduled meeting;**]

(d) Effectuating compliance by judges and court personnel with all applicable court rules, provisions of law and administrative orders;

(e) Counseling, assisting and supervising judges in their conduct and in the performance of their administrative responsibilities;

(f) Appointing court personnel to committees of the court;

(g) Implementing established policies, orders and regulations concerning the court's internal management and operation, including but not limited to business hours, the timely disposition of the court's business, judicial vacations and leaves of absence, attendance at meetings, and education and training conferences;

(h) Supervising caseload management;

(i) Appointing a presiding judge for each court location, assigning judges and court personnel to court locations when workload and other factors so require, and allocating equipment and other internal court resources where needed;

(j) Preparing the court budget requests and supervising the financial affairs of the court;

(k) Representing the court in its relations with other courts, other branches of government, the bar, the general public, the news media, and in ceremonial functions;

(l) In the event of unavailability of the administrative judge (or, in the circuit court, the unavailability of both the administrative judge and the deputy administrative judge), designating an acting administrative judge, subject to the approval of the supreme court.