

ADVISORY COMMITTEE ON RULES  
March 19, 2003

Supreme Court Conference Room  
Frank Rowe Kenison Supreme Court Building  
Concord, New Hampshire

Honorable Linda S. Dalianis, Chairman, called the meeting to order at  
12:20 p.m.

The following Committee members were present:

Robert L. Chase  
Hon. Linda S. Dalianis  
Hon. Robert L. Cullinane  
Mrs. Alice Guay  
Hon. Richard A. Hampe  
Amanda Merrill  
Jack B. Middleton, Esquire  
Emily G. Rice, Esquire  
Raymond W. Taylor, Esquire

Also present were David S. Peck, Secretary to the Advisory Committee on  
Rules, and Margaret Haskett, staff.

The Committee approved the minutes of the December 11, 2002 meeting  
as submitted.

With respect to action taken by the Supreme Court since the Committee's  
last meeting, David Peck reported that the Supreme Court issued orders  
adopting, on a temporary basis, the Committee's recommendations to amend  
Superior Court Administrative Rule 12-9 and to repeal Superior Court Rule 86,  
Probate Court Rule 86 and District Court Rule 3.22. The court also adopted the  
Committee's recommendations relative to Supreme Court Rule 42 dealing with  
standards for the Character and Fitness Committee. In addition, after further  
amendment, the Court adopted, on a permanent basis, the Committee's  
recommendations relative to Supreme Court Rule 12.

The Committee next discussed the status of items still pending before the Committee and the following action was taken:

Relative to administrative orders prepared by administrative judges, Attorney Rice reported that she recently met with Judge Maher about the use of administrative orders and procedural bulletins. She stated that while Judge Maher is willing to submit rules to the Advisory Committee on Rules for its consideration, he feels he should retain the ability to make changes to internal operations of the probate court. She noted that many of the concerns expressed by the Committee and the Court relating to public access to court rules and procedures are being resolved because of access to rules and forms on the Judicial Branch's website. She concluded by saying that based on the informal discussions she has had with the administrative judges, she believes fewer administrative orders are being issued. She will meet with Judges Murphy and Kelly within the next thirty days.

Relative to comments to the Professional Conduct Rules, David Peck reported that the New Hampshire Bar Ethics Committee is still working on those comments. The Committee requested that Mr. Peck again contact Attorney Rolf Goodwin to learn when it could expect the comments from the ethics committee.

Relative to amendments to Superior Court Rules pertaining to entry fees for libels and petitions in libel cases, David Peck reported that Chief Justice Murphy will have something in writing prior to the Committee's next meeting.

Relative to amending Supreme Court Rule 50-B pertaining to reporting requirements concerning malpractice insurance coverage, following discussion of the proposed amendments contained in David Peck's December 20, 2002

memo, and on motion of Attorney Middleton, seconded by Mr. Chase, the Committee voted to send the amendments to Supreme Court Rule 50-B, as contained in Appendix A of these minutes, to the Committee's next public hearing.

Relative to the uniform fine schedule, David Peck reported that the Supreme Court has indicated that there is no need for the Committee to review the uniform fine schedule at this time. Mr. Peck distributed the District Court Fines Study Committee report for the Committee's information.

Relative to public access to court records, Mr. Peck reported that the Public Access to Court Records Committee, chaired by Judge Smukler, is putting together a full-day seminar with a speaker who will discuss issues seen around the country. Invitees will include representatives from the media, legislature, courts and the private sector. Following a brief discussion, Judge Dalianis agreed to notify Judge Smukler that members of the Advisory Committee on Rules were interested in attending the seminar.

Relative to amendments to Superior Court Rule 195-A and Family Division Pilot Program Rule 21-A pertaining to attendance of minors at depositions and hearings, following discussion, and on motion of Judge Hampe, seconded by Judge Dalianis, the Committee voted to further amend Superior Court Rule 195-A and Family Division Pilot Program Rule 21-A and to recommend to the Supreme Court that said rules be adopted as amended and contained in Appendices B and C respectively of these minutes.

The Committee next turned to new items for its consideration and the following action was taken:

Relative to listing Committee members on the Judicial Branch's new website, following a brief discussion, the Committee agreed that the names of Committee members could be listed on the website page.

Relative to amendments to Superior Court Rule 170 pertaining to alternative dispute resolution, David Peck explained that these amendments have been re-referred to the Committee from the Supreme Court following the Court's public comment period. Following a brief discussion of the first question posed by the Court, and on motion of Attorney Middleton, seconded by Attorney Rice, the Committee voted, 7 -1, with one abstention, against adding a provision to Superior Court Rule 170 that would require a notice be sent to an insured defendant whenever a motion to excuse the insured defendant from attending hearings is filed.

With reference to the comment made by Attorney Martin Gross during the Court's comment phase on Superior Court Rule 170, following discussion, and on motion of Attorney Rice, and seconded by Attorney Middleton, the Committee voted against recommending that the rule be expanded to require the presence of all known lien claimants at mediations and non-binding evaluations.

Relative to amendments to Supreme Court Rules 37 and 37A pertaining to the Professional Conduct Committee disciplinary system, and at the invitation of the Committee, Attorneys James DeHart and Margaret Nelson made a presentation to the Committee on the proposed amendments. Following the presentation and after further discussion, the Committee agreed to send the amendments to Supreme Court Rules 37 and 37A to the Committee's next public hearing.

The Committee continued its discussion on new items and the following action was taken:

Relative to media access to court proceedings, David Peck reported that as a result of a recent ruling (Petition of WMUR Channel 9), the Supreme Court referred Superior Court Rule 78 to the Advisory Committee on Rules for the adoption of a new rule. Following discussion, the following subcommittee was established: Raymond Taylor, Esquire, Chair; Judge Philip Mangones; Judge Robert Cullinane; Attorney Emily Rice; and Laura Kiernan, Public Information Officer. Judge Dalianis suggested that the subcommittee may wish to add additional members to it who are interested in the topic. The subcommittee is charged with recommending a new rule that takes into consideration the nine issues raised in the recent ruling and reporting back to the Committee by its June or September 2003 meeting.

Relative to amendments to Supreme Court Rule 38 and Superior Court Administrative Rule 12-7 pertaining to marital masters, following a brief discussion, and on motion of Attorney Middleton, seconded by Attorney Rice, the Committee voted to send Supreme Court Rule 38 and Superior Court Administrative Rule 12-7, as contained in Appendices D and E respectively of these minutes, to the Committee's next public hearing.

Relative to amendments to District Court Rules 1.3 and 3.13, on motion of Judge Hampe, seconded by Attorney Rice, the Committee voted to recommend to the Supreme Court that said rules be adopted, as contained in Appendices F and G respectively of these minutes, and further that they be considered as technical amendments.

Relative to joinder and severance rules for criminal cases, following a brief discussion, the Committee asked David Peck to write to various individuals and groups including the attorney general, the county attorney and the public defender's office asking whether they believe the Committee should recommend the adoption of court rules to govern joinder and severance and, if so, any suggestions for said rules.

The Committee scheduled its next meeting for June 4, 2003 at 12:00 p.m., to be followed by a public hearing at 1:00 p.m.

No further business to come before the Committee, the meeting adjourned at 2:35 p.m.

Adopt Supreme Court Rule 50-B as follows:

**RULE 50-B. PROFESSIONAL LIABILITY INSURANCE  
CERTIFICATION REQUIREMENT**

(1) In furtherance of the disclosure requirements in Professional Conduct Rule 1.17, all attorneys licensed to practice in the State of New Hampshire, whether in private practice or not, other than those in inactive status, shall individually or through their firm organizations disclose the status of their professional liability insurance coverage on or before August 1st of each year in accordance with this rule. The disclosure of professional liability coverage shall certify to one of the following:

A. That on the date of certification the attorney is not covered by professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate; or

B. That on the date of certification the attorney is covered by professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate.

C. That on the date of certification the attorney is exempt from the notice requirements of Professional Conduct Committee Rule 1.17(a) because the attorney is engaged in rendering legal services to a governmental entity that employs the attorney.

D. That on the date of certification the attorney is exempt from the notice requirements of Professional Conduct Committee Rule 1.17(a) because the attorney is engaged in rendering legal services to an entity that employs the attorney as in-house counsel.

(2) The prescribed Certificate of Compliance form sent annually with the attorney's dues assessment by the New Hampshire Bar Association pursuant to Supreme Court Rule 50-A(1) shall include space for making the certification required by this rule. The completed Certificate of Compliance forms shall be filed with the New Hampshire Supreme Court by delivery to the New Hampshire Bar Association by August 1st of each year. The certification requirements of this rule shall not apply to any full-time judge, full-time marital master, or full-time supreme, superior, and district court clerk or deputy clerk.

(3) An attorney who fails to complete and timely file the required annual Certificate of Compliance form shall be deemed to be in violation of Rule 1.15 of the Rules of Professional Conduct and the applicable Supreme Court Rule. Unless upon petition to the Supreme Court an extension has been granted, failure to complete and file the required annual Certificate of Compliance form by August 1st shall, in addition, subject the attorney to a fine of \$100 for each month or fraction thereof after August 1st in which the Certificate of Compliance form remains incomplete or unfiled.



## **APPENDIX B**

Adopt Superior Court Rule 195-A as follows:

### **ATTENDANCE OF MINORS**

195-A. DEPOSITIONS AND HEARINGS. In any proceedings brought pursuant to RSA chapters 168-A, 458, 458-A, or 460, no minor child shall be deposed or brought to a deposition, brought to court to appear as a witness or to attend a hearing without prior order of the court based upon good cause shown unless in an emergency situation.

## **APPENDIX C**

Adopt Family Division Pilot Program Rule 21-A as follows:

### **21-A. Attendance of Minors:**

In any proceedings brought pursuant to RSA chapters 168-A, 458, 458-A, or 460, no minor child shall be deposed or brought to a deposition, brought to court to appear as a witness or to attend a hearing without prior order of the court based upon good cause shown unless in an emergency situation.

## **APPENDIX D**

Amend Supreme Court Rule 38, Application of the Code of Judicial Conduct section A, by inserting the phrase "marital master," so that section A as amended shall state as follows:

A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, marital master, special master or referee, is treated as a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

Further amend Supreme Court Rule 38, Application of the Code of Judicial Conduct section C, by adding a new subsection (4) that states as follows:

(4) Notwithstanding anything above to the contrary, a part-time marital master shall be governed by all of the canons of the Code of Judicial Conduct as provided in Superior Court Administrative Rule 12-7.

## **APPENDIX E**

Amend Superior Court Administrative Rule 12-7 by deleting said rule and replacing it with the following:

**12-7.** The Masters Committee may at any time consider and act on any grievance or complaint concerning a Marital Master and take whatever action is appropriate, including recommendation to the full Court that the Marital Master's appointment be terminated. All Marital Masters shall be governed by all of the canons of the Code of Judicial Conduct. Notwithstanding any appointment, Marital Masters serve at the pleasure of the Court.

## **APPENDIX F**

Amend District Court Rule 1.3 G. so that said paragraph, as amended, shall state as follows:

G. Whenever the attorney of a party withdraws an appearance in a civil case and no other appearance is entered, the Clerk shall notify the party by mail of such withdrawal, and unless the party appears pro se or through counsel by a date fixed by the Court, the court may take such action as justice may require.

## **APPENDIX G**

Amend District Court Rule 3.13 so that said rule, as amended, shall state as follows:

### **Rule 3.13 Settlement agreement**

Whenever a party states orally or in writing to the Clerk that a particular case has been settled and that agreements will be filed, the parties shall file the agreement with the Clerk within twenty days and if not so filed, the court shall take such action as justice may require.