

ADVISORY COMMITTEE ON RULES
March 2, 2005

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

The meeting was called to order at 12:20 p.m.

The following Committee members were present:

William Ardinger
Robert L. Chase
Hon. Linda S. Dalianis
Hon. R. Laurence Cullen
Alice Guay
Hon. Richard Hampe
Robert Lown
Hon. Philip Mangones
Robert H. Rowe
Raymond W. Taylor, Esquire

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

Judge Dalianis welcomed new members to the Committee and thanked them for their willingness to serve. Introductions of all Committee members followed.

On motion of Judge Hampe, seconded by Attorney Taylor, the Committee approved the minutes of the December 8, 2004 meeting.

With respect to action taken by the Supreme Court since the Committee's last meeting, David Peck reported that the Supreme Court adopted the technical amendments recommended by the Committee. In addition, following its public comment period ending on December 17, 2004, the Supreme Court adopted all of the Committee's recommendations for rules changes, except as follows: the Supreme Court did not accept the Committee's recommendation to adopt an amendment to Supreme Court Rule 42; the amendments to the rule dealing with the approval of

forms was forwarded to the Administrative Council for consideration; action on Professional Conduct Rule 5.5 dealing with multijurisdictional practice of law was deferred until additional proposed amendments dealing with foreign consultants are received. In addition, it also adopted a number of amendments on a temporary basis.

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

Relative to Professional Conduct Rules 5.5A and 5.5B pertaining to the licensing of legal consultants and temporary practice by foreign lawyers, following discussion and on motion of Judge Cullen, seconded by Judge Mangones, the Committee voted to recommend to the Supreme Court that Professional Conduct Rules 5.5A and 5.5B be adopted as submitted to the December public hearing.

Relative to rules of civil procedure, Judge Dalianis reported that Attorney Honigberg is in the process of putting together separate groups to revisit the rules of civil procedure in the superior, probate and district courts and family division. The goal is to have consistent rules and forms wherever possible throughout the system. She added that any member of the Advisory Committee on Rules is welcome to join this effort.

Relative to limited scope legal assistance, the Committee considered amendments to various rules that would allow lawyers to provide limited representation to clients. Following discussion, and on motion of Judge Hampe, seconded by Mr. Chase, the Committee voted to further amend Professional Conduct Rule 1.2 and the limited representation agreement, as contained in Appendices A & B of these minutes, and to send all amendments relating to limited scope legal assistance to the Committee's next public hearing. In addition, Judge Cullen and

Attorney Taylor agreed to provide language for a limited representation appearance form.

Relative to the comments to the Professional Conduct rules, David Peck reported that although Committee members received a draft response from the N.H. Bar Ethics Committee at its last meeting, there has been no formal recommendation from the Ethics Committee.

The Committee turned its discussion to new items and the following action was taken:

Relative to the new appellate process—rules and forms, following a brief discussion and on motion of Judge Cullen, seconded by Attorney Taylor, the Committee voted to send the new appellate rules and forms to the Committee's next public hearing.

Relative to District Court Rule 2.7 pertaining to payment of fines by criminal defendants, following a brief discussion, the Committee asked Mr. Peck to refer the question of how fines are treated in the superior and district courts to Judges Lynn and Kelly for comment by their respective judges.

Relative to amending the rules to provide for announcing the presiding justice, the Committee reviewed the suggestion made by Representative Cady to Eileen Fox, which Ms. Fox forwarded by e-mail dated January 13, 2005 to various individuals. In reviewing the responses received from various individuals, the Committee noted that nameplates are now visible on each bench. On motion duly made and seconded, the Committee agreed to make no changes to the rules at this time.

Relative to the code of criminal procedure for superior and district courts, following a brief discussion, the Committee asked Mr. Peck to forward Attorney

Guerrero's January 20, 2005 letter to Attorney Honigberg for his subcommittee's consideration.

Relative to various rules adopted by the Supreme Court on a temporary basis and referred to this Committee for consideration of whether they should be adopted on a permanent basis, on motion of Attorney Taylor, seconded by Judge Dalianis, the Committee voted to send Superior Court Rule 69, Superior Court Administrative Rules 12-1, 12-2, 12-3, 12-5, 12-6, 12-7, Probate Court Rule 169(I) and a new rule in section "General" of the Family Division Pilot Program Rules to the Committee's next public hearing.

Relative to Superior Court Rule 93-A relating to GALs and fees, on motion of Attorney Taylor, seconded by Judge Mangones, the Committee voted to send Superior Court Rule 93-A, as contained in Appendix C of these minutes, to the Committee's next public hearing.

The Committee's next meeting is scheduled for June 1, 2005 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 1:43 p.m.

APPENDIX A

Amend Professional Conduct Rule 1.2(c) by deleting said subsection and replacing it with the following:

(c) *Limited Representation.* A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation. If, after consultation, the client consents in writing (a sample form is set forth in section (f) of this rule), an attorney may enter a limited appearance on behalf of an otherwise unrepresented party involved in a court proceeding. A lawyer who signs a writ, petition, counterclaim, cross-claim or any amendment thereto which is filed with the court, may not thereafter limit representation as provided in this rule.

APPENDIX B

Amend Professional Conduct Rule 1.2 by adopting a new subsection (f) as follows:

(f) *Sample form:*

LIMITED REPRESENTATION AGREEMENT

To Be Executed In Duplicate

Date: _____, 20

1. The client, _____, retains the attorney, _____, to perform limited legal services in the following matter: _____ v. _____.

2. The client seeks the following services from the attorney (indicate by writing “yes” or “no”):

- a. Legal advice: office visits, telephone calls, fax, mail, e-mail;
- b. Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
- c. Evaluation of client self-diagnosis of the case and advising client about legal rights and responsibilities;
- d. Guidance and procedural information for filing or serving documents;
- e. Review pleadings and other documents prepared by client;
- f. Suggest documents to be prepared;
- g. Draft pleadings, motions, and other documents;
- h. Factual investigation: contacting witnesses, public record searches, in-depth interview of client;
- i. Assistance with computer support programs;
- j. Legal research and analysis;
- k. Evaluate settlement options;

- l. Discovery: interrogatories, depositions, requests for document production;
- m. Planning for negotiations;
- n. Planning for court appearances;
- o. Standby telephone assistance during negotiations or settlement conferences;
- p. Referring client to expert witnesses, special masters, or other counsel;
- q. Counseling client about an appeal;
- r. Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
- s. Provide preventive planning and/or schedule legal check-ups;
- t. Other:

3. The client shall pay the attorney for those limited services as follows:

a. Hourly Fee:

The current hourly fee charged by the attorney or the attorney's law firm for services under this agreement are as follows:

- i. Attorney: \$
- ii. Associate: \$
- iii. Paralegal: \$
- iv. Law Clerk: \$

Unless a different fee arrangement is established in clause b.) of this paragraph, the hourly fee shall be payable at the time of the service. Time will be charged in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.

b. Payment from Deposit:

For a continuing consulting role, client will pay to attorney a deposit of \$ _____ , to be received by attorney on or before _____ , and to be applied against attorney fees and costs incurred by client. This amount will be deposited by attorney in attorney trust account. Client authorizes attorney to withdraw funds from the trust account to pay attorney fees and costs as they are incurred by client. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by client for attorney fees and costs is less than the amount of the deposit, the difference will be refunded to client. Any balance due shall be paid within thirty days of the termination of services.

c. Costs:

Client shall pay attorney out-of-pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with client case, including filing fees, investigation fees, deposition fees, and the like shall be paid directly by client. Attorney shall not advance costs to third parties on client behalf.

4. The client understands that the attorney will exercise his or her best judgment while performing the limited legal services set out above, but also recognizes:

- a. the attorney is not promising any particular outcome,
- b. the attorney has not made any independent investigation of the facts and is relying entirely on the client limited disclosure of the facts given the duration of the limited services provided, and
- c. the attorney has no further obligation to the client after completing the above described limited legal services unless and until both attorney and client enter into another written representation agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Signature of client

Signature of attorney

APPENDIX C

Amend Superior Court Rule 93-A by adding two new paragraphs to the end of the rule, so that Rule 93-A as amended shall provide as follows:

93-A. In any criminal case alleging a sex-related offense in which a minor child was a victim, the Court shall allow the use of anatomically correct drawings and/or anatomically correct dolls as demonstrative evidence to assist the alleged victim or minor witness in testifying, unless otherwise ordered by the Court for good cause shown.

In the event that the alleged victim or minor witness is nervous, afraid, timid, or otherwise reluctant to testify, the Court may allow the use of leading questions during the initial testimony but shall not allow the use of such questions relating to any essential element of the criminal offense.

The Clerk shall schedule a pretrial conference, to be held within forty-five (45) days of the filing of an indictment, for the purpose of establishing a discovery schedule and trial date. At such conference, the Court shall consider the advisability and need for the appointment of a guardian ad litem to represent the interests of the alleged victim.

In the event that a guardian ad litem is appointed to represent the interests of a minor victim or witness, the role and scope of services of the guardian ad litem shall be explicitly outlined by the trial judge prior to trial.

The guardian ad litem appointed under this rule shall be compensated at the same hourly rate, and shall be subject to the same case maximums, as set forth for defense counsel in misdemeanor cases under the provisions of Supreme Court Rule 47. The guardian ad litem shall also be reimbursed for his or her investigative and related expenses, as allowed under Rule 47, upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to the said expenses being incurred.