NEW HAMPSHIRE SUPREME COURT
ADVISORY COMMITTEE ON RULES

Minutes of Public Meeting of September 11, 2015

Supreme Court Courtroom
Frank Rowe Kenison Supreme Court Building
One Charles Doe Drive
Concord, NH 03301

The meeting was called to order at 12:28 p.m. by Justice Robert J. Lynn, Committee Chair. The following Committee members were present: Abigail Albee, Esq., Hon. Paul S. Berch, Hon. R. Laurence Cullen, Hon. Will Delker, Hon. Daniel J. Feltes, Ralph D. Gault, Joshua L. Gordon, Esq., Derek D. Lick, Esq., Maureen Raiche Manning, Esq., Patrick W. Ryan, Esq., Frederick H. Stephens, Jr., and Hon. Robert J. Lynn.

Also present was the Secretary to the Committee, Carolyn Koegler, Esq.

1. Approval of Minutes of the June 5, 2015 Meeting

Justice Lynn began the meeting by asking Committee members if they had any comments on the minutes. Mr. Stephens stated that his middle initial is "H," not "W." Carolyn Koegler agreed to make that correction.

Upon motion made by attorney Berch and seconded by attorney Lick, the Committee voted to approve the June 5, 2015 minutes, as amended.

2. Status of Items Still Pending Before the Committee

a. District Court Rules of Civil Procedure and Probate Court Rules of Civil Procedure and Probate Administration

This item is on hold.

b. 2012-010(1) and (2) District Division Rules. Counsel at Arraignment

Justice Lynn reported that the counsel at arraignment rules are still in effect in the Circuit Court, but that attorneys from the Public Defender's office are not able to be present at all arraignments.

Attorney Ryan noted that it will be interesting to see what impact the felonies first rules will have on the existing counsel at arraignment rules. He understands that a Committee is currently drafting rules to implement the Rules of Criminal Procedure and the Felonies First Rules.

Justice Lynn explained to the Committee that an ad hoc committee chaired by attorney Richard Guerriero has taken the New Hampshire Rules of Criminal procedure that were submitted to the Court some time ago and is currently working on updating those rules. The current plan is for that Committee to submit the updated rules to the Court soon. The Court will then put them out for public comment. Following the public comment period, the Court will review the rules and, unless there is a problem with the rules, will issue an order adopting them. March 1, 2016 is the target date for making the New Hampshire Rules of Criminal Procedure effective.

Justice Lynn reported that the Guerriero committee is also working on an amended version of the Rules of Criminal Procedure which would take into account the Felonies First legislation. Currently, the plan is for Felonies First to be implemented in Cheshire and Strafford Counties on January 1, 2016. The Court will probably adopt as temporary rules the New Hampshire Rules of Criminal Procedure which incorporate the felonies first rules on a temporary basis and refer those rules to this Committee for review. The idea would be that the rules would be implemented in different counties as felonies first is rolled out.

Attorney Berch noted for the record that while he is not in favor of doing anything now to address concerns he has about the counsel at arraignment rules and the related ethics rules because of the state of flux the criminal rules are in due to new legislation, he does not believe that this model is sustainable over time. He notes that allowing an exception to the conflict of interest rules in cases in which a lawyer from the New Hampshire Public Defender Program represents an individual at arraignment is not a sustainable way to do business. He understands the need for this exception now, but believes that this problem should be addressed at some point.

c. 2013-002. Interlocutory Appeals

Attorney Gordon reminded the Committee that this issue relates to what happens when a trial court grants a motion to dismiss some, but not all, of the defendants in a case. Under New Hampshire case law, when some but not all defendants are dismissed from a case, the dismissed defendants must wait for a final decision to be done with the litigation unless the *plaintiff* both chooses to request an interlocutory appeal under Rule 8 and has his or her request granted at both the trial court and supreme court levels. The Court had asked the Committee to consider whether a rule amendment should be adopted that provides a mechanism for the trial court to certify (either on its own, or on motion, or both) that an order that would otherwise be interlocutory is final and immediately appealable. The Committee asked Attorney Gordon to chair a subcommittee to address this issue. Attorney Gordon stated that his subcommittee had submitted a memo to the Committee on May 15, 2015

which the Committee had considered at its meeting on June 5. The subcommittee had proposed an amendment to the Superior Court Rules that would add a provision similar to Federal Rule of Civil Procedure ("FRCP") 54(b). He also stated that is not clear to him what the Committee would like the subcommittee to do at this point. As he recalls, the discussion at the June meeting centered on what happens after a superior court judge grants a motion to deem an interlocutory order a final order for the purposes of appeal. Is this a mandatory appeal or should the supreme court be able to decide, ultimately, whether the order is, in fact, appealable?

Justice Lynn inquired how this works under the federal system if the district court grants a FRCP 54(b) motion. Does the Court of Appeals have to take the appeal? Attorney Gordon stated that yes, if there is the entry of a final order, you file a Notice of Appeal with the First Circuit and you are there. There is no issue of whether the appeal is mandatory or discretionary.

Justice Lynn asked Committee members what they think about this issue – if the Supreme Court adopts a rule analogous to FRCP 54(b), and if a trial court makes the determination that an order is final and appealable, should the Supreme Court have to take the case? Judge Delker asked why *shouldn't* the Supreme Court have to take the case. He believes that the trial court is in the best position to make the evaluation about whether a party should be allowed to appeal at this juncture. He does not know why the Supreme Court would ever second-guess that determination. Justice Lynn stated that given that the trial judge has to meet the requirements set out in the rule, he tends to agree with Judge Delker.

Judge Delker noted that if a party in the litigation opposes the FRCP 54(b) order then it can file a motion to reconsider with the trial court or oppose it on appeal, and deal with it that way. Attorney Gordon noted that the standard set forth in the proposed rule is a high standard that forces the trial court to think through the issue well. Also, from a conceptual standpoint, not treating this as a Rule 7 mandatory appeal would create a third category of appeal.

Judge Delker noted that the temptations are different in an interlocutory appeal versus a FRCP 54(b)-type of appeal. With a FRCP 54(b)-type of appeal, the judge has already made a decision. Attorney Gordon inquired – if the court denies the motion requesting the appeal, where is that litigant? A committee member noted that the appeal would then just become a standard interlocutory appeal.

Justice Lynn stated that he believes it makes sense to do this, and asked attorney Gordon to circulate some language to the Committee adopting the FRCP 54(b) language as well as language making it clear that this is a mandatory appeal. A committee member noted that the subcommittee had

already proposed some language essentially adopting the FRCP 54(b) language. It is set forth on page 4 of the May 15, 2015 memo. Committee members took some time to review that language.

Attorney Lick noted that it would be helpful to have an ancillary Supreme Court Rule making it clear that any appeal under this rule will be deemed a mandatory appeal – that is, that an order of this type granted by the trial court will be treated as a mandatory appeal under Supreme Court Rule 7.

Upon motion made by Representative Berch and seconded by Senator Feltes, the Committee voted to put the proposal out for public hearing in December.

d. 2014-005. Electronic Filing Pilot Rules

Pat Ryan reported that electronic filing has been rolled out to guardianship cases in the Circuit Court.

e. 2014-006 through 2014-010. Superior Court Rules (Civ.)

Justice Lynn noted that the Committee is awaiting a report from the subcommittee chaired by attorney Rice.

f. 2015-007. Circuit Court – Family Division Rule 2.29

Carolyn Koegler distributed to Committee members a submission made by Justice Lynn proposing a rule regarding the effectiveness of final orders in domestic relations cases pending appeal. The Committee considered this, as well as a September 10, 2015 submission from the subcommittee charged with addressing this issue.

Attorney Gordon reminded the Committee that his subcommittee had been charged with addressing a problem relating to when an order becomes "final." He noted that the word "final" is ambiguous in New Hampshire jurisprudence, and can mean both: (1) the earliest date an order becomes *effective*; and (2) the latest date an order is *appealable*, and that this is particularly problematic in family division cases. In divorce cases, there is often the problem of a decree becoming "unfinal." This ambiguity leads to arguments between litigants and confusion for judges and clerks. As is stated in the subcommittee's September 10, 2015 memo to the Committee, the subcommittee confined its efforts to making more precise the rule defining when domestic relations orders of the family court become effective.

Attorney Gordon stated that the subcommittee's September 10, 2015 memo contains a proposal to amend Family Division Rule 2.29. The subcommittee's goal was to propose language to: (1) make the finality rule in

domestic relations cases clear and unambiguous; (2) put all of the relevant rules in one place so that they are accessible to all; and (3) create a default rule that puts into effect orders that ought to be in effect immediately, but also provides judges with discretion to adjust this when it is appropriate to do so. The subcommittee believes that the language set forth in the draft rule on page 3 of the September 10 memo accomplishes these goals.

Attorney Gordon explained that the subcommittee understood that the Committee had suggested at the June 5 meeting that the rule should require a judge to indicate in his or her order which aspect of the order would be effective when. As is stated on page 1 of the September 10 memo, the subcommittee concluded that applying this system to all aspects of every order would be burdensome for both judges and litigants, would be prone to typographical and other error, would be burdensome for clerks in answering litigants regarding effective dates of their decrees and would increase rather than reduce complexity. The subcommittee also believed that such a level of granularity would not be necessary to address the existing problem. So, the subcommittee's proposed language takes a more categorical approach.

Section B of the rule basically says that temporary orders, parenting plans, uniform support orders and designated provisions concerning the welfare of a child or the safety of a party will be effective immediately, which is a departure from the current rule. Section C says that all other orders will be in effect on the 31st day from the date of the clerk's notice of decision unless otherwise specified by the court, a party files a timely post-decision motion, or a party files an appeal. Section D implements the current policy that temporary orders are in effect pending appeal and also continues the current policy discouraging bifurcation of marital and parenting cases. Section E says that if a party files a timely post-decision motion but no appeal is filed, orders are effective on the 31st day from the date of the notice of decision on the motion, unless the court specifies another effective date. Section F states that if an appeal is filed, the temporary orders continue in effect until the mandate is issued or any other proceeding as ordered by the Court has concluded. Attorney Gordon noted that attorney Honey Hastings, who drafted the rule, was present at the meeting and available to answer questions.

Attorney Hastings spoke at the meeting and urged the Committee to recommend the change proposed on page 3 of the September 10 memo for adoption, noting that this would be helpful to many because the proposed new rule now makes it very clear when orders become effective. This is particularly important for new lawyers, clients, and people proceeding *pro se*. Many people represent themselves in divorce and parenting cases and should not have to read cases to understand when these very personal orders take effect. This proposed new rule is very important and in the interest of New Hampshire families. In addition, this should reduce pressure on the court staff at the call center because now it will be clear when these orders go into effect. Judge

Carbon served on this subcommittee and she and her clerk are very supportive of these proposals.

Judge Delker inquired about the meaning of the phrase "designated provisions concerning the welfare of a child or the safety of a party" in proposed rules 2.29(B)(4). Attorney Hastings responded that it refers to designated paragraphs that may be contained within an order.

Senator Feltes inquired whether Attorney Hastings has had the opportunity to review the 9/3/15 submission made by Justice Lynn and distributed to Committee members. Attorney Hastings responded that she did review the submission, and appreciates the effort to simplify the rule, but stated that she believes that the details contained in the subcommittee's proposal are necessary.

Justice Lynn stated that it seems like there may be some kinds of orders, for example, orders in which a judge says, "this is a final order - the husband is required to pay alimony for five years." In the absence of some other factors, it seems like this is an order that should take effect immediately. The fact that an appeal has been filed should not mean that the person pays alimony for seven years, for example. Attorney Hastings agreed and stated that in that example, it would be appropriate for the judge to say the order takes effect immediately. But this is possible under this rule, because the language in section B allows the court to specify another effective date.

There was some discussion about whether orders in domestic violence cases should be effective immediately. Attorney Hastings noted that Rule 10 of the family division rules specifically refers to domestic violence cases but makes no reference to effective dates of orders. She believes that this should be addressed and that the orders should be effective immediately. She noted that attorney Ryan raised the issue with a legal assistance lawyer. The lawyer asked for more time to consider the issue with the stakeholders in that community, and noted that this issue needs more study. Attorney Hastings informed the Committee that the printed orders in domestic violence cases state that the order is effective immediately. She also noted that section B(4) of the subcommittee's proposal states that "designated provisions concerning the welfare of a child or the safety of a party," are effective immediately, so if there is a restraining order granted in a divorce case, this situation would be covered. However, this provision would not apply in a domestic violence case. Attorney Gordon noted that in domestic violence cases, the clerk does not issue a standard notice. Rather, a special notice is issued making it clear that the order is effective immediately.

Justice Lynn expressed concern that there might be some inconsistency between sections B and D of the proposal on page 3 of the subcommittee's 9/10/15 memo. Section B(1) refers to temporary orders, but Section D says

that "all orders other than those described in section B shall take effect as temporary orders." Attorney Hastings responded that the idea is that section (B)(1) refers to temporary orders issued after a hearing. The "as temporary orders" language in section D is not the same thing, so perhaps better language for section D is "on a temporary basis." Justice Lynn asked, whether, if the language is left as it is now, it creates the same problem he was talking about before regarding alimony, for example. Attorney Gordon agreed that the language seems to create some potential circularity. Judge Delker inquired whether it is necessary to have the language set forth in section D at all. He asked whether there are any orders that should be "converted" to a temporary order. Attorney Hastings noted that a residence issue could be such an issue. For example, a judge might issue a final order awarding the husband the house. Under section D, this would be a temporary order, in which the husband has the house. Attorney Gordon noted that language along the lines of "this order shall take effect as a temporary order pending post-trial motions or appeal" is increasingly being included in marital orders. Attorney Hastings noted that the fact that some judges are already using them is another reason it is important to have these categories.

Justice Lynn asked the Committee to consider a situation in which the order, in the final order, is "the house shall be sold." This does not fall under section B, but under section C. Is this therefore an "all other orders" under section D that then becomes a temporary order? Attorney Hastings agreed that property division should be an exception to this. Judge Delker asked again whether it is really necessary to have section D. It may only create an unintended consequence of, for example, shifting the house from one person to another. Attorney Hastings stated that she was coming closer to the view that section D should be deleted from the proposal.

Justice Lynn suggested that alimony orders should be included in B. Attorney Hastings agreed, because the latest information about the kids and alimony was at the two day trial, not the temporary hearing. Attorney Manning noted that alimony may not cover enough. Perhaps it is better to change the language to "alimony and other ongoing expenses." Justice Lynn stated that if the court orders the payment of ongoing expenses, *e.g.*, the mortgage, it is safe to assume that the court wants that to happen now. Attorney Hastings agreed that that is correct.

Attorney Lick inquired how sections D and F work together in a situation involving an appeal. Section D says, "after a hearing, based on the hearing, the order remains in effect." Section F says, "temporary orders shall continue," and is tied to Section D. Do you mean post-hearing orders? Judge Delker stated that he thought what was intended in F was orders covered by section B. Attorney Hastings said that it means existing orders continue in effect. Attorney Lick stated once you have had a hearing, if there are post-trial motions or an appeal, you want these to be in effect, but how much of that

supersedes what is in Section B? Attorney Hastings stated that it might make sense to cross out "temporary" in section F and substitute it with "existing."

Justice Lynn inquired whether sections E and F are necessary, in light of the existence of sections B and C. Attorney Hastings explained that the issue in sections E and F is post-trial motions and appeal. She noted that section C goes to what happens if there are no other pleadings. Section D goes to what happens if there are post-trial motions and an appeal, and section E goes to what happens if there are post-trial motions but no appeal. Attorney Gordon noted that the language in section E is taken directly from the existing Family Division Rule 2.29. Judge Delker stated that he believes all of the provisions are necessary. Attorney Manning inquired whether the rule could be restructured as "C" with subdivisions "1,2,3."

Justice Lynn asked what orders are the "orders" referred to in section E? He notes that this could be inconsistent with other provisions, and asked whether it should say, "the orders specified in section C above are effective and then section F should say, "if any party files an appeal, the orders specified in section C above take effect 31 days after the appeal is resolved." It was generally agreed by Committee members that the language in section F should be parallel to section E.

Attorney Gordon agreed that his subcommittee would redraft the language to take into consideration the Committee's comments on the current draft. Justice Lynn noted that it is important to ask Judge Kelly to look at the proposal, and inquire whether he has any concerns about it. Pat Ryan agreed that the Circuit Court staff would need to take a look at the proposal.

Upon motion made by Judge Delker and seconded by Justice Lynn, the Committee voted to put the subcommittee's proposal to amend Family Division Rule 2.29, as amended by the Committee, out for public hearing in December.

Carolyn Koegler agreed to circulate the new language to Committee members and to request an email vote to put the language out for public comment so that the language can be included in the December public hearing notice.

3. <u>New Submissions</u>

a. <u>2015-011. Supreme Court Rule 37(14)(b)</u>

Carolyn Koegler referred Committee members to a June 5, 2015 memorandum from Eileen Fox to the Committee. The memo was submitted after the Committee's meeting on June 5. She explained that the Court had received an inquiry from a disbarred attorney seeking clarification about the procedure for readmission to the bar. The Court advised the disbarred

attorney that he was required by the rule to retake the bar examination. The Court has asked the Committee to propose an amendment to Rule 37(14)(b) to make it clear that an attorney seeking readmission must submit an application and petition for admission to the bar, take and pass the bar examination, and submit to the additional review required by the rule. The Court also asked that the Committee propose language to clarify the provisions of Rule 37(14)(b) dealing with the review of a disbarred attorneys application by the Professional Conduct Committee and the Character and Fitness Committee. Carolyn Koegler noted that she had met with Eileen Fox, Sherry Hieber and Sara Greene to discuss how the rule might be amended to address the Court's concerns about the rule. She will work with Attorneys Fox, Hieber and Greene. They hope to submit language to the Committee prior to the December meeting. She inquired whether any Committee members would be interested in working with the subcommittee on the proposal. Attorney Abigail Albee stated that she would like to join the group, and that she is a member of the Board of Bar Examiners.

Judge Delker stated that he has some concerns about a blanket rule requiring all disbarred attorneys to retake the bar examination. He suggested that whether a disbarred attorney should retake the bar exam should depend, perhaps, on what the attorney had been disbarred for. Attorney Manning stated that she is not sure that retaking the bar exam is important in all circumstances. Also, she notes that she is concerned that the disbarred attorney is required to retake the bar exam but does not necessarily know whether he or she will be readmitted. Does the attorney know that he or she will be readmitted despite what happened in his or her past, if he or she passes the bar examination again? Does it make sense to require someone to retake the bar examination if they are not likely to be readmitted, given what they did that caused them to be disbarred?

Justice Lynn stated that there is a fairness issue here, but notes that this is also true for a new applicant. That is, they are required to take the bar examination before the Character and Fitness Committee has completed its review.

Attorney Gordon noted that he represents a client who has been disbarred and has been disbarred in a number of states. Admission in each of the states depends upon admission in the other.

Judge Cullen asked how the Court is to determine whether the disbarred attorney still has the competence to practice, since he or she has been unable to practice during the period of disbarment.

Representative Berch asked whether it might make sense to have the disbarment order specify that if the applicant wishes to reapply to the bar, he or she will or will not be required to retake the bar exam.

Senator Feltes inquired how the process works in other states, and whether it might make sense of Character and Fitness to do its work first, before a disbarred attorney sits for the bar examination again. He agrees with Judge Delker that whether someone should be required to retake the bar examination should depend upon the specific circumstances that led to the disbarment.

Judge Delker stated that it would make some sense for the Character and Fitness Committee to make its determination first, and to perhaps state whether it would recommend readmission to the bar, conditioned on the passage of the bar.

Judge Cullen noted that there is another issue here – he notes that disbarment can also prevent people from getting licensed in other areas.

Attorney Manning inquired what happens in circumstances in which an attorney from out of state waives into New Hampshire, then does not pay dues or take CLES, etc. Would these things cause the attorney to be suspended from the practice of law, or is it possible to be disbarred for this?

Attorney Manning noted that Committee members have raised a lot of concerns about this issue, and that she hopes that the concerns will be addressed by the subcommittee. In particular, the Committee would like to understand: (1) how the bar application process currently works for people applying to the bar the first time; and (2) how the process works or will work for disbarred attorneys who seek reinstatement. It was agreed that Abigail Albee would work with Carolyn Koegler, Eileen Fox, Sherry Hieber and Sara Greene to draft a proposal to submit to the Committee for consideration at the December meeting.

b. 2015-012. Professional Conduct Rule 5.5

Justice Lynn explained that attorney Rolf Goodwin had submitted proposals to amend Professional Conduct Rule 5.5 and the accompanying Ethics Committee comment. The proposal relates to the multijurisdictional practice of law, and would change the assumption that a lawyer must be licensed in New Hampshire simply because he or she happens to be present in New Hampshire. The proposal would clarify that a lawyer who is licensed in another jurisdiction but does not practice New Hampshire law does not need to obtain a New Hampshire license to practice law solely because the lawyer is present in New Hampshire.

Attorney Manning inquired whether anyone on the Committee knows anyone who is an expert on the multijurisdictional practice of law.

Representative Berch inquired whether the proposal would have an impact on any people who are commonly practicing but who are not licensed. Justice Lynn stated that this proposal would not impact those people.

Upon motion made by Judge Cullen and seconded by attorney Ryan, the Committee voted to put the proposal out for public hearing in December.

c. <u>2015-013. Superior Court (Civ) Rule 201. Fees for Copied Material.</u>

Justice Lynn referred Committee members to a June 15, 2015 letter from Judge Nadeau. He explained to the Committee that the Superior Court has submitted a proposal to amend the rule relating to the fees to be charged to people who request copies of Court documents once e-filing is implemented in civil cases filed in the Superior Court. The proposal would amend the rules to state that the fees charged for printing from the kiosks in the courthouse will be less than fees paid for copied materials.

Maureen Manning inquired why the fee increases from $.25 per page to $.50 per page when someone copies more than 10 pages. Pat Ryan stated that this is in order to discourage people from doing too much copying. Representative Berch noted that this is also true at the legislature, and that the legislature wants to discourage unnecessary volume requests.

Following some discussion, the Committee determined that a public hearing on this would not be necessary. Judge Delker agreed to ask Judge Nadeau why printouts over ten pages triggers a higher fee.

d. <u>2015-014. Circuit Court Rules. Fees for Copied Material.</u>

Justice Lynn referred Committee members to an August 11 memo from Carolyn Koegler explaining that the Circuit Court had also proposed changes to court rules relating to fees to be charged in the Circuit Court to litigants who request copies or printouts of court documents.

Following some discussion, the Committee determined that a public hearing on this would not be necessary. Pat Ryan agreed to ask Judge Kelly why printouts over ten pages triggers a higher fee.

e. <u>2015-015. Superior Court Rules. Application to annul record of conviction and sentence.</u>

At the June meeting, Judge Delker raised the question of whether there should be a rule similar to Circuit Court Rule 2.18 in the Superior Court.

Judge Delker reported that there is a disparity in the way annulments work in the Superior Court versus the Circuit Court. The procedures are different, and are different from the statute. It is not clear how they interrelate, but it is clear that we need to have a rule that is uniform and consistent. Judge Delker agreed to draft a rule and to work with Pat Ryan to come up with one rule to cover all of the requests.

f. Superior Court Rules. Dissemination of Jury Questionnaires

Justice Lynn referred Committee members to a September 1, 2015 letter from attorney Karen Gorham, Superior Court Administrator, to Justice Lynn. The Superior Court is proposing what it believes is a technical change to the superior court civil and criminal rules, reflecting the current manner in which the questionnaires are collected and distributed.

Attorney Albee and Judge Delker noted that there are a lot of complaints about the juror questionnaires, but that the complaints are generally about the questionnaire, not about the fact that the questionnaires are completed online.

Following some brief discussion about whether the change is technical, after concluding that no hearing would be necessary, and upon motion made by Senator Feltes and seconded, the Committee voted to recommend this change to the Court immediately.

g. 2015-017. Public or Semi-Public Access to the Odyssey System

Attorney Gordon referred Committee members to his August 21, 2015 email to Carolyn Koegler in which he notes that an attorney has suggested that there be public or semi-public access to the Odyssey system. Attorney Gordon explained that attorneys are frustrated that they have to call the call center just to obtain a docket number.

Judge Delker explained that this is just not technologically possible. He notes that once e-filing is implemented, attorneys will have access to the information in Odyssey (though, of course, not to confidential information).

h. 2015-018. Retention of Advisory Committee on Rules Files

Carolyn Koegler referred Committee members to her memo of September 10, 2015. She reminded the Committee that the relevant provision of proposed Supreme Court Rule 51, which was recommended by the Committee and put out for public comment by the Supreme Court, includes as one of the responsibilities of the Advisory Committee on Rules to "retain for a minimum of three years, as matters of public record, all rule suggestions and all Committee reports, agendas, minutes and notices of public hearing." The Court has asked that the Committee provide its opinion about whether the rules should make

clear that after three years, the records will be destroyed. If the Committee concludes that it is unnecessary or inadvisable to provide that level of specificity regarding the retention and destruction of documents, the Court would like the Committee to provide its opinion about whether it is desireable for the Court to retain Committee records for longer than the three years provided in the rule.

Committee members generally agreed that Committee records should *not* be destroyed after three years. Carolyn Koegler explained that the paper files take up a considerable amount of space and that she very rarely receives requests for information about the history of rules changes. Committee members nevertheless believe that the records should be retained. Committee members suggested that Committee records should be maintained electronically, which will allow records to be retained for a very long time.

Following some further discussion of the issue, Carolyn Koegler and Justice Lynn agreed to consult with Brian Eddy at the Supreme Court to see whether it would be possible to create files by docket number on the Advisory Committee on Rules webpage. This would allow members of the Advisory Committee on Rules as well as the public to view online all documents considered by the Committee that relate to a particular issue. Carolyn Koegler and Justice Lynn also agreed to raise the question with the Court of whether files can be maintained electronically, and, if so, how. Until this issue is decided, paper files will be maintained.

i. Miscellaneous

Carolyn Koegler reminded the Committee that a member had asked her to prepare a chart reflecting the status of rules proposals. She then distributed to Committee members a draft chart showing the status of various rules changes recommended by the Advisory Committee on Rules to the Supreme Court. Committee members asked that Carolyn Koegler: (1) provide the document with a title; (2) add the Advisory Committee on Rules docket numbers; and (3) include the items that are pending before the Advisory Committee on Rules.

4. Meeting Dates

The next Advisory Committee on Rules meeting will be December 4, 2015. Committee members selected the following meeting dates for 2016:
Friday, March 11
Friday, June 3
Friday, September 9
Friday, December 9