

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT OF NEW HAMPSHIRE

O R D E R

R-2007-0003, In re 2007 Annual Report of the Advisory Committee on Rules and January 3, 2007 Referral of the Advisory Committee on Rules

The New Hampshire Supreme Court Advisory Committee on Rules has reported a number of proposed rule amendments to the New Hampshire Supreme Court with a recommendation that they be adopted. On or before **Friday, August 31, 2007**, members of the bench, bar, legislature, executive branch, or public may file with the clerk of the supreme court comments on any of the proposed rule amendments. An original and seven copies of all comments shall be filed. Comments may also be e-mailed to the court at:

[rulescomment@courts.state.nh.us](mailto:rulescomment@courts.state.nh.us)

The proposed rule amendments are set forth below.

**A. SUPREME COURT RULES**

1. Supreme Court Rule 3 re definition of "mandatory appeal." After public hearing held in June 2007, the committee recommends adopting this rule on a permanent basis as set forth in Appendix A.

2. Supreme Court Rule 21(6-A) re automatic extensions of time. After public hearing held in December 2006, the committee recommends adopting this rule on a permanent basis as set forth in Appendix B.

3. Supreme Court Rule 33 re nonmembers of the New Hampshire bar. After public hearing held in June 2007, the committee recommends amending this rule as set forth in Appendix C.

4. Supreme Court Rule 37 re attorney discipline system. After public hearing in December 2006, the committee recommends amending this rule as set forth in Appendix D.

5. Supreme Court Rule 37A re rules and procedures of the attorney discipline system. After public hearing in December 2006, the committee recommends amending this rule as set forth in Appendix E.

6. Supreme Court Rule 38, Canon 4F, re service as arbitrator or mediator. After public hearing in December 2006, the committee recommended amending this rule. The rule was amended on a temporary basis by supreme court order dated January 18, 2007. The court now seeks comment on whether to adopt the rule, as set forth in Appendix F, on a permanent basis.

7. Supreme Court Rule 38, Application Section B, re application of Code of Judicial Conduct to retired judges. After public hearing in December 2006, the committee recommended amending this rule. The rule was amended on a temporary basis by supreme court order dated January 18, 2007. The court now seeks comment on whether to adopt the rule, as set forth in Appendix G, on a permanent basis.

8. Supreme Court Rule 39 re judicial conduct committee. After public hearing held in December 2006, the committee recommends adopting this rule on a permanent basis as set forth in Appendix H.

9. Supreme Court Rule 55(5) re public protection fund. After public hearing in December 2006, the committee recommends amending this rule as set forth in Appendix I.

## **B. SUPERIOR COURT RULES**

1. Superior Court Rule 19 re nonmembers of the New Hampshire bar. After public hearing in June 2007, the committee recommends amending this rule as set forth in Appendix J.

2. Superior Court Rule 61-B re late reports by guardians ad litem. After public hearing held in June 2007, the committee recommends adopting this rule on a permanent basis as set forth in Appendix K.

3. Superior Court Rule 97-A re joinder and severance. After public hearing held in December 2006, the committee recommends adopting this rule as set forth in Appendix L.

4. Superior Court Rule 104 re payment of fines. After public hearing held in June 2006, the committee recommends amending this rule as set forth in Appendix M.

5. Superior Court Rule 169-A re access to confidential records. After public hearing in June 2007, the committee recommends adopting this rule on a permanent basis as set forth in Appendix N.

6. Superior Court Rule 170 re mediation. After public hearing in June 2007, the committee recommends amending this rule as set forth in Appendix O.

7. Superior Court Rule 170-A re arbitration. After public hearing in June 2007, the committee recommends amending this rule as set forth in Appendix P.

8. Superior Court Rule 185 re answers and cross-petitions in domestic relations cases. After public hearing in June 2007, the committee recommends amending this rule as set forth in Appendix Q.

9. Superior Court Rules 201 to 202-E re domestic relations. After public hearing held in December 2006, the committee recommends adopting these rules on a permanent basis as set forth in Appendix R.

### **C. DISTRICT COURT RULES**

1. District Court Rule 1.3C re nonmembers of the New Hampshire bar. After public hearing in June 2007, the committee recommends amending this rule as set forth in Appendix S.

2. District Court Rule 1.25 re late reports by guardians ad litem. After public hearing in June 2007, the committee recommends adopting this rule on a permanent basis as set forth in Appendix T.

3. District Court Rule 1.26 re access to confidential court records. After public hearing in June 2007, the committee recommends adopting this rule on a permanent basis as set forth in Appendix U.

4. District Court Rule 2.7 re payment of fines. After public hearing held in June 2006, the committee recommends amending this rule as set forth in Appendix V.

5. District Court Rule 2.9-A re joinder and severance. After public hearing held in December 2006, the committee recommends adopting this rule as set forth in Appendix W.

#### **D. PROBATE COURT RULES**

1. Probate Court Rule 19 re nonmembers of the New Hampshire bar. After public hearing in June 2007, the committee recommends amending this rule as set forth in Appendix X.

2. Probate Court Rule 61-B re late reports by guardians ad litem. After public hearing in June 2007, the committee recommends adopting this rule on a permanent basis as set forth in Appendix Y.

3. Probate Court Rule 169-A re access to confidential court records. After public hearing in June 2007, the committee recommends adopting this rule on a permanent basis as set forth in Appendix Z.

#### **E. FAMILY DIVISION RULES**

1. Family Division (General) Rule 12 re late reports by guardians ad litem. After public hearing in June 2007, the committee recommends adopting this rule on a permanent basis as set forth in Appendix AA.

2. Family Division (General) Rule 13 re access to confidential court records. After public hearing in June 2007, the committee recommends adopting this rule on a permanent basis as set forth in Appendix BB.

#### **F. RULES OF EVIDENCE**

1. Evidence Rule 609 re impeachment by evidence of conviction of crime. After public hearing held in June 2007, the committee recommends amending this rule as set forth in Appendix CC.

Copies of the proposed changes are available upon request to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646). In addition, the proposed changes are available on the Internet at:

<http://www.courts.state.nh.us/index.htm>

The current rules of the New Hampshire state courts are also available  
on the Internet at:

<http://www.courts.state.nh.us/rules/index.htm>

June 20, 2007

ATTEST: \_\_\_\_\_  
Eileen Fox, Clerk  
Supreme Court of New Hampshire

## APPENDIX A

Amend the definition of "mandatory appeal" in Supreme Court Rule 3 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strike~~ format):

"Mandatory appeal": A mandatory appeal shall be accepted by the supreme court for review on the merits. A mandatory appeal is an appeal filed by the State pursuant to RSA 606:10, or **[the first appeal filed by a party]** ~~an appeal~~ from a final decision on the merits **[in a case pending in]** ~~issued by a~~ superior court, district court, probate court, or family division court, that is in compliance with these rules. Provided, however, that the following appeals are NOT mandatory appeals:

(1) an appeal from a final decision on the merits issued in a post-conviction review proceeding (including petitions for writ of habeas corpus and motions for new trial);

(2) an appeal from a final decision on the merits issued in a collateral challenge to any conviction or sentence;

(3) an appeal from a final decision on the merits issued in a sentence modification or suspension proceeding;

(4) an appeal from a final decision on the merits issued in an imposition of sentence proceeding;

(5) an appeal from a final decision on the merits issued in a parole revocation proceeding;

(6) an appeal from a final decision on the merits issued in a probation revocation proceeding.;

(7) an appeal from a final decision on the merits issued in a landlord/tenant action filed under RSA chapter 540 or in a possessory action filed under RSA chapter 540; and

(8) an appeal from an order denying a motion to intervene.

Comment

**[Only the first appeal filed by a party from a final order in a case is a mandatory appeal. Should a subsequent appeal be filed by the same party from a subsequent final order in the same case, it will be a discretionary appeal, not a mandatory appeal. For example, if a party's first appeal in a divorce proceeding is from the final divorce decree, that appeal will be a mandatory appeal. If, at a later date, the same party appeals a subsequent final order issued in a post-divorce proceeding, such as a petition to modify the divorce decree or a petition to modify child support, that appeal will be a discretionary appeal.]**

A trial court order denying a motion by a non-party to intervene in a trial court proceeding is treated as a "final decision on the merits" for purposes of appeal. Thus, such an order is immediately appealable to the supreme court. Pursuant to this rule, however, such an appeal is not a mandatory appeal. Therefore, a non-party who wishes to appeal the trial court's denial of the non-party's motion to intervene must file an appeal pursuant to Rule 7(1)(B) within the time allowed for appeal under that rule.

## APPENDIX B

Adopt Supreme Court Rule 21(6-A) on a permanent basis as follows (no changes are being made to the temporary rule now in effect):

(6-A). *Extensions of time to file briefs.*

(a) Unless the scheduling order states otherwise, any party may obtain an automatic extension of no more than fifteen days within which to file briefs (or memoranda of law) by filing an original and one copy of an assented-to notice of automatic extension of time. The notice shall affirmatively state that all parties assent to the extension, and the notice MUST set forth the new dates upon which all briefs (or memoranda of law) for all parties shall be due, including the date for reply briefs. No such date shall be extended by more than fifteen days. Upon the filing of the notice, the new briefing schedule set forth therein shall become effective without further order of the court.

(b) A maximum of two assented-to notices of automatic extension of time may be filed by the parties collectively. Thereafter, no additional extension of time will be granted by the court absent a showing of extraordinary circumstances.

(c) Extensions of time of more than fifteen days, or extensions when all parties do not consent, may be requested only by motion to the court. Extensions of more than fifteen days are not favored.

## APPENDIX C

Amend Supreme Court Rule 33 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

### **RULE 33. Nonmember of the New Hampshire Bar.**

(1) (a) An attorney, who is not a member of the Bar of this State **[(a “Nonmember Attorney”)]**, shall not be allowed to enter an appearance in any case, except on application to appear *pro hac vice*, which may be granted if a member of the Bar of this State **[(the “In-State Attorney”)]** is associated with him or her and present at oral argument.

(b) ~~An attorney who is not a member of the Bar of this State~~ **[A Nonmember attorney]** seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

- (1) the applicant's residence and business address;
- (2) the name, address and phone number of each client sought to be represented;
- (3) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;
- (4) whether the applicant: (i) has been denied admission *pro hac vice* in this State; (ii) had admission *pro hac vice* revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;
- (5) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;
- (6) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for

disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application);

(7) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this State within the preceding two years; the date of each application; and the outcome of the application; ~~and~~

(8) the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at oral argument; **and**

**(9) the date upon which the non-refundable fee set forth in Rule 33(5) was paid to the New Hampshire Bar Association].**

(c) The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that ~~such admission~~:

(1) **[such admission]** may be detrimental to the prompt, fair and efficient administration of justice;

(2) **[such admission]** may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

(2) Without the prior written approval of the court, no person who is not a lawyer may represent a person other than himself or be listed on the notice of appeal or other appeal document, or on the brief, or sit at counsel table in the courtroom or present oral argument. Request for such written approval shall be made in writing at the time of filing the appeal or, if it relates to briefing or oral argument, not later than 15 days before the date scheduled for filing the brief or for oral argument. The request must contain: (a) a power of attorney signed by the party, and witnessed and acknowledged before a justice of the peace or notary public, constituting another person as his or her attorney to

appear in the particular action; and (b) an affidavit under oath in which said other person discloses (i) all of said other person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (ii) all instances in which said other person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, and (iii) all prior proceedings in which said other person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

(3) When an attorney provides limited representation to an otherwise unrepresented party by drafting a document to be filed by such party with the supreme court in a proceeding in which the attorney is not entering any appearance or otherwise appearing in the case in the supreme court, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement "This pleading was prepared with the assistance of a New Hampshire attorney." The unrepresented party must comply with this required disclosure.

**[(4) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.]**

**(5) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]**

## APPENDIX D

Amend Supreme Court Rule 37(3)(c) by adding a new subsection 37(3)(c)(15); and amend Rule 37(19) by amending the title and adding new subsections 37(19)(b), 37(19)(c), 37(19)(d), and 37(19)(e).

1. Adopt new subsection 37(3)(c)(15) as follows:

(15) To issue discretionary monetary sanctions against a disciplined attorney in the form of the assessment of costs and expenses pursuant to Rule 37(19).

2. Amend Rule 37(19) so that as amended it shall state as follows:

(19) ***Monetary Sanctions: Expenses Relating to Discipline Enforcement:***

(a) All expenses incurred by the attorney discipline system in the investigation and enforcement of discipline may, in whole or in part, be assessed to a disciplined attorney to the extent appropriate.

(b) Following any assessment, the professional conduct committee shall send a written statement of the nature and amount of each such expense to the disciplined attorney, together with a formal demand for payment. The assessment shall become final after 30 days unless the disciplined attorney responds in writing, listing each disputed expense and explaining the reasons for disagreement. If the parties are unable to agree on an amount, the professional conduct committee may resolve and enforce the assessment by petition to the superior court in any county in the state.

(c) A final assessment shall have the force and effect of a civil judgment against the disciplined attorney. The professional conduct committee may file a copy of the final assessment with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures.

(d) The superior court may increase the assessment to include any taxable costs or other expenses incurred in the resolution or enforcement of any assessment. Such expenses may include reasonable

attorney's fees payable to counsel retained by the committee to resolve or recover the assessment.

(e) Any monetary assessment made against a disciplined attorney shall be deemed to be monetary sanctions asserted by the professional conduct committee or the applicable court against such attorney.

## **APPENDIX E**

Amend Supreme Court Rule 37A(I)(e)(1) by adding a new subsection 37A(I)(e)(1)(F); and amend Rule 37A(III)(d)(2)(C)(v) by adding a new sentence to the end of the subsection.

1. Adopt new subsection 37A(I)(e)(1)(F) as follows:

(F) Monetary Sanctions Pursuant to Rule 37(19) – by the professional conduct committee or the court.

2. Amend 37A(III)(d)(2)(C)(v) so that as amended it shall state as follows:

(v) assess to a disciplined attorney to the extent appropriate, in whole or in part, expenses incurred by the attorney discipline system in the investigation and enforcement of discipline. An assessment made under this section shall have the same force, effect and characterization and shall be subject to the same procedures for finalization, resolution and enforcement as an assessment under Rule 37(19).

## APPENDIX F

Adopt Supreme Court Rule 38, Canon 4F on a permanent basis as follows (no changes are being made to the temporary rule now in effect):

### F. Service as Arbitrator or Mediator.

(1) Except as provided in subsection 2 below, a judge shall not provide services as a private arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(2) A judge who is in senior active service pursuant to RSA 493-A:1 or who has reached age 70 but continues to sit as a judicial referee pursuant to RSA 493-A:1-a may serve as a private mediator or arbitrator, and may be privately compensated for such services in accordance with this subsection. To the extent the senior judge or judicial referee provides mediation services pursuant to Superior Court Rule 170 or 170-B, he or she shall comply with the certification requirements of those rules.

(a) A senior judge or judicial referee may be associated with entities that are solely engaged in offering mediation or other alternative dispute resolution services but that are not otherwise engaged in the practice of law. However, such senior judge or judicial referee shall not associate with a law firm, or advertise or solicit business in a manner that identifies his or her position as a senior active judge or judicial referee or prior service as a judge, but he or she may include the fact of prior service as a judge, along with other background and experience, in a resume or curriculum vitae.

(b) A senior judge or judicial referee who serves as a mediator or arbitrator shall disclose to the parties to the mediation or arbitration whether he or she has presided over a case involving any party to the mediation or arbitration within the past three years. A senior judge or judicial referee shall not solicit service as a mediator or arbitrator in any case in which he or she is or has presided or in which he or she has ruled upon any issues other than routine scheduling matters, but he or she may serve as a mediator or arbitrator in such a case if requested to do so by all parties to the case; provided, however, that once a senior judge or judicial referee serves as a mediator or arbitrator in such a case, he or she shall not thereafter preside over any aspect of the case or rule upon any issue in the case in a judicial capacity.

(c) A senior judge or judicial referee shall disclose if he or she is being utilized or has been utilized as a mediator or arbitrator by any party, attorney or law firm involved in the case pending before the senior judge or

judicial referee. Absent express consent from all parties, a senior judge or judicial referee is prohibited from presiding over any case involving any party, attorney or law firm that is utilizing or has utilized the senior judge or judicial referee as a mediator within the previous three years. A senior judge or judicial referee also shall disclose any negotiations or agreements for the provision of mediation or arbitration services between the senior judge or judicial referee and any of the parties or counsel to the case.

(3) The provisions of subsections (2)(b) and (2)(c) above do not apply when a judge, senior judge or judicial referee is performing mediation services for the judicial branch and without private compensation pursuant to Superior Court Rules 170 or 170-B.

## **APPENDIX G**

Adopt Supreme Court Rule 38, Section B of the Application of the Code of Judicial Conduct on a permanent basis as follows (no changes are being made to the temporary rule now in effect):

B. All retired judges who have elected to take senior active status or who wish to serve as judicial referees or temporary justices of the supreme court shall comply with the provisions of this Code governing part-time judges, except that they shall also comply with the provisions of Section 4F if they wish to serve as a private mediator or arbitrator for compensation. A retired judge who does not take senior active status and who does not desire to serve as a judicial referee or a temporary justice of the supreme court is not subject to Section 4F of this Code.

## APPENDIX H

Adopt Supreme Court Rule 39 on a permanent basis as follows (no changes are being made to the temporary rule now in effect):

### **RULE 39. COMMITTEE ON JUDICIAL CONDUCT**

#### *(1) Authority*

Pursuant to the supreme court's constitutional and statutory authority, and to provide for the orderly and efficient administration of the Code of Judicial Conduct, Rule 38 of the Rules of the Supreme Court, there is hereby established a committee on judicial conduct.

#### *(2) Appointment of Committee*

(a) The committee on judicial conduct shall consist of eleven members and eleven alternate members. Alternate members may participate in committee proceedings only as specifically provided in this rule.

(1) One member and one alternate member who shall each be an active or retired justice of the superior court; one member and one alternate member who shall each be an active or retired district court judge; and one member and one alternate member who shall each be an active or retired probate court judge, all of whom shall be appointed by the supreme court.

(2) One member and one alternate member who shall each be a clerk of court and who shall be appointed by the supreme court.

(3) One member and one alternate member who shall each be a New Hampshire Bar Association member and who shall be appointed by the president of the New Hampshire Bar Association.

(4) One public member and one alternate public member, who shall not be a judge, attorney, clerk of court, or elected or appointed public official, shall be appointed by the president of the New Hampshire Bar Association.

(5) One public member and one alternate public member], who shall not be a judge, attorney, clerk of court, or elected or appointed public official, shall be appointed by the supreme court.

(6) Two public members and two alternate public members, who shall not be judges, attorneys, clerks of court, or elected or appointed public officials, shall be appointed by the Governor.

(7) One public member and one alternate public member, who shall not be a judge, clerk of court, or attorney, shall be appointed by the president of the Senate.

(8) One public member and one alternate public member, who shall not be a judge, clerk of court, or attorney, shall be appointed by the speaker of the House.

(b) *Committee Address*

The committee address shall be determined by the committee.

(3) *Terms of Office*

(a) The terms of the current members serving on July 1, 2005, shall continue until, and expire at the end of, the dates set forth below. The appointing authority who shall fill any vacancy for each current member is also set forth below.

<u>Current Member</u>	<u>Expiration Date</u>	<u>Appointing Authority</u>
Alfred Catalfo, III, Esquire	July 1, 2005	Bar President (public member position)
Harland W. Eaton	July 1, 2005	Governor
Elizabeth Lown	July 1, 2005	House Speaker
Jay Rosenfield	July 1, 2005	Senate President
Hon. Raymond A. Cloutier	July 1, 2006	Supreme Court (probate court judge position)
Hon. Douglas S. Hatfield	July 1, 2006	Supreme Court (district court judge position)
Wilfred L. Sanders, Esq.	July 1, 2006	Bar President (attorney member position)
Dr. Robert O. Wilson	July 1, 2006	Governor
Hon. Patricia C. Coffey	July 1, 2007	Supreme Court (superior court justice position)
Lawrence W. O'Connell	July 1, 2007	Supreme Court (public member position)
Dana Zucker	July 1, 2007	Supreme Court (clerk of court position)

Each member serving on July 1, 2005, shall continue to serve as a member until his or her successor is appointed. The initial term of the first eleven members appointed after July 1, 2005, which may include appointments of members who were serving on July 1, 2005, shall be for a three-year term.

The initial term of all alternate members appointed shall be for three years.

(b) All terms after the initial appointments set forth in subparagraph (a) shall be for three years.

(c) A member may serve a maximum of three successive terms, all of which commenced after July 1, 2005. After the expiration of the member's third successive term, the member may not again be appointed to the committee, either as a member or as an alternate member, until three years after the date of the member's last day as a member of the committee. An alternate member may serve an unlimited number of terms as an alternate.

(d) If any appointing authority other than the supreme court fails to appoint a member or an alternate member to fill a vacancy for a period of three months following the date upon which notice is sent to the appointing authority informing the appointing authority of the vacancy, the supreme court may appoint a member or alternate member to fill the vacancy. The person appointed shall have the same qualifications as would have been required had the appointing authority filled the vacancy.

#### (4) *Vacancy and Disqualification*

(a) A vacancy in the office of the committee shall occur

(1) when the term of a member or alternate member expires; provided, however, that such member or alternate member shall continue to serve until his or her successor is appointed; or

(2) when a judge who is a member or alternate member of the committee ceases to hold the office which he or she held at the time of selection; or

(3) when a lawyer ceases to be in good standing in all jurisdictions where admitted to practice law, or is appointed to a judicial office or as a clerk of court; or

(4) when a public member or alternate public member becomes a lawyer, clerk of court, or a judge; or

(5) when a public member or alternate public member appointed by the Governor or the President of the New Hampshire Bar Association becomes an elected or appointed public official; or

(6) when a member or alternate member ceases to be domiciled in New Hampshire; or

(7) when a clerk of court who is a member or alternate member of the committee ceases to hold the office which he or she held at the time of selection; or

(8) when a member or alternate member is removed from office by the committee as provided in paragraph 10; or

(9) when a member or alternate member ceases to hold office by submitting his or her resignation to the committee or otherwise.

(b) A vacancy shall be filled by selection of a successor with the same qualifications as those required for the selection of his or her predecessor in office. A member or alternate member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor.

(c) No member shall participate in any proceedings before the committee involving his or her own conduct or the conduct of any other member. No alternate member shall participate in any proceedings before the committee involving his or her own conduct.

(d) No member or alternate member shall participate in any proceeding in which his or her impartiality might reasonably be questioned.

(e) Whenever a member is disqualified from participating in a particular proceeding, or is unable to participate by reason of prolonged absence or physical or mental incapacity, an alternate member may be assigned by the chair to participate in any such proceeding or for the period of any such disability, provided that said alternate member shall have been appointed by the same appointing authority as the member who is being replaced, and shall have the same qualifications as those required for the selection of the member who is being replaced. If, however, due to disqualification or incapacity, there is no alternate member who was appointed by the same appointing authority with the same qualifications who is able to participate, then the chair may assign any other alternate member to participate in the proceeding or for the period of the member's disability.

(5) *Expenses of the Committee and Staff*

(a) The committee's budget shall be a separate PAU within the judicial branch budget. The committee shall prepare its own budget request. The budget request and such additional information as may be requested shall be submitted to the director of the administrative office of the courts for inclusion in the judicial branch budget request in the amounts requested. Expenses approved for payment by the committee shall be paid by the administrative office of the courts from funds appropriated for the judicial conduct committee.

(b) Members and alternate members shall serve without compensation for their services, but shall be reimbursed for necessary expenses incurred in the performance of their duties, subject to the availability of funds.

(c) The committee shall appoint an executive secretary and such other persons as may be necessary to assist the committee in its work. The executive secretary shall perform the duties and responsibilities prescribed by this rule and Supreme Court Rule 40, and such other duties and responsibilities as the committee may determine from time to time. He or she shall notify the appropriate appointing authority whenever a member's or alternate member's term expires or a vacancy in the office of the committee otherwise occurs. He or she shall receive all grievances, information, and inquiries, and process the same under the direction and supervision of the committee. The executive secretary shall maintain the committee's records, maintain statistics concerning the operation of the committee, and prepare an annual report of the committee's activities for presentation to the committee. He or she shall coordinate investigations ordered by the committee, and ensure that they are conducted discreetly and with dispatch. Subject to the direction and control of the committee, and subject to the availability of appropriated funds, the executive secretary shall have charge of the disbursement of expense funds. Generally, the executive secretary shall supervise the work of other personnel employed by the committee, direct the activities of the committee's office, and endeavor to keep members of the committee properly informed about its business.

(d) The committee may employ counsel. The duties of counsel shall be determined by the committee.

(e) The committee may employ such private investigators, experts and other personnel as the committee in its discretion deems necessary for the efficient discharge of its duties.

(f) The committee shall select its own office space, which should not be in the facilities of any branch of government.

#### (6) *Quorum and Chairperson*

(a) A quorum for the transaction of business by the committee shall be six members; provided, however, that no formal charges shall be instituted or unfavorable action taken against a judge except upon the affirmative vote of at least seven members. Except as otherwise provided in this rule or in Supreme Court Rule 40, no act of the committee shall be valid unless concurred in by six of its members.

Members of the committee may participate in a meeting of the committee by means of a conference telephone or similar communications equipment, provided all persons participating in the meeting can hear each other.

Participation by these means shall constitute presence in person at a meeting. These procedures shall not be used for hearings.

(b) If a quorum of the committee cannot be obtained by reason of the disqualification or absence of members thereof, the chair or the executive secretary may request that one or more alternate members act as a temporary replacement or replacements. Any such temporary replacement shall have been appointed by the same appointing authority and have the same qualifications as the member replaced.

(c) The committee shall designate the chair and vice-chair of the committee. The vice-chair shall act as chair in the absence of the chair. In the absence of both the chair and the vice-chair, the members present may select one among them to act as temporary chair.

#### *(7) Meetings of the Committee*

(a) Meetings of the committee shall be held at the call of the chair, the vice-chair, or the executive secretary or at the written request of three members of the committee.

(b) The committee may, by vote, establish regular or stated meeting dates.

(c) The business of the committee may be transacted by telephone, exchange of correspondence, or other informal poll of members, unless one or more members object; provided, however, that no formal charges shall be instituted or unfavorable action taken against a judge except upon deliberation and the affirmative vote of at least seven members who are physically present at a meeting of the committee.

#### *(8) Annual Report*

On or before March 1 of each year, the committee shall prepare a report summarizing its activities during the preceding calendar year. Upon approval of the report by the committee, a copy of the report shall be filed with the Governor, the president of the Senate, the speaker of the House, the chief justice of the supreme court, the chairpersons of the House and Senate Judiciary Committees, and shall be made available to the public.

#### *(9) Powers and Duties of the Committee*

The committee shall have the power and the duty:

(a) to consider and investigate the conduct of any judge, as that term is defined in Rule 40(2), within the jurisdiction of this court and may initiate an inquiry on its own motion in accordance with Rule 40(6) or undertake an investigation upon grievance or complaint filed by any person;

(b) to retain counsel as may from time to time be required to properly perform the functions prescribed by the committee, subject to the availability of appropriated funds;

(c) to retain such investigative and other personnel as the committee shall deem necessary, and to select its own office space, which should not be in the facilities of any branch of government, both subject to the availability of appropriated funds;

(d) to dismiss a grievance or complaint when the grievant lacks standing, the committee lacks jurisdiction over the grievance or complaint, the grievance or complaint is insufficient or there is insufficient cause to proceed, or the period of limitations set forth in Rule 40(4)(c) has expired;

(e) to dispose of a grievance or complaint by informal resolution or adjustment prior to the filing of formal charges or after a hearing on formal charges;

(f) to prepare and file a statement of formal charges when appropriate;

(g) to hold a public hearing on a statement of formal charges, during which hearing counsel shall have the burden of establishing by clear and convincing evidence a violation of the Code of Judicial Conduct;

(h) to institute disciplinary proceedings in the supreme court when appropriate;

(i) to educate the public on the general functions and procedures of the Committee.

#### (10) *Attendance at Meetings; Removal of Members*

(a) Committee members shall be expected to attend all meetings of the committee. The chair shall be authorized to excuse the attendance of committee members from any meeting for good cause. The chair is authorized to discuss with members whether continued service on the committee is justified when meetings are frequently missed.

(b) The chair, with the concurrence of a majority of the committee, shall be authorized to remove a member or alternate member for cause, including unexcused or frequent absences or serious violations of the rules governing the committee. Prior to any vote by the committee on removal, the chair shall provide the member or alternate member with a written statement of the reasons for which his or her removal is sought. The member or alternate member shall have the right to file a written response within ten days, copies of which shall be provided to all other members of the committee by the executive secretary. The member or alternate member shall have the right to attend the meeting at which removal is sought, and to speak prior to the committee's vote. The committee may hold such further proceedings as it deems necessary in its sole discretion prior to voting on removal.

## APPENDIX I

Amend Supreme Court Rule 55(5) as follows (new language to be added is in **[bold and in brackets]**; current language to be deleted is in ~~strikethrough mode~~):

(5) Administration of the Fund. The Public Protection Fund shall be administered by a nine member committee, appointed by the President of the New Hampshire Bar Association with the approval of the association's Board of Governors, which committee shall include at least two public members. Five members shall constitute a quorum. All decisions of the committee shall be made by a majority of the members present and voting. The committee shall have the power to propose regulations to clarify the intent of this rule, which regulations shall become effective after review and approval by the court. Decisions of the committee as to whether or not to pay claims and the amount of payments shall be within the committee's discretion, subject to the annual limits stated above, and will be reviewable only for unsustainable exercise of discretion. **[Any request for review of a decision of the committee shall be filed in writing with the New Hampshire Supreme Court within thirty days of the date of the committee's decision. In the event that a claimant seeks a review of a decision of the committee, the claimant shall mail or hand-deliver a copy of his or her request to the New Hampshire Bar Association at the same time as the claimant files the request with the supreme court. If the New Hampshire Bar Association wishes to participate in the review of the decision, it shall file an appearance in the matter within thirty (30) days of receipt of the request.]** ~~Review of decisions of the committee shall be by a panel of three retired judges, appointed by the New Hampshire Supreme Court, whose d~~ **[D]**ecisions **[of the New Hampshire Supreme Court]** shall be final. Within 120 days after the end of each fund year, the New Hampshire Bar Association shall report to the court about the claims made, approved and paid, assessments received, income earned, and expenses incurred in the preceding fund year. Reasonable expenses incurred by the New Hampshire Bar Association in administering the fund, including overhead, staff time, and professional fees, shall be reimbursed by the fund as a cost of operation, subject to the review and approval of the court.

## APPENDIX J

Amend Superior Court Rule 19 as follows (new material is in **bold and in brackets**]; deleted material is in ~~strikethrough~~ format):

19. (a) An attorney, who is not a member of the Bar of this State **[(a "Nonmember Attorney")]**, shall not be allowed to engage in the trial or hearing in any case, except on application to appear *pro hac vice*, which will not ordinarily be granted unless a member of the Bar of this State **[(the "In-State Attorney")]** is associated with him or her and present at the trial or hearing.

(b) ~~An attorney who is not a member of the Bar of this State~~ **[A Nonmember attorney]** seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

- (1) the applicant's residence and business address;
- (2) the name, address and phone number of each client sought to be represented;
- (3) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;
- (4) whether the applicant: (i) has been denied admission *pro hac vice* in this State; (ii) had admission *pro hac vice* revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;
- (5) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;
- (6) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the

substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application); ~~and~~

(7) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this State within the preceding two years; the date of each application; and the outcome of the application **]; and**

**(8) the date upon which the non-refundable fee set forth in Rule 19(e) was paid to the New Hampshire Bar Association].**

~~(8)~~ **[(9)]** In addition, unless this requirement is waived by the superior court, the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at any trial or hearing.

(c) The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that ~~such admission:~~

(1) **[such admission]** may be detrimental to the prompt, fair and efficient administration of justice;

(2) **[such admission]** may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

**[(d) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.**

**(e) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated**

**or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]**

## **APPENDIX K**

Adopt Superior Court Rule 61-B on a permanent basis as follows (no changes are being made to the temporary rule now in effect):

### **UNTIMELY-FILED GUARDIAN AD LITEM REPORTS**

61-B. (I) A guardian ad litem who, without good cause, fails to file a report required by any court or statute by the date the report is due may be subject to a fine of not less than \$100 and not more than the amount of costs and attorneys fees incurred by the parties to the action for the day of the hearing. The guardian ad litem shall not be subject to the fine under this rule if, at least ten days prior to the date the report is due, he or she files a motion requesting an extension of time to file the report.

(II) The court clerk shall report a guardian ad litem who, without good cause, fails to file a report by the date the report is due to the guardian ad litem board. The court clerk shall make such report available to the public.

## **APPENDIX L**

Adopt new Superior Court Rule 97-A as follows:

### **JOINDER OF OFFENSES**

97-A. (I) Joinder of Offenses.

(A) Related Offenses. Two or more offenses are related if they:

(i) are alleged to have occurred during a single criminal episode; or

(ii) constitute parts of a common scheme or plan; or

(iii) are alleged to have occurred during separate criminal episodes, but nonetheless, are logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct.

(B) Joinder of Related Offenses for Trial. If a defendant is charged with two or more related offenses, either party may move for joinder of such charges. The trial judge shall join the charges for trial unless the trial judge determines that joinder is not in the best interests of justice.

(C) Joinder of Unrelated Offenses. Upon written motion of a defendant, or with the defendant's written consent, the trial judge may join for trial two or more charges of unrelated offenses upon a showing that failure to try the charges together would constitute harassment or unduly consume the time or resources of the parties. The trial judge shall join the charges for trial unless the trial judge determines that joinder is not in the best interest of justice.

(II) Relief from Prejudicial Joinder. If it appears that a joinder of offenses is not in the best interests of justice, the judge may upon his or her own motion or the motion of either party order an election of separate trials or provide whatever other relief justice may require.

## APPENDIX M

Amend Superior Court Rule 104 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

### ~~COUNSEL FEES—INDIGENT RESPONDENTS~~

#### **[PAYMENT OF FINES]**

~~104. Repealed, effective June 1, 1982.~~

#### **[104. Payment of Fines.**

**(A) In all cases, fines imposed by the Court shall be due and payable on the date imposed. In those cases where a defendant indicates an inability to pay forthwith, the defendant shall be required to complete an affidavit of resources, under oath, prior to leaving the courthouse. The affidavit shall be in the form set forth in Appendix \_\_\_\_\_. The Court may consider such factors as the defendant's employment, good faith attempts to seek employment, spousal, family and partner income, savings, property ownership, credit lines and expenses including child support.**

**(B) In any case where the Court finds the defendant indigent or the defendant is unable to pay the fine on the date imposed, the Court may defer payment of the fine or order periodic payment. Eligibility for appointed counsel shall not be conclusive on the issue of indigency for purposes of fine payment orders.**

**(C) In any case where a defendant proves an inability to pay a fine, the Court may allow the defendant to perform community service, pursuant to a plan submitted to and approved by the Court. Every hour of verified community service shall be applied against the fine at the rate of \$10.00 an hour.**

**(D) Conduct which amounts to willful failure to pay any fine or perform community service as ordered, may be punishable as contempt of court or through the provisions of RSA 618:9.]**

## APPENDIX N

Adopt Superior Court Rule 169-A on a permanent basis as follows (no changes are being made to the temporary rule now in effect):

### **ACCESS TO CONFIDENTIAL RECORDS – FEES AND NOTICE**

169-A. Any person or entity not otherwise entitled to access may file a motion or petition to gain access to: (1) a financial affidavit filed pursuant to Superior Court Rule 197 or 198 and kept confidential under RSA 458:15-b, I; or (2) any other sealed or confidential court record. See *Petition of Keene Sentinel*, 136 N.H. 121 (1992).

**Filing Fee:** There shall be no filing fee for such a motion or petition.

**Notice:** In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the clerk.

In closed cases, the court shall order that the petitioner notify the parties of the petition to grant access by certified mail to the last known address of each party, return receipt requested, restricted delivery, signed by the addressee only, unless the court expressly determines that another method of service is necessary in the circumstances.

## **APPENDIX O**

Amend Superior Court Rule 170 by deleting it in its entirety and replacing it with the following:

### **170. MEDIATION**

#### **(A) Applicability.**

(1) All parties to any civil or equity action filed in or removed to the Superior Court, except actions exempt pursuant to subsection B below, shall, within 180 days of the return date, absent an agreement approved by the court, attend and participate in an alternative dispute resolution conference pursuant to this rule.

#### **(B) Exemptions.**

(1) The following categories of civil and equity actions are exempt from the requirements of this rule.

(a) Actions by or against or appeals taken from decisions of the state, counties, or municipalities (including their subdivisions, departments, agencies, boards, and agents), except where the action contains a claim for personal injury or monetary damages, unless the parties agree to alternative dispute resolution and the court approves.

(b) Actions where the parties represent by joint motion that they have engaged in formal alternative dispute resolution before a neutral third party prior to suit being filed.

(c) Actions exempted by the court on motion and for good cause, but only when said motion is filed within 180 days of the return date.

#### **(C) Selection of Process and Neutral.**

(1) Promptly after the filing of an answer or appearance in the Superior Court or upon removal from the District Court, the parties shall confer and select an alternative dispute resolution process (that is, mediation, neutral evaluation, or arbitration) and a neutral third party to conduct the process. If the parties cannot agree on the ADR process, they shall proceed to mediation.

(2) The parties shall select a neutral third party to conduct the dispute resolution process from the appropriate Court list of qualified neutrals. If the parties cannot agree on the selection of a neutral, they shall

notify the court, which shall designate a neutral from the Court's list of qualified neutrals.

(3) Parties may select a neutral not on the Court's list of qualified neutrals if the parties agree, document proof of the qualifications of the chosen neutral, and the court approves. Any motion seeking leave to hire a mediator not on the Court's list of qualified mediators must be filed within 90 days of the return date.

**(D) ADR Fees.**

(1) Neutrals shall be compensated, and shall provide to the parties a schedule of their fees and expenses.

Unless the court orders or the parties otherwise agree, the neutral's fees and expenses shall be apportioned and paid in equal shares by each party, due and payable according to fee arrangements worked out directly by the parties and the neutral. Fees and expenses paid to the neutral shall be allowed and taxed as costs in accordance with Superior Court Rule 87(a).

(2) Indigency.

A party may move to be exempted from payment of neutral fees or a portion thereof based upon indigency. Determination of indigency shall be in the sole discretion of the court. If the court determines a party is indigent, that party's case shall be mediated/arbitrated, at the court in which the case has been filed, and under time and procedure parameters set by the court, by a neutral from the court's list of qualified neutrals available pro bono.

**(E) Motions and Discovery.**

Unless otherwise ordered by the Court, the alternative dispute resolution process shall not suspend or delay other pretrial activity, including discovery and motion practice.

**(F) Conference Scheduling and Report.**

(1) Conference. Once the neutral is selected or designated, the parties shall agree with the neutral on a time and place for the ADR conference. The conference must be held and completed no later than 180 days after the return date absent an agreement approved by the court.

(2) Settlement. If the conference results in a settlement, the parties shall, within 10 days after the conference, report that fact to the court and include a proposed order concerning the settlement. The court shall make the appropriate entry on the docket.

(3) No or Incomplete Settlement. If the conference does not result in a settlement, the neutral shall, within 10 days after the conference, file with the court a report and, if appropriate, a proposed order which indicates any agreements of the parties on matters such as stipulations, identification and limitation of issues to be tried, discovery matters and further alternative dispute resolution efforts. If there are no agreements of the parties, the report shall so indicate. The parties shall be equally responsible for assuring that the neutral's report is filed in a timely manner. If the neutral does not file the report, the parties shall prepare and file the report.

**(G) Conference Attendees.**

(1) Unless excused by the neutral, conference attendees shall include:

(a) Individual parties;

(b) A management employee or officer of a corporate party, with appropriate settlement authority, whose interests are not entirely represented by an insurance company;

(c) A designate representative of a government agency party whose interests are not entirely represented by an insurance company;

(d) An adjuster for any insurance company providing coverage potentially applicable to the case;

(e) Counsel for all parties; and

(f) Nonparties whose participation is essential to settlement discussions - including lien holders - may be requested to attend the conference.

(2) The court may impose appropriate sanctions on any party or representative required and notified to appear at a conference who fails to attend.

(3) Attendance shall be in person, or at the discretion of the neutral, by telephone or videoconference.

**(H) Conference Documents.**

(1) Not later than ten (10) days prior to the session the parties shall submit to the neutral and exchange a summary, which shall not be more than 5 pages, of the significant aspects of their case. The parties may also attach to the summary copies of pertinent documents.

(2) Upon receipt of a party's submission, any party may send additional information responding to that submission. All such responsive submissions shall be exchanged with opposing counsel and shall contain a statement of compliance with the exchange requirement.

**(I) Inadmissibility of Alternative Dispute Resolution Proceedings.**

(1) ADR proceedings and information relating to those proceedings shall be confidential. Information, evidence, or the admission of any party or the valuation placed on the case by any neutral shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party, attorney, or other participant in aid of such proceeding shall be privileged and shall not be disclosed to any court or arbitrator or construed for any purpose as an admission against interest. All non-binding ADR proceedings are deemed settlement conferences consistent with the Superior Court Rules and Rules of Evidence. In addition, the parties shall not introduce into evidence in any subsequent proceeding, the fact that there was an ADR proceeding or any other matter concerning the conduct of the ADR proceedings except as required by the Rules of Professional Conduct or the Mediator Standards of Conduct.

(2) Evidence that would otherwise be admissible at trial shall not be rendered inadmissible as a result of its use in an ADR proceeding.

**(J) Sanctions.**

If a party or a party's lawyer fails without good cause to appear at a dispute resolution conference scheduled pursuant to this rule, or fails to comply with any order made there under, the court may, on its own or upon motion of a party, impose any sanction that is just and appropriate in the circumstances.

**(K) Qualifications.**

In determining whether a particular individual is included in the panel, the Office of Mediation/Arbitration shall consider mediation proficiency as well as the mediator's suitability for the program:

(1) Mediation Proficiency.

(a) Mediation training. The neutral must be able to document the successful completion of at least 40 hours of mediation training. All current Rule 170 Mediators, as of the effective date of this rule, who lack the 40 hours of training required by this section, may apply for inclusion on the court roster. They shall be given 12 months to comply with the educational requirements of this rule. In addition, the mediator must have completed a 4-

hour course on New Hampshire's judicial system approved by Office of Mediation/Arbitration or be a member of the New Hampshire Bar.

(b) ADR experience. The mediator must be able to document a minimum of 50 hours of mediation or active co-mediation over at least ten cases within the last five years. Observation of mediation sessions does not constitute mediation experience and will not count toward these hours.

(c) Provide to the Office of Mediation/Arbitration three letters of reference, including at least one letter from a person with knowledge of the applicant's mediation experience as set forth in I (1) and (2).

(d) Continuing education. The neutral must complete eight hours of continuing mediation training annually for the duration of the period of inclusion on the panel.

(2) Suitability for Panel.

(a) Good standing. Any neutral who is a member of the New Hampshire Bar must be a member in good standing.

(b) Moral character. Neutrals must be of good moral character and adhere to any standards of practice for mediators acting pursuant to these Rules adopted by the Supreme Court.

(c) Disclosures. Applicants must also disclose criminal convictions or professional disciplinary actions. The Office of Mediation/Arbitration may refuse to approve an applicant who has been convicted of a criminal offense or been disciplined by a professional organization on ethical grounds. Failure to disclose complete and accurate information could constitute grounds for de-certification once the errors or omissions are discovered.

(3) Mediators shall apply for inclusion on the courts roster by submitting an application, application fee, and three letters of reference as set forth in this rule to the Office of Mediation/Arbitration. Inclusion on the court's list of qualified neutrals remains valid until July 1 of each year. To request continued inclusion, a neutral, prior to June 1 of each year, shall:

(a) File a statement that there have been no material changes in his or her initial application for inclusion, or if there have been material changes, list and explain them.

(b) File documentation that the neutral has completed 8 hours of continuing education in the field of alternative dispute resolution in accordance with section (K)(1)(d).

(c) Accompanied by payment of the annual fee set for inclusion on the court's list of qualified neutrals.

(4) All neutrals agree that as a condition of inclusion on the Court's list of qualified neutrals, they will provide up to two Pro Bono ADR sessions each year to parties who qualify as indigent.

### **(L) Guidelines for the Conduct of Rule 170 Mediations**

The Guidelines for Rule 170 mediators have three major purposes: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The guidelines draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice.

Mediation is a process in which an impartial third party -- a mediator -- facilitates the resolution of a dispute by promoting voluntary agreement (or "self-determination") by the parties to the dispute. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and seeks creative problem solving to enable the parties to reach their own agreement. These guidelines give meaning to this definition of mediation.

(1) Self-Determination: A Mediator shall recognize that mediation is based on the principle of self-determination by the parties.

(a) Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. The mediator shall assist the parties in reaching an informed and voluntary settlement.

(b) A mediator shall not coerce or unfairly influence a party to enter into a settlement agreement and shall not make a substantive decision for any party to a mediation process.

(c) A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation.

(d) The mediator shall promote mutual respect among the parties throughout the mediation process.

### **COMMENTS**

a. The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.

b. A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

(2) Impartiality: A mediator shall conduct the mediation in an impartial manner.

Mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of the proposed options for settlement.

#### **COMMENTS**

a. A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.

b. A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

(3) Conflicts of Interest: A mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator. The need to protect against conflicts of interest also governs conduct that occurs during and after them mediation.

A conflict of interest is anything that might create an impression of bias. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of potential conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest issue casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of a conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with a party to the mediation in the same or related matter, particularly a matter affecting the interest of any other party to the mediation.

#### **COMMENTS**

a. A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations, which maintain rosters of qualified professionals.

b. Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressures from outside the mediation process should never influence the mediator to pressure parties to settle.

(4) Confidentiality: A mediator shall maintain the reasonable expectations of the parties with regard to confidentiality.

(a) A mediator shall preserve and maintain the confidentiality of all mediation proceedings except where disclosure is required by law. Any communication made during the mediation, which relates to the controversy mediated, whether made to the mediator or a party, or to any other person present at the mediation, is confidential.

(b) A mediator shall keep confidential from the other parties any information obtained in an individual caucus unless the party to the caucus permits disclosure.

(c) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceedings except:

(i) Where the parties to the mediation agree in writing to waive confidentiality;

(ii) Where there are threat(s) of violence or harm to self or others;

(iii) Where disclosure is required by law or the Code of Professional Responsibility.

(5) Professional Advice: A mediator shall not provide information the mediator is not qualified by training or experience to provide and shall not give legal advice. When a mediator believes a non-represented party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the participants to seek independent legal counsel.

While a mediator may point out a possible outcome of the case, under no circumstances may a mediator offer a personal or professional opinion as to how the court in which the case is filed will resolve the dispute.

A lawyer-mediator shall conduct the mediation in a manner that is consistent with the parties' choices and expectations. If agreed by the parties, a lawyer-mediator may offer evaluation of strengths and weaknesses of positions,

assess the value and cost of alternatives to settlement or assess the barriers to settlement provided such evaluation is incidental to the facilitative role and does not interfere with the lawyer-mediator's impartiality or self-determination of the parties.

#### **COMMENTS**

a. A lawyer-mediator shall not offer any of the parties legal advice that is the function of the lawyer who is representing a client.

b. If the parties request an evaluative approach, the lawyer-mediator shall discuss the risk that the evaluation might interfere with mediator impartiality and party self-determination.

#### **(6) Competence.**

(a) A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.

(b) If a mediator cannot satisfy this Standard, the mediator shall immediately notify the parties and take steps reasonably appropriate under the circumstances, including declining or withdrawing from the engagement or, where appropriate, obtaining assistance from others.

(c) A mediator shall not conduct any aspect of a mediation while impaired by drugs, alcohol, medication or otherwise.

#### **COMMENTS**

a. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings, and other qualities are often necessary for effective mediation. A person who offers her or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively.

b. A mediator should have available for the parties information relevant to training, education and experience.

c. A mediator should attend educational programs and related activities to enhance and strengthen her or his personal knowledge of and skills in the mediation process.

**(7) Quality of the Process:** A mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties.

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

## **COMMENTS**

a. The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should therefore refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other professions.

b. A mediator shall withdraw from mediation when incapable of serving or when unable to remain impartial.

c. A mediator shall withdraw from the mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.

d. Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

(8) Obligations to the Mediation Process: Mediators have a duty to improve the practice of mediation.

## **COMMENTS**

Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

### (9) Fees and Expenses

(a) A mediator holds a position of trust. Fees charged for mediation services shall be reasonable and consistent with the nature of the case.

(b) A mediator shall be guided by the following general principles in determining fees:

(i) Any charges for mediation services based on time shall not exceed actual time spent or allocated.

(ii) Charges for costs shall be for those actually incurred.

(iii) All fees and costs shall be appropriately divided between the parties.

(iv) When time or expenses involve two or more mediations on the same day or trip, the time and expense charges shall be prorated appropriately.

(c) A mediator shall give the parties or their counsel a written explanation of any fees and costs prior to mediation. The explanation shall include:

(i) the basis for and amount of any charges for services to be rendered, including minimum fees and travel time;

(ii) the amount charged for the postponement or cancellation of mediation sessions and the circumstances under which such charges will be assessed or waived;

(iii) the basis and amount of charges for any other items;  
and

(iv) the parties' pro rata share of mediation fees and costs if previously determined by the court or agreed to.

(10) Advertising and Solicitation. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating one's qualifications, experience, and range of available professional services.

#### **COMMENTS**

a. Communications, including business cards, letter heads, or computer-based communications, should not include any statistical settlement data or any promises as to outcome.

b. Communications may include references to a mediator's satisfying state, national or private organization qualifications only if the entity referred to has a procedure for qualifying mediators, and the mediator has been duly granted the requisite status.

c. A mediator should not solicit in a manner that could give an appearance of partiality for or against a party.

d. A mediator should not list names of clients or persons served in promotional materials and communications without their permission.

#### **(M) Complaints.**

Complaints against neutrals shall be made to the Director of the Office of Dispute Resolution.

## **APPENDIX P**

Amend Superior Court Rule 170-A by deleting it in its entirety and replacing it with the following:

### 170-A. **ARBITRATION**

**(A) Cases for Arbitration.** Subject to NH RSA 542, all non-criminal and non-marital disputes will be assigned to arbitration upon agreement of the parties or as mandated by a written contractual provision.

### **(B) Submission of Dispute to Arbitration.**

A written request for arbitration shall be made to the Administrator of the Office of Mediation/Arbitration. The request may come prior to or after the commencement of any lawsuit. In the event that the dispute is pending in a New Hampshire Court, a copy of the written submission shall be sent to the clerk for the appropriate court; and all proceedings in that court will cease. The administration of the Arbitration Hearing will be conducted pursuant to New Hampshire Superior Court Rule 170-A.

### **(C) Administrative Fees.**

A non-refundable fee of \_\_\_\_\_ per party must be submitted to the Administrator of the Office of Mediation/Arbitration at the time of the written submission of the dispute.

### **(D) Roster of Arbitrators.**

The New Hampshire Supreme Court shall establish minimum standards and procedures for qualifications, certifications, professional conduct discipline and training for arbitrators who will be on the panel. The Supreme Court is authorized to set fees to be charged to applicants for certification and renewal of certification. The revenues generated from these fees shall be used to offset the costs of administration of the certification process and the Office of Mediation/Arbitration. The Office of Mediation/Arbitration shall maintain a roster of qualified arbitrators accepted by the New Hampshire Supreme Court.

**(E) Immunity for Arbitrators.**

An arbitrator selected to serve and serving under New Hampshire Superior Court Rule 170-A shall have immunity consistent with RSA (Statute Creating the Office).

**(F) Neutrality.**

All arbitrators, whether selected by a party, selected by all parties, or selected by arbitrators, shall be neutral and shall serve with impartiality.

**(G) Communication with Arbitrator.**

No party and no one acting on behalf of any party shall communicate ex-parte with an arbitrator or a candidate for arbitrator concerning the arbitration.

**(H) Arbitrator's Disclosure.**

Any person appointed as an arbitrator shall disclose immediately to the parties and the Administrator of the Office of Mediation/Arbitration any circumstance likely to give rise to justifiable concern relative to the arbitrator's impartiality or independence, including any personal relationship, financial interest, or bias relative to the parties, the nature of the dispute, or counsel.

**(I) Arbitration Panel.**

Each panelist shall be subject to the Code of Ethics adopted by the New Hampshire Supreme Court.

In all cases so assigned the Office of Mediation/Arbitration shall provide the litigants with the names of qualified individuals to serve as arbitrators on either a single or three-member panel. The litigants may choose either a single or three-person panel. In the event the litigants cannot agree upon the panel number, a three-person panel will be utilized for all cases involving claims or counterclaims exceeding \$100,000 or cases involving three or more litigants. In the event the litigants cannot agree upon the panel number, a single member panel will be utilized for all cases involving claims or counterclaims of \$100,000 or less.

The litigants shall attempt to select the arbitrators by agreement. In the event the litigants cannot agree on an arbitrator for single-person panels, each litigant shall submit one name to the Office of Mediation/Arbitration

and the Administrator shall select one individual from the names submitted to serve as the arbitrator.

For three-person panels, if the litigants cannot unanimously agree upon the arbitrators and there are two litigants, each will select an arbitrator and the two arbitrators will select the third. In the event there are three litigants, each will select an arbitrator. The three selected arbitrators will serve as the panel. In the event there are more than three litigants and they cannot unanimously agree upon the panel, each litigant will submit one name to the Office of Mediation/Arbitration and the Administrator shall select three individuals from the names submitted to serve as the arbitration panel.

**(J) Qualifications of Arbitrators.**

(1) The Office of Mediation/Arbitration shall create and maintain a panel of arbitrators consisting of attorneys licensed to practice in the State of New Hampshire and, in its discretion, qualified non-attorneys with extensive experience in their field.

(2) Attorneys serving as arbitrators shall have substantial experience in civil litigation, and shall have been licensed to practice law in the State of New Hampshire for a minimum of ten (10) years, or can provide the Office of Mediation/Arbitration with proof of equivalent qualifying experience.

(3) Non-attorneys serving as arbitrators shall have as a minimum 10 years of experience in their field of expertise, or can provide the Office of Mediation/Arbitration with proof of equivalent experience.

(4) Arbitrators shall be required to complete an orientation/training program following their selection to the panel and other additional training sessions scheduled by the Office of Mediation/Arbitration or demonstrate completion of other appropriate training or education programs as approved by the Director of the Office of Mediation/Arbitration.

(5) Arbitrators shall be sworn or affirmed by the Chief Justice or his designee to uphold these rules of the Program, the laws of the State of New Hampshire and the Code of Ethics adopted by the Supreme Court.

**(K) Arbitrator Fees.**

Neutrals shall be compensated, and shall provide to the parties a schedule of their fees and expenses. In the event a single arbitrator is selected, the parties shall equally share the costs of the panel. When there are two parties and they select a three person panel each party shall pay for the arbitrator selected by the party and share the fees of the third panel

member. When there are three parties and they select a three person panel, each party shall be responsible for the arbitrator selected by the party. In the event there are more than three parties, the parties shall pay a pro rata share of the entire arbitration panels fees.

**(L) Preliminary Hearing.**

(1) At the request of any litigant, the panel will schedule within 14 days of the request a preliminary hearing with counsel and/or the litigants. The preliminary hearing may be conducted by telephone at the panel's discretion.

(2) During the preliminary hearing, the litigants and the panel shall discuss and establish a schedule for the hearings, any outstanding discovery issues, any outstanding procedural issues, and to the extent possible a clarification of the issues.

(3) Ex parte communications between a litigant's counsel and arbitrator are prohibited.

**(M) Hearings: When and Where Held; Notice.**

(1) Hearings shall be held at a place designated by the panel. The hearing date shall be established at the preliminary hearing or by the panel after consultation with counsel and/or the litigants. Counsel and/or the litigants shall respond to requests for hearing dates within seven (7) days of the request. Counsel or the litigants shall be notified in writing at least thirty (30) days before the hearing of the time and place of the hearing. No hearing shall be assigned for Saturdays, Sundays, legal holidays, or evenings unless by the unanimous agreement of all counsel or litigants.

(2) Unless excused by the panel, all litigants shall be in attendance at the hearing, and each litigant shall have at least one person present who has authority to authorize settlement.

**(N) Postponement of Arbitration.**

In the event that counsel or any litigant for good cause shown is unable to proceed, the panel may reschedule the case in their discretion. The postponement shall be for no more than 30 days absent extraordinary circumstances.

**(O) Default and Sanctions.**

Upon failure of a litigant to appear at a scheduled arbitration hearing or to participate in good faith in the proceedings, a default judgment may be

entered and reasonable costs and attorneys fees may be assessed against the litigant. Default judgments may be contested only by the filing of a Motion to Strike Default setting forth specific grounds therefor within ten (10) days of the mailing of the Notice of Default. The panel shall have discretion as to appropriate sanction, including assessing costs, attorneys' fees, or entering default.

**(P) Prehearing Submissions.**

(1) Unless otherwise agreed to at the preliminary hearing, the litigants shall exchange a list of witnesses they intend to call, including experts, a short description of the anticipated testimony of each witness, an estimate of the length of direct testimony of each witness, and all exhibits at least thirty (30) calendar days before the arbitration hearing. The litigants shall attempt to resolve any disputes regarding the admissibility of exhibits. The exhibits must be premarked and a list of the exhibits submitted, indicating those exhibits that are to be admitted without objection and those exhibits that are objected to.

(2) If the litigants intend to offer expert witnesses at the time of the hearing, at least sixty (60) calendar days before the arbitration hearing an expert disclosure consistent with the then existing Superior Court Rule 35 shall be made. Failure to make such a disclosure will result in the exclusion of the expert as a witness at the hearing. Any objection to the sufficiency of the disclosure and, therefore, the admissibility of the expert's testimony will be ruled upon by the panel.

**(Q) Case Summary.**

(1) All litigants shall submit and exchange no later than ten (10) days prior to the arbitration hearing a double-spaced typewritten summary of not more than four (4) pages upon 8½" x 11" paper of the significant portions of their case.

(2) All such summaries shall contain a written stipulation, or, if counsel cannot agree to file a stipulation, a separate statement by each litigant, setting forth the following information:

- (i) All uncontested facts;
- (ii) All contested facts;
- (iii) Pertinent applicable law;
- (iv) Disputed issues of law;

(v) Specific claims of liability by each litigant making such claims;

(vi) Specific defenses to liability by each litigant asserting such defenses;

(vii) An itemized statement of special damages by each litigant claiming such damages;

(3) All such summaries shall contain a statement of compliance with the exchange requirement.

(4) The purpose of the case summary submission is to apprise the panel of the issues in dispute.

**(R) Securing Witnesses and Documents for the Arbitration Hearing.**

(1) The panel may issue subpoenas for the attendance of witnesses or the production of documents. All litigants shall produce for the Arbitration Hearing all witnesses requested in writing by another litigant that are in their employ or under their control. This shall be done without the need of subpoena.

(2) The testimony of witnesses shall be given under oath.

(3) The plaintiff shall present all of his/her evidence. In the event of multiple plaintiffs, each plaintiff shall present all of his/her evidence. The defendant will then present evidence to support its defenses and any counterclaims. In the event of multiple defendants, one defendant will complete his evidence and then the remaining defendants will proceed.

(4) Witnesses will be subject to cross-examination by other counsel (or the opposing litigant where a party is unrepresented) and the panel. The panel has the discretion to vary this procedure provided the litigants are treated fairly, justly, and equally and that each litigant is given an adequate opportunity to present his case.

(5) The panel exercising its discretion shall conduct the proceedings with a view to expediting the hearing and expediting the resolution of the dispute. Therefore, strict conformity to New Hampshire Rules of Evidence is not required, with the exception that the panel shall apply applicable New Hampshire law relating to privileges and work product. The panel shall consider evidence that is relevant and material to the dispute, giving the evidence such weight as is appropriate. The panel may limit testimony to exclude evidence that would be unduly repetitive.

(6) Openings and closing will be allowed and may be made orally or in writing.

**(S) Hearing Closure.**

If post-hearing memoranda are to be submitted or closing arguments are to be made in writing, the hearing shall be deemed closed upon receipt by the panel of the written submissions. The date for the written submissions shall be established; otherwise, the hearing will be closed at the conclusion of the presentation of the evidence and oral arguments.

**(T) Transcript of the Testimony.**

Any litigant may arrange for a stenographic or other record to be made of the hearing and shall inform the other litigants in advance. The requesting litigant shall bear the cost of the stenographic record. A copy of the stenographic record shall be made available to all other litigants upon request.

**(U) Report of Award.**

(1) Within twenty (20) days after the hearing closure date, the panel shall file a Report of Award. Originals of the Award shall be mailed to all counsel or litigants. If there is a dissent, it shall be signed separately; but, the Award shall be binding if signed by the majority of a three-member panel.

(2) The decision need not be in a particular form but must include sufficient findings of fact and conclusions of law to establish a basis for the decision.

**(V) Legal Effect of Report and Award; Entry of Judgment.**

The Report of Award, unless appealed consistent with provisions of New Hampshire RSA 542:8, shall be final and shall have the attributes and legal effect of a verdict. If no appeal is taken within the time and in the manner specified in New Hampshire RSA 542:8, any litigant may move for confirmation and entry of judgment in accordance with New Hampshire RSA 542:8. After entry of such judgment, execution process may be issued as in the case of other judgments.

**(W) Complaints.**

Complaints against neutrals shall be made to the Director of the Office of Dispute Resolution.

## APPENDIX Q

Amend Superior Court Rule 185 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~striketrough~~ format):

185. ANSWER AND CROSS-PETITION. An answer to a petition or a cross-petition is required in cases where the responding party wishes to seek ~~alimony or other~~ affirmative relief **[other than alimony]**, or to assert an affirmative defense. In all other cases, an answer may be filed. All answers shall be dated and signed under oath. A cross-petition must follow the format set forth in Rules 173 and 174. An answer to a petition, or a cross-petition, shall be filed within thirty days after the return day. Any answer to a cross-petition shall be filed within ten days after filing of the cross-petition. **[Any party who wishes to seek alimony may either file an answer as set forth in this rule, or file a motion in accordance with the requirements of RSA 458:19.]**

## **APPENDIX R**

Adopt Superior Court Rules 201 to 202-E on a permanent basis as follows (no changes are being made to the temporary rules now in effect):

201. FORM FOR DECREES AND STIPULATIONS. Agreed upon or proposed decrees must be filed at all temporary or final divorce, legal separation or parenting hearings. Any temporary decree for divorce or legal separation must follow the format set forth in Superior Court Rule 202-C(I). Any final decree for divorce or legal separation must follow the format set forth in Superior Court Rule 202-C(II). Any temporary or final decree for parenting actions must follow the format set forth in Superior Court Rule 202-D. For all final default hearings, the moving party shall provide a copy of the proposed order to the other party at least thirty days before the hearing date.

202. SIGNING OF STIPULATIONS. All stipulations, agreements, and proposed decrees shall be typewritten and signed by the parties and, if represented by counsel, by attorneys for the parties. The court may accept handwritten stipulations or agreements provided the parties file a typewritten substitute with the court within ten days. A typewritten substitute does not need to contain signatures.

### 202-A. PARENTING PLANS.

(I) Parenting plans shall be filed in all divorce and legal separation actions where there are minor children, and in all parenting actions. Parents shall work together to agree upon as many provisions of the parenting plan as possible. Exceptions to the requirement that parents work together on parenting plans include cases where there is evidence of domestic violence, child abuse, or neglect, or as otherwise excused by the court.

(II) In any divorce, legal separation, or parenting action in which a temporary parenting order is requested, a temporary parenting plan must be filed at the temporary hearing.

(III) A final parenting plan must be filed at the final hearing in any final divorce or legal separation action where there are minor children, and in all final parenting actions.

(IV) Parenting plans must be filed in all actions to modify final parenting plans or prior final parenting-related orders issued in divorce, legal separation, or custody actions.

(V) Parties may use the parenting plan form provided by the court or may create their own parenting plan. However, parties who create their own parenting plans must adhere to the standard order of lettered paragraphs set forth at Superior Court Rule 202-B, Standard Order of Paragraphs for Parenting Plan.

(VI) All parenting plans required by this rule shall be filed as separate documents, signed by one or more parties.

(VII) For all actions requiring parenting plans, if a complete parenting plan is not agreed upon by the parties which includes every provision of the Standard Order of Paragraphs for Parenting Plan, a partially agreed-upon parenting plan, signed by the parties, and a proposed parenting plan for the remaining provisions must be filed by each party.

#### 202-B. STANDARD ORDER OF PARAGRAPHS FOR PARENTING PLAN.

All parenting plans shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.

- (I) Decision Making Responsibility
  - (1) Major Decisions
  - (2) Day-to-Day Decisions
  - (3) Other
- (II) Residential Responsibility & Parenting Schedule
  - (1) Routine Schedule
  - (2) Holiday and Birthday Planning
  - (3) Three-day weekends
  - (4) Vacation Schedule
  - (5) Supervised Parenting Time
  - (6) Other Parental Responsibilities
- (III) Legal Residence of a Child for School Attendance

- (IV) Transportation and Exchange of the Child(ren)
- (V) Information Sharing and Access, Including Telephone and Electronic Access
  - (1) Parent-Child Telephone Contact
  - (2) Parent-Child Written Communication
- (VI) Relocation of a Residence of a Child
- (VII) Procedure for Review and Adjustment of Parenting Plan
- (VIII) Method(s) for Resolving Disputes
- (IX) Other Parenting Agreements Attached

202-C. STANDARD ORDER OF PARAGRAPHS FOR TEMPORARY AND FINAL DECREES ON DIVORCE AND LEGAL SEPARATION.

(I) Temporary. All temporary agreements and proposed decrees shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.

- (1) Type of Case
- (2) Parenting Plan and Uniform Support Order
- (3) Tax Exemptions for Children
- (4) Guardian ad Litem Fees
- (5) Alimony
- (6) Health Insurance For Spouse
- (7) Life Insurance
- (8) Motor Vehicles
- (9) Furniture and Other Personal Property
- (10) Retirement Plans and Other Tax-Deferred Assets
- (11) Other Financial Assets
- (12) Business Interests of the Parties
- (13) Division of Debt
- (14) Marital Home
- (15) Other Real Property
- (16) Enforceability after Death

- (17) Restraints against the Property
- (18) Restraining Order
- (19) Other Requests

(II) Final. All final agreements and proposed decrees shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.

- (1) Type of Case
- (2) Parenting Plan and Uniform Support Order
- (3) Tax Exemptions for Children
- (4) Guardian ad Litem Fees
- (5) Alimony
- (6) Health Insurance For Spouse
- (7) Life Insurance
- (8) Motor Vehicles
- (9) Furniture and Other Personal Property
- (10) Retirement Plans and Other Tax-Deferred Assets
- (11) Other Financial Assets
- (12) Business Interests of the Parties
- (13) Division of Debt
- (14) Marital Home
- (15) Other Real Property
- (16) Enforceability after Death
- (17) Signing of Documents
- (18) Restraining Order
- (19) Name Change
- (20) Other Requests

202-D. STANDARD ORDER OF PARAGRAPHS FOR DECREE ON PARENTING PETITION.

All agreements and proposed decrees in parenting actions shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.

- (1) Parenting Plan and Uniform Support Order
- (2) Tax Exemptions for Children
- (3) Guardian ad Litem Fees
- (4) Life Insurance
- (5) Enforceability after Death
- (6) Restraining Order
- (7) Other Requests

202-E. PERSONAL DATA SHEET. At the time of filing any initial pleading or pleading that brings an action forward, the filing party shall, and the responding party may, file a completed personal data sheet. Should a party become aware of any change in addresses, telephone numbers, or employment during the pendency of a case or of any outstanding support order, that party shall notify the court of such change. Access to information contained in the personal data sheet shall be restricted to court personnel, the Office of Child Support, the court-appointed mediator, the guardian ad litem, the parties, and counsel unless a party has requested on the data sheet that it not be disclosed to the other party.

## APPENDIX S

Amend District Court Rule 1.3C. as follows (new material is in **bold and in brackets**]; deleted material is in ~~striketrough~~ format):

C. (1) An attorney, who is not a member of the Bar of this State **[(a "Nonmember Attorney")]**, shall not be allowed to engage in the trial or hearing in any case, except on application to appear *pro hac vice*, which will not ordinarily be granted unless a member of the Bar of this State **[(the "In-State Attorney")]** is associated with him or her and present at the trial or hearing.

(2) ~~An attorney who is not a member of the Bar of this State~~ **[A Nonmember attorney]** seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

- (a) the applicant's residence and business address;
- (b) the name, address and phone number of each client sought to be represented;
- (c) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;
- (d) whether the applicant: (i) has been denied admission *pro hac vice* in this State; (ii) had admission *pro hac vice* revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;
- (e) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;
- (f) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application); and

(g) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this State within the preceding two years; the date of each application; and the outcome of the application **]; and**

**(h) the date upon which the non-refundable fee set forth in Rule 1.3C(5) was paid to the New Hampshire Bar Association].**

~~(8)~~ **[(i)]** In addition, unless this requirement is waived by the district court, the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at any trial or hearing.

(3) The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that ~~such admission:~~

(a) **[such admission]** may be detrimental to the prompt, fair and efficient administration of justice;

(b) **[such admission]** may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(c) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(d) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

**[(4) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.**

**(5) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be**

**waived to permit pro bono representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]**

## APPENDIX T

Adopt District Court Rule 1.25 on a permanent basis as follows (no changes are being made to the temporary rule now in effect):

### **Rule 1.25. Untimely-filed guardian ad litem reports**

(A) A guardian ad litem who, without good cause, fails to file a report required by any court or statute by the date the report is due may be subject to a fine of not less than \$100 and not more than the amount of costs and attorneys fees incurred by the parties to the action for the day of the hearing. The guardian ad litem shall not be subject to the fine under this rule if, at least ten days prior to the date the report is due, he or she files a motion requesting an extension of time to file the report.

(B) The court clerk shall report a guardian ad litem who, without good cause, fails to file a report by the date the report is due to the guardian ad litem board. The court clerk shall make such report available to the public.

## APPENDIX U

Adopt District Court Rule 1.26 on a permanent basis as follows (no changes are being made to the temporary rule now in effect):

### **Rule 1.26. Access To Confidential Records – Fees And Notice**

Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. See Petition of Keene Sentinel, 136 N.H. 121 (1992).

**Filing Fee:** There shall be no filing fee for such a motion or petition.

**Notice:** In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the clerk.

In closed cases, the court shall order that the petitioner notify the parties of the petition to grant access by certified mail to the last known address of each party, return receipt requested, restricted delivery, signed by the addressee only, unless the court expressly determines that another method of service is necessary in the circumstances.

## APPENDIX V

Amend District Court Rule 2.7 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

### **Rule 2.7. Postponements for payment of fine [Payment of Fines]**

~~The Court may defer payment of a fine or may order periodic payment thereof; but due regard in all cases shall be given to the prompt settlement of fines. In all convictions where a return is required, the return shall be filed with the Motor Vehicle Division forthwith, and an amended return filed when the fine is paid.~~

**[(A) In all cases, fines imposed by the Court shall be due and payable on the date imposed. In those cases where a defendant indicates an inability to pay forthwith, the defendant shall be required to complete an affidavit of resources, under oath, prior to leaving the courthouse. The affidavit shall be in the form set forth in Appendix \_\_\_\_\_. The Court may consider such factors as the defendant's employment, good faith attempts to seek employment, spousal, family and partner income, savings, property ownership, credit lines and expenses including child support.**

**(B) In any case where the Court finds the defendant indigent or the defendant is unable to pay the fine on the date imposed, the Court may defer payment of the fine or order periodic payment. Eligibility for appointed counsel shall not be conclusive on the issue of indigency for purposes of fine payment orders.**

**(C) In any case where a defendant proves an inability to pay a fine, the Court may allow the defendant to perform community service, pursuant to a plan submitted to and approved by the Court. Every hour of verified community service shall be applied against the fine at the rate of \$10.00 an hour.**

**(D) Conduct which amounts to willful failure to pay any fine or perform community service as ordered, may be punishable as contempt of court or through the provisions of RSA 618:9.]**

## APPENDIX W

Adopt new District Court Rule 2.9-A as follows:

### **Rule 2.9-A. Joinder of Offenses**

(A) Joinder of Offenses.

(1) Related Offenses. Two or more offenses are related if they:

(i) are alleged to have occurred during a single criminal episode; or

(ii) constitute parts of a common scheme or plan; or

(iii) are alleged to have occurred during separate criminal episodes, but nonetheless, are logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct.

(2) Joinder of Related Offenses for Trial. If a defendant is charged with two or more related offenses, either party may move for joinder of such charges. The trial judge shall join the charges for trial unless the trial judge determines that joinder is not in the best interests of justice.

(3) Joinder of Unrelated Offenses. Upon written motion of a defendant, or with the defendant's written consent, the trial judge may join for trial two or more charges of unrelated offenses upon a showing that failure to try the charges together would constitute harassment or unduly consume the time or resources of the parties. The trial judge shall join the charges for trial unless the trial judge determines that joinder is not in the best interest of justice.

(B) Relief from Prejudicial Joinder. If it appears that a joinder of offenses is not in the best interests of justice, the judge may upon his or her own motion or the motion of either party order an election of separate trials or provide whatever other relief justice may require.

## APPENDIX X

Amend Probate Court Rule 19 as follows (new material is in **brackets**]; deleted material is in ~~strikethrough~~ format):

### **Rule 19. ATTORNEYS - Appearing *Pro Hac Vice*.**

(A) An attorney, who is not a member of the Bar of this State [~~(a~~ **“Nonmember Attorney”**)], shall not be allowed to engage in the trial or hearing in any case, except on application to appear *pro hac vice*, which will not ordinarily be granted unless a member of the Bar of this State [~~(the~~ **“In-State Attorney”**)] is associated with him or her and present at the trial or hearing.

(B) ~~An attorney who is not a member of the Bar of this State~~ **[A Nonmember attorney]** seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

- (1) the applicant's residence and business address;
- (2) the name, address and phone number of each client sought to be represented;
- (3) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;
- (4) whether the applicant: (a) has been denied admission *pro hac vice* in this State; (b) had admission *pro hac vice* revoked in this State; or (c) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;
- (5) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;
- (6) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for

disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application); and

(7) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this State within the preceding two years; the date of each application; and the outcome of the application **]; and**

**(8) the date upon which the non-refundable fee set forth in Rule 19(E) was paid to the New Hampshire Bar Association].**

~~(8)~~ **[(9)]** In addition, unless this requirement is waived by the probate court, the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at any trial or hearing.

(C) The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that such admission:

(1) may be detrimental to the prompt, fair and efficient administration of justice;

(2) may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

**[(D) When a Nonmember Attorney appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the In-State Attorney, or in an advisory or consultative role, the In-State Attorney who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the In-State Attorney to advise the client of the In-State Attorney's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Nonmember Attorney.**

**(E) An applicant for permission to appear *pro hac vice* shall pay a non-refundable fee equal to 85 percent of the current dues paid by active members of the State Bar of New Hampshire for the calendar year in**

**which such application is filed; provided that not more than one application fee may be required per Nonmember Attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the Nonmember Attorney; and further provided that the requirement of an application fee may be waived to permit pro bono representation of an indigent client or clients, in the discretion of the court. Such non-refundable fee shall be paid to the State Bar of New Hampshire at the time the verified application is filed with the court.]**

## **APPENDIX Y**

Adopt Probate Court Rule 61-B on a permanent basis as follows (no changes are being made to the temporary rule now in effect):

### **Rule 61-B. UNTIMELY-FILED GUARDIAN AD LITEM REPORTS**

(a) A guardian ad litem who, without good cause, fails to file a report required by any court or statute by the date the report is due may be subject to a fine of not less than \$100 and not more than the amount of costs and attorneys fees incurred by the parties to the action for the day of the hearing. The guardian ad litem shall not be subject to the fine under this rule if, at least ten days prior to the date the report is due, he or she files a motion requesting an extension of time to file the report.

(b) The register shall report a guardian ad litem who, without good cause, fails to file a report by the date the report is due to the guardian ad litem board. The register shall make such report available to the public.

## APPENDIX Z

Adopt Probate Court Rule 169-A on a permanent basis as follows (no changes are being made to the temporary rule now in effect):

### **Rule 169-A. ACCESS TO CONFIDENTIAL RECORDS – Fees and Notice**

Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. See Petition of Keene Sentinel, 136 N.H. 121 (1992).

**Filing Fee:** There shall be no filing fee for such a motion or petition.

**Notice:** In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the register.

In closed cases, the court shall order that the petitioner notify the parties of the petition to grant access by certified mail to the last known address of each party, return receipt requested, restricted delivery, signed by the addressee only, unless the court expressly determines that another method of service is necessary in the circumstances.

## APPENDIX AA

Adopt Family Division (General) Rule 12 on a permanent basis as follows

(no changes are being made to the temporary rule now in effect):

### 12. **Untimely-filed Guardian Ad Litem Reports:**

A. A guardian ad litem who, without good cause, fails to file a report required by any court or statute by the date the report is due may be subject to a fine of not less than \$100 and not more than the amount of costs and attorneys fees incurred by the parties to the action for the day of the hearing. The guardian ad litem shall not be subject to the fine under this rule if, at least ten days prior to the date the report is due, he or she files a motion requesting an extension of time to file the report.

B. The court clerk shall report a guardian ad litem who, without good cause, fails to file a report by the date the report is due to the guardian ad litem board. The court clerk shall make such report available to the public.

## APPENDIX BB

Adopt Family Division (General) Rule 13 on a permanent basis as follows

(no changes are being made to the temporary rule now in effect):

13. **Access To Confidential Records – Fees And Notice:** Any person or entity not otherwise entitled to access may file a motion or petition to gain access to: (1) a financial affidavit filed pursuant to Family Division (Domestic Relations) Rule 13 and kept confidential under RSA 458:15-b, I, or (2) any other sealed or confidential court record. See *Petition of Keene Sentinel*, 136 N.H. 121 (1992).

**Filing Fee:** There shall be no filing fee for such a motion or petition.

**Notice:** In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the clerk.

In closed cases, the court shall order that the petitioner notify the parties of the petition to grant access by certified mail to the last known address of each party, return receipt requested, restricted delivery, signed by the addressee only, unless the court expressly determines that another method of service is necessary in the circumstances.

## APPENDIX CC

Amend Rule of Evidence 609 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

### **Rule 609. Impeachment by Evidence of Conviction of Crime**

(a) *General rule.* For the purpose of attacking the credibility **[character for truthfulness]** of a witness,

**[(1)]** evidence that **[a witness other than an accused]** ~~the witness~~ has been convicted of a crime shall be admitted **[, subject to Rule 403,]** ~~if elicited from the witness or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he or she [the witness] was convicted, and [evidence that an accused has been convicted of such a crime shall be admitted if] the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant [accused; and] or~~

~~(2) involved dishonesty or false statement, regardless of the punishment.~~  
**[evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.]**

(b) *Time limit.* Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) *Effect of [pardon,] annulment, or certificate of rehabilitation.* Evidence of a conviction is not admissible under this rule if **[(1)]** the conviction has been the subject of **[a pardon,]** ~~an~~ annulment, certificate or rehabilitation, or other equivalent procedure **[based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence].**

(d) *Juvenile adjudications.* Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) *Pendency of appeal.* The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.