THE STATE OF NEW HAMPSHIRE

SUPREME COURT OF NEW HAMPSHIRE

O R D E R

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

I. PRO BONO SERVICES – TEMPORARY SERVICE FOLLOWING MAJOR DISASTER

The following new rule allows temporary practice on a pro bono basis in New Hampshire by lawyers licensed in other jurisdictions following declaration of a major disaster.

1. Supreme Court Rule 60 re provision of legal services following determination of major disaster. The court adopts this new rule as set forth in Appendix A.

2. Professional Conduct Rule 5.5, ABA Model Code Comment [14] and Ethics Committee Comment. The court hereby gives notice that the ABA Model Code Comment [14] is amended and a new Ethics Committee Comment is added, all as set forth in Appendix B.

II. MEDIA ACCESS AND PROTECTIVE ORDERS

The following rule amendments address media access to proceedings before the Supreme Court, the Judicial Conduct Committee and the Attorney Discipline System. In addition, they address the review of protective orders issued by the Judicial Conduct Committee and the Attorney Discipline System.

1. Supreme Court Rule 19 re media access. The court amends this rule as set forth in Appendix C.

2. Supreme Court Rule 37(20)(f) re protective orders. The court amends this rule as set forth in Appendix D.

3. Supreme Court Rule 37(21)(c) re protective orders. The court amends this rule as set forth in Appendix E.

4. Supreme Court Rule 37A(III)(c)(9) re media access. The court amends this rule as set forth in Appendix F.

5. Supreme Court Rule 37A(IV) re protective orders. The court amends this rule, and adopts it on a permanent basis, as set forth in Appendix G.

6. Supreme Court Rule 40(3)(f) re protective orders. The court amends this rule as set forth in Appendix H.

7. Supreme Court Rule 40(11)(j) re media access. The court amends this rule as set forth in Appendix I.

III. SYSTEM-WIDE GUARDIAN AD LITEM RULES

The following amendments repeal the current system-wide guardian ad litem guidelines and related Superior Court Rule 212, and replace them with new rules. The interested reader may wish to review RSA chapter 490-C, which establishes the Guardian ad Litem Board, as well as the administrative rules promulgated by the Guardian ad Litem Board (New Hampshire Administrative Rules, GAL 100 through 500).

1. System-Wide Guardian ad Litem Guidelines. The court repeals the current System-Wide Guardian ad Litem Guidelines, and adopts new System-Wide Guardian ad Litem Application, Certification and Practice Rules as set forth in Appendix J.

2. Superior Court Rule 212, re certification of court-appointed guardians ad litem. The court repeals this rule as set forth in Appendix K.

IV. DISCIPLINARY PROCEDURES AND RULES COMMITTEE MEMBERSHIP

The following rule amendments address the process for reinstatement of attorneys suspended for six months or less, clarify the authority of the Judicial Conduct Committee to order disciplined judges to pay the Committee's expenses, delete reference to an outdated mailing address for the Judicial Conduct Committee, and expand the membership of the Advisory Committee on Rules to include a judge or master from the Family Division.

1. Supreme Court Rule 37A(II)(d)(2)(D) re reinstatement of attorneys suspended for six months or less. The court amends this rule as set forth in Appendix L.

2. Supreme Court Rule 40(4)(b) re address of judicial conduct committee. The court amends this rule as set forth in Appendix M.

3. Supreme Court Rule 40(13-A) re judicial conduct committee procedures. The court amends this rule as set forth in Appendix N.

4. Supreme Court Rule 51B re rules advisory committee membership. The court amends this rule as set forth in Appendix O.

V. USE OF VIDEO TAPE DEPOSITIONS IN SUPERIOR COURT

The following rule amendment requires a party intending to use a video tape deposition at trial to provide the superior court before trial with a transcript of the entire deposition unless the superior court orders otherwise.

1. Superior Court Rule 45-A re use of video tape depositions. The court amends this rule as set forth in Appendix P.

VI. APPEALS FROM ADMINISTRATIVE AGENCIES – THE RECORD ON APPEAL

The following rule amendment clarifies that the appealing party has the initial burden of paying for transcripts in administrative appeals, and explains the potential consequences of not providing a transcript. It further repeals the current provision that states that the entire record of the administrative agency, even if it is not filed with the supreme court, is part of the record on appeal.

1. Supreme Court Rule 10 re appeals from administrative agencies. The court amends this rule as set forth in Appendix Q.

VII. FAMILY DIVISION RULES

The following amendments to the Family Division Rules are being adopted on a temporary basis. These amendments are currently being considered by the Advisory Committee on Rules for its recommendation as to whether they should be adopted on a permanent basis. They will be considered at the Advisory Rules Committee's December 10, 2008 public hearing; written comments on the Family Division Rules may be filed with the Advisory Rules Committee prior to or at the public hearing.

1. Family Division Rule 1.20 re withdrawal and new representation. The court amends this rule on a temporary basis as set forth in Appendix R.

2. Family Division Rule 1.22 re testimony of attorney or witness. The court amends this rule on a temporary basis as set forth in Appendix S.

3. Family Division Rule 1.24 re pleading requirements. The court amends this rule on a temporary basis as set forth in Appendix T.

4. Family Division Rule 1.25 re discovery. The court amends this rule on a temporary basis as set forth in Appendix U.

5. Family Division Rule 1.26 re motions. The court amends this rule on a temporary basis as set forth in Appendix V.

6. Family Division Rule 2.10 re child impact seminar. The court amends this rule on a temporary basis as set forth in Appendix W.

7. Family Division Rule 2.11 re first appearance. The court amends this rule on a temporary basis as set forth in Appendix X.

8. Family Division Rule 2.28 re qualified domestic relations orders. The court amends this rule on a temporary basis as set forth in Appendix Y.

9. Family Division Rules 2.29, 2.30, and 2.31 re effective dates, modification of final decree, and enforcement of court order. The court amends current Family Division Rules 2.28, 2.29 and 2.30 by renumbering them as Rules 2.29, 2.30, and 2.31, on a temporary basis, as set forth in Appendix Z.

10. Family Division Rules Index. The court amends the Index to the Family Division Rules as set forth in Appendix AA.

VIII. TECHNICAL AMENDMENTS

The following technical rule amendments are hereby adopted.

1. Supreme Court Rule 15(2) re transcript costs. The court amends this rule as set forth in Appendix BB.

2. Evidence Rule 804(b)(6) re hearsay. The court amends this rule as set forth in Appendix CC.

IX. TEMPORARY RULES CURRENTLY IN EFFECT

The following rules, which have been in effect as temporary rules, are hereby adopted on a permanent basis without any substantive changes.

1. Supreme Court Rule 3 re definition of "mandatory appeal." The court adopts the temporary amendments to this rule on a permanent basis, as set forth in Appendix DD.

2. Supreme Court Rule 37(1)(e) re privileges. The court adopts the temporary amendments to this rule on a permanent basis as set forth in Appendix EE.

3. Supreme Court Rules 37(2)(c), 37(2)(f), and 37(2)(k) re definitions. The court adopts the temporary amendments to these rules on a permanent basis as set forth in Appendix FF.

4. Supreme Court Rule 37(5)(b) re complaint screening committee. The court adopts the temporary amendments to this rule on a permanent basis as set forth in Appendix GG.

5. Supreme Court Rule 37(6)(c) re general counsel. The court adopts the temporary amendments to this rule on a permanent basis as set forth in Appendix HH.

6. Supreme Court Rules 37(20)(b)(1), 37(20)(j), 37(20)(k), and 37(20)(*l*) re attorney discipline office. The court adopts the temporary amendments to these rules on a permanent basis as set forth in Appendix II.

7. Supreme Court Rule 37A(I)(c) re definitions. The court adopts the temporary amendments to this rule on a permanent basis as set forth in Appendix JJ.

8. Supreme Court Rules 37A(I)(e)(2) and 37A(I)(e)(3) re attorney discipline office. The court adopts the temporary amendments to these rules on a permanent basis as set forth in Appendix KK.

9. Supreme Court Rule 37A(I)(g)(3) to 37A(I)(g)(8) re discretionary diversion. The court adopts the temporary amendments to these rules on a permanent basis as set forth in Appendix LL.

10. Supreme Court Rule 37A(II)(a)(3) re procedure after receipt of grievance. The court adopts the temporary amendments to this rule on a permanent basis, with a further clarifying amendment, as set forth in Appendix MM.

11. Supreme Court Rules 37A(II)(a)(6) and 37A(II)(a)(7) re investigation and action by general counsel or complaint screening committee. The court adopts the temporary amendments to these rules on a permanent basis as set forth in Appendix NN.

12. Supreme Court Rule 37A(II)(b)(1)(B)(iii) re warnings. The court adopts the temporary amendments to this rule on a permanent basis as set forth in Appendix OO.

13. Supreme Court Rule 37A(III)(b)(1) re attorney discipline office. The court adopts the temporary amendments to this rule on a permanent basis as set forth in Appendix PP.

14. Supreme Court Rule 37A(VI) re request for reconsideration. The court adopts the temporary amendments to this rule on a permanent basis as set forth in Appendix QQ.

15. Supreme Court Rule 40(5) re judicial conduct committee procedures. The court adopts the temporary amendments to this rule on a permanent basis, with a further clarifying amendment, as set forth in Appendix RR.

16. Supreme Court Rule 42(4) re qualifications for admission to the bar. The court adopts the temporary amendments to this rule on a permanent basis, as set forth in Appendix SS.

17. Supreme Court Rule 42(5)(h) and (j) re committee on character and fitness. The court adopts the temporary amendments to this rule on a permanent basis, as set forth in Appendix TT.

18. Supreme Court Rule 42(13) re admission of Daniel Webster Scholars to the bar. The court adopts the temporary amendments to this rule on a permanent basis, as set forth in Appendix UU.

19. Supreme Court Rule 49(I)(E)(3), Rule 49(I)(H), and Rule 49(I)(I) re fees. The court adopts the temporary amendments to this rule on a permanent basis, as set forth in Appendix VV.

20. Superior Court Rule 62(I) re initial structuring conferences. The court adopts the temporary amendments to this rule on a permanent basis, with a further clarifying amendment, as set forth in Appendix WW.

21. Superior Court Rule 170-A re arbitration. The court adopts the temporary amendments to this rule on a permanent basis, with further clarifying amendments, as set forth in Appendix XX.

22. Superior Court Rule 170-B re judge-conducted mediation. The court adopts the temporary amendments to this rule on a permanent basis, as set forth in Appendix YY.

Effective Dates

These amendments shall take effect on January 1, 2009.

Date: November 14, 2008

ATTEST: ___________________
Eileen Fox, Clerk
Supreme Court of New Hampshire

APPENDIX A

Adopt new Supreme Court Rule 60 as follows (the ABA Model Code Comment that follows the text of Rule 60 is not being adopted as part of the rule – it is intended to be interpretive, not mandatory):

Rule 60. Provision of Legal Services Following Determination of Major Disaster

(a) *Determination of existence of major disaster.* Solely for purposes of this Rule, the Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(1) this jurisdiction and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or

(2) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) *Temporary practice in this jurisdiction following major disaster.* Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of *pro bono* services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a *pro bono* basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, *pro bono* program or legal services program or through such organization(s) specifically designated by this Court.

(c) *Temporary practice in this jurisdiction following major disaster in another jurisdiction.* Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) *Duration of authority for temporary practice.* The authority to practice law in this jurisdiction granted by paragraph (b) of this Rule shall end when this Court determines that the conditions caused by the major disaster in this jurisdiction have ended except that a lawyer then representing clients in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in this jurisdiction granted by paragraph (c) of this Rule shall end 60 days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(e) *Court appearances.* The authority granted by this Rule does not include appearances in court except:

(1) pursuant to that court's *pro hac vice* admission rule and, if such authority is granted, any fees for such admission shall be waived; or

(2) if this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, any *pro hac vice* admission fees shall be waived.

(f) *Disciplinary authority and registration requirement.* Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Rule 8.5 of the Rules of Professional Conduct. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

(g) *Notification to clients.* Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule

shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

ABA Model Code Comment

[1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a *pro bono* basis through an authorized not-for-profit entity or such other organization(s) specifically designated by this Court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under paragraph (a)(1), this Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph (b) of this Rule. This Court may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph (b) shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide *pro bono* legal services to residents of the affected jurisdiction following determination of an emergency caused by a major disaster; notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal services pursuant to this Rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, this court may instead designate other specific organization(s) through which these legal services may be rendered. Under paragraph (b), an emeritus lawyer from another United State jurisdiction may provide *pro bono* legal services on a temporary basis in this jurisdiction provided that the emeritus lawyer is authorized to provide

pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or *pro bono* practice rule. Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis under Rule 5.5(c) of the Rules of Professional Conduct.

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this Court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under paragraph (c) to provide legal services on a temporary basis in this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. For purposes of this Rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction. For the meaning of "arise out of and reasonably related to," see Rule 5.5 Comment [14], Rules of Professional Conduct.

[5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs (b) and (c) also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph (d), this Court determines when those conditions end only for purposes of this Rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of this jurisdiction under paragraph (b) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by paragraph (c) will end 60 days after this Court makes such a determination with regard to an affected jurisdiction.

[6] Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of this jurisdiction. Court appearances are subject to the *pro hac vice* admission rules of the particular court. This Court may, in a determination made under paragraph (e)(2), include authorization for lawyers who provide legal services in this jurisdiction under paragraph (b) to appear in all or designated courts of this jurisdiction without need for such *pro hac vice* admission. If such an authorization is included, any *pro hac vice* admission fees shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule 1.16 of the Rules of Professional Conduct.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this Rule.

[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs (b) or (c) of this Rule is disbarred, suspended from practice or otherwise subject to a public disciplinary sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

APPENDIX B

Amend 2004 ABA Model Rule Comment [14] and add a new Ethics Committee Comment to Rule of Professional Conduct 5.5 as follows (the 2004 ABA Model Rule Comment and Ethics Committee Comment are intended to be interpretive, not mandatory) (new material is in **[bold and in brackets]**:

[Ethics Committee Comment

1. **New Hampshire has adopted ABA Model Rule 5.5.**
2. **Lawyers desiring to provide *pro bono* legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult Supreme Court Rule 60, which governs the provision of legal services following determination of major disaster.]**

[ABA Model Rule Comment]

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law. **[Lawyers desiring to provide *pro bono* legal services on a temporary basis in a**

jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult the Model Court Rule on Provision of Legal Services Following Determination of Major Disaster.]

APPENDIX C

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

Rule 19. Media Access to Court Proceedings

~~With prior notice to the clerk, and the consent of the court, any~~ **[Any]** person may record and photograph, or broadcast by radio or television, ~~the oral~~ proceedings of the supreme court **[that are open to the public]**, provided that the orderly procedures of the court are not impaired or interrupted.

(1) *Prior Notice*. Members of the broadcast media who wish to cover a proceeding **[shall notify]** ~~are required to give reasonable notice to~~ the court information officer **[as far]** in advance **[as is practicable.]** ~~of the court session. The court information officer will notify the court clerk and court security of media coverage.~~

(a) No more than one still photographer and one videographer may be in the courtroom at one time. Video equipment must remain stationary during the entire court session. Rotation of still photographers will be under the direction of the court information officer who will minimize movement while court is in session.

(b) No person or organization will have exclusive access to a proceeding in the courtroom. The court information officer will advise media outlets if pool coverage is necessary.

(2) *Equipment*. Broadcast media should arrive at least thirty (30) minutes prior to oral argument to begin setting up equipment. All equipment must be in place and tested fifteen (15) minutes in advance of the time scheduled for the court session. Equipment may not be adjusted or dismantled during the proceedings.

(a) Exact locations for all video and still cameras, and audio equipment within the courtroom will be determined by the court information officer. Movement in the courtroom is prohibited, unless specifically approved by the court information officer.

(b) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash equipment and other supplemental lighting or sound equipment is prohibited unless specifically approved by the court.

(c) Handheld tape recording devices may be used but shall not be placed on the bar to the well of the courtroom.

(d) Cellular telephones should be turned off or muted at all times.

(3) *Courtroom Conduct*. Broadcast or print interviews will not be permitted inside the courtroom or anywhere in the supreme court building either before or after oral argument unless specifically approved by the court information officer. Exceptions may be made in case of inclement weather.

(a) Distribution of printed material, including pamphlets and flyers of any kind, is prohibited both in the courtroom and in the supreme court building.

(b) Photographers, videographers and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings.

(c) All media personnel shall observe the customs of the court.

(d) Appropriate dress is required.

Comment

Supreme Court Rule 19 provides generally that~~, with prior notice to the clerk, oral~~ proceedings before the court may be broadcast, recorded and photographed by members of the media; but the rule requires that such activities not impair or interrupt the orderly procedures of the court. The purpose of the amended rule is to define that conduct which the court considers appropriate to avoid disruption of proceedings. The rule is subject to orders of the court in particular cases.

APPENDIX D

Amend Supreme Court Rule 37(20)(f) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(f) *Protective Orders*: Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant, a witness, or the attorney. In order to protect the interests of the complainant, witness, or attorney, the professional conduct committee, may, upon request, or on its own initiative, issue a protective order prohibiting the disclosure of confidential, malicious, personal, privileged information or material submitted in bad faith. Any person aggrieved by a decision on a protective order may, within thirty (30) days of the decision, request that the **[supreme]** court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the court has acted or the period for requesting court review has expired. ~~A motion for review of the professional conduct committee's decision about issuance of a protective order shall be filed as a confidential matter in the court.~~

APPENDIX E

Amend Supreme Court Rule 37(21)(c) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(c) *Protective Orders*: Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant, a witness, or the attorney. In order to protect the interests of the complainant, witness, or attorney, the professional conduct committee, may, upon request, or on its own initiative, issue a protective order prohibiting the disclosure of confidential, malicious, personal, privileged information or material submitted in bad faith. Any person aggrieved by a decision on a protective order may, within thirty (30) days of the decision, request that the **[supreme]** court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the court has acted or the period for requesting court review has expired. ~~A motion for review of the professional conduct committee's decision about issuance of a protective order shall be filed as a confidential matter in the court.~~

APPENDIX F

Amend Supreme Court Rule 37A(III)(c)(9) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(9) *Photographing, Recording and Broadcasting.*

~~Except by order of the hearing panel chair or the supreme court, no person shall within the hearing room take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of the proceeding. Reporters hired by the hearings committee to record hearings pursuant to this rule and authorized recorders are not prohibited by this rule from making voice recordings for the sole purpose of discharging their official duties.~~

[(A) The hearing panel should permit the media to photograph, record and broadcast all proceedings that are open to the public. The hearing panel may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence. Except as specifically provided in this rule, or by order of the hearing panel, no person shall within the hearing room take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of any proceeding.

(B) Reporters hired by the hearings committee to record hearings pursuant to this rule and authorized recorders are not prohibited by this rule from making voice recordings for the sole purpose of discharging their official duties.

(C) *Proposed Limitations on Coverage by the Electronic Media.* Any party to a formal proceeding – or any other interested person – shall notify the hearings committee at the inception of a matter, or as soon as practicable, if that person intends to ask the hearing panel to limit electronic media coverage of any proceeding that is open to the public. Failure to notify the hearings committee in a timely fashion may be sufficient grounds for the denial of such a request. In the event of such a request, the hearings committee or hearing panel shall either deny the request or issue an order notifying the parties to the proceeding and all other interested persons that such a limitation has been requested, establish deadlines for the filing of written objections by parties and interested persons, and order an evidentiary hearing during which all interested persons will be heard. The same procedure for notice and hearing shall be utilized in the event that the hearing panel *sua sponte* proposes a limitation on coverage by the electronic media. A copy of the order shall, in addition to being incorporated in the case docket, be sent to the Associated Press, which will disseminate the order to its members and inform them of upcoming deadlines/hearing.

(D) ***Advance Notice of Requests for Coverage.*** **Any requests to bring cameras, broadcasting equipment and recording devices into a hearing room for coverage of any proceedings shall be made as far in advance as practicable. If no objection to the requested electronic coverage is received by the hearings committee or hearing panel, coverage shall be permitted in compliance with this rule. If an objection is made, the media will be so advised and the panel will conduct an evidentiary hearing during which all interested parties will be heard to determine whether, and to what extent, coverage by the electronic media or still photography will be limited.**

(E) ***Pool Coverage.*** **The hearing panel retains discretion to limit the number of still cameras and the amount of video equipment in the hearing room at one time and may require the media to arrange for pool coverage. The panel will allow reasonable time prior to a proceeding for the media to set up pool coverage for television, radio and still photographers providing broadcast quality sound and video.**

(1) It is the responsibility of the news media to contact the attorney discipline office in advance of a proceeding to determine if pool coverage will be required. If the hearing panel has determined that pool coverage will be required, it is the sole responsibility of the media, with assistance as needed from the attorney discipline office, to determine which news outlet will serve as the "pool." Disputes about pool coverage will not be resolved by the hearing panel. Access may be curtailed if pool agreements cannot be reached.

(2) In the event of multiple requests for media coverage, because scheduling renders a pool agreement impractical, the attorney discipline office retains the discretion to rotate media representatives into and out of the courtroom.

(F) ***Live Feed.*** **Except for good cause shown, requests for live coverage should be made at least five (5) days in advance of a proceeding.**

(G) ***Exhibits.*** **For purposes of this rule, access to exhibits will be at the discretion of the hearing panel. The panel retains the discretion to make one "media" copy of each exhibit available in the attorney discipline office.**

(H) ***Equipment.*** **Exact locations for all video and still cameras, and audio equipment within the hearing room will be determined by the hearing panel. Movement in the hearing room is prohibited, unless specifically approved by the panel.**

(1) Placement of microphones in the hearing room will be determined by the hearing panel. An effort should be made to facilitate broadcast quality sound. All microphones placed in the hearing room will be wireless.

(2) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash

equipment and other supplemental lighting or sound equipment is prohibited unless otherwise approved by the hearing panel.

(I) *Restrictions*. Unless otherwise ordered by the hearing panel, the following standing orders shall govern.

(1) No flash or other lighting devices will be used.

(2) Set up and dismantling of equipment is prohibited when the proceedings are in session.

(3) No camera movement during the proceedings.

(4) No cameras permitted behind the respondent's table.

(5) Broadcast equipment will be positioned so that there will be no audio recording of conferences between attorney and client or among counsel and the hearing panel at the bench. Any such recording is prohibited.

(6) Photographers and videographers must remain a reasonable distance from parties, counsel tables, alleged victims, witnesses and families unless the hearing participant voluntarily approaches the camera position.

(7) All reporters and photographers will abide by the directions of the hearing room officers at all times.

(8) Broadcast or print interviews will not be permitted inside the hearing room before or after a proceeding.

(9) Photographers, videographers and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings.

(10) Appropriate dress is required.]

APPENDIX G

Adopt Supreme Court Rule 37A(IV), as amended, on a permanent basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(IV) ***Confidentiality and Public Access***

(a) *Confidentiality of and Public Access to Proceedings and Records.*

(1) *General Rule.* The confidentiality of and public access to records, files and proceedings shall be governed by Supreme Court Rule 37.

(2) *Public Access to Files.*

(A) *Grievance against Person Not Subject to Rules of Professional Conduct.* Correspondence to the grievant relating to a grievance against a person who is not subject to the rules of professional conduct shall be available for public inspection for a period of two years. After this two-year period, the correspondence shall be destroyed.

(B) *Grievance Not Docketed as a Complaint.* All records (other than work product, internal memoranda and deliberations) relating to a grievance filed against a person who is subject to the rules of professional conduct but which is not docketed as a complaint, shall be maintained at the attorney discipline office for two (2) years from the date of original filing, and it shall be available for public inspection during this period. After this two-year period, the records shall be destroyed.

(C) *Complaints.* All records (other than work product, internal memoranda and deliberations) relating to a complaint that is docketed shall be maintained at the attorney discipline office and shall be available for public inspection in accordance with the provisions of Supreme Court Rule 37. Paper records may be destroyed after:

(i) three years of the date of notice of dismissal **[with or without]** ~~without~~ a caution; or

(ii) three years of the date of an annulment in accordance with section (V) of this rule; or

(iii) five years after the death of the attorney-respondent.

(D) *Index of Complaints.* The attorney discipline office shall maintain an index of complaints docketed against each attorney, which shall contain pertinent information, including the outcome of the

complaint. No index of grievances that are not docketed as complaints shall be maintained.

(E) *Protective Order.* Any person or entity, at any point in the processing of a complaint, may request a protective order from the professional conduct committee, or the committee may issue on its own initiative, a protective order prohibiting the disclosure of confidential, malicious, personal, or privileged information or material submitted in bad faith, and directing that the proceedings be so conducted as to implement the order. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time. Within thirty (30) days of the committee's decision on a request for protective order, or of the committee's issuance of one on its own initiative, an aggrieved person or entity may request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the supreme court has acted, or the period for seeking supreme court review has expired. ~~A motion for review of the professional conduct committee's decision about issuance of a protective order shall be filed as a confidential matter in the supreme court.~~

APPENDIX H

Amend Supreme Court Rule 40(3)(f) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(f) Protective order. Any person or entity may request from the committee, or the committee may issue on its own initiative, a protective order prohibiting the disclosure of confidential, malicious, personal, or privileged information or materials submitted in bad faith, and directing that the proceedings be so conducted as to implement the order. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the committee. The committee shall act upon the request within a reasonable time. Within 30 days of the committee's decision on a request for protective order, or of the committee's issuance of one on its own initiative, an aggrieved person or entity may request that the **[supreme]** court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the supreme court has acted, or the period for seeking supreme court review has expired. ~~A motion for review of the committee's decision on a request for protective order shall be filed as a confidential matter in the supreme court.~~

APPENDIX I

Amend Supreme Court Rule 40(11)(j) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(j) ~~No person may record, photograph, or broadcast by radio or television, the oral proceedings of the committee.~~ **[*Photographing, Recording and Broadcasting.***

(1) The committee should permit the media to photograph, record and broadcast all proceedings that are open to the public. The committee may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence. Except as specifically provided in this rule, or by order of the committee, no person shall within the hearing room take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of any proceeding.

(2) Reporters hired by the committee to record hearings pursuant to this rule and authorized recorders are not prohibited by this rule from making voice recordings for the sole purpose of discharging their official duties.

(3) *Proposed Limitations on Coverage by the Electronic Media.* Any party to formal proceedings – or any other interested person – shall notify the committee at the inception of a matter, or as soon as practicable, if that person intends to ask the committee to limit electronic media coverage of any proceeding that is open to the public. Failure to notify the committee in a timely fashion may be sufficient grounds for the denial of such a request. In the event of such a request, the committee shall either deny the request or issue an order notifying the parties to the proceeding and all other interested persons that such a limitation has been requested, establish deadlines for the filing of written objections by parties and interested persons, and order an evidentiary hearing during which all interested persons will be heard. The same procedure for notice and hearing shall be utilized in the event that the committee *sua sponte* proposes a limitation on coverage by the electronic media. A copy of the order shall, in addition to being incorporated in the case docket, be sent to the Associated Press, which will disseminate the order to its members and inform them of upcoming deadlines/hearing.

(4) *Advance Notice of Requests for Coverage.* Any requests to bring cameras, broadcasting equipment and recording devices into a hearing room for coverage of any proceedings shall be made as far in advance as practicable. If no objection to the requested electronic coverage is received by the committee, coverage shall be permitted in compliance with this rule. If an objection is made, the media will be so advised and the committee will conduct an evidentiary hearing during which all interested parties will be heard to determine whether, and to what extent, coverage by the electronic media or still photography will be limited.

(5) *Pool Coverage*. The committee retains discretion to limit the number of still cameras and the amount of video equipment in the hearing room at one time and may require the media to arrange for pool coverage. The committee will allow reasonable time prior to a proceeding for the media to set up pool coverage for television, radio and still photographers providing broadcast quality sound and video.

(A) It is the responsibility of the news media to contact the executive secretary in advance of a proceeding to determine if pool coverage will be required. If the committee has determined that pool coverage will be required, it is the sole responsibility of the media, with assistance as needed from the executive secretary, to determine which news outlet will serve as the "pool." Disputes about pool coverage will not be resolved by the committee. Access may be curtailed if pool agreements cannot be reached.

(B) In the event of multiple requests for media coverage, because scheduling renders a pool agreement impractical, the executive secretary retains the discretion to rotate media representatives into and out of the courtroom.

(6) *Live Feed.* Except for good cause shown, requests for live coverage should be made at least five (5) days in advance of a proceeding.

(7) *Exhibits*. For purposes of this rule, access to exhibits will be at the discretion of the committee. The committee retains the discretion to make one "media" copy of each exhibit available in the committee's office.

(8) *Equipment.* Exact locations for all video and still cameras, and audio equipment within the hearing room will be determined by the committee. Movement in the hearing room is prohibited, unless specifically approved by the committee.

(A) Placement of microphones in the hearing room will be determined by the committee. An effort should be made to facilitate broadcast quality sound. All microphones placed in the hearing room will be wireless.

(B) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash equipment and other supplemental lighting or sound equipment is prohibited unless otherwise approved by the committee.

(9) *Restrictions*. Unless otherwise ordered by the committee, the following standing orders shall govern.

(A) No flash or other lighting devices will be used.

(B) Set up and dismantling of equipment is prohibited when the proceedings are in session.

(C) No camera movement during the proceedings.

(D) No cameras permitted behind the judge's table.

(E) Broadcast equipment will be positioned so that there will be no audio recording of conferences between attorney and client or among counsel and the committee at the bench. Any such recording is prohibited.

(F) Photographers and videographers must remain a reasonable distance from parties, counsel tables, alleged victims, witnesses and families unless the hearing participant voluntarily approaches the camera position.

(G) All reporters and photographers will abide by the directions of the executive secretary or other hearing room officers at all times.

(H) Broadcast or print interviews will not be permitted inside the hearing room before or after a proceeding.

(I) Photographers, videographers and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings.

(J) Appropriate dress is required.]

APPENDIX J

Repeal the System-Wide Guardian Ad Litem Application, Certification and Practice guidelines, which took effect on December 15, 1994, and adopt in their place the following:

SYSTEM-WIDE GUARDIAN AD LITEM APPLICATION, CERTIFICATION AND PRACTICE RULES

Chapter I. Certification

Rule 1.1 Authority and Applicability

The following rules are established pursuant to the supreme court rulemaking authority under the New Hampshire Constitution, part II, article 73-a and the authority conferred under RSA 490:26-e. The court incorporates hereby by reference the rules adopted by the New Hampshire Guardian Ad Litem Board pursuant to RSA chapter 490-C in regard to the certification, qualifications, training, standards, oversight and decertification of Guardians ad Litem.

Rule 1.2 Appointment

Except in special circumstances as determined by the court, no person shall be appointed as a Guardian ad Litem unless he or she is certified by the New Hampshire Guardian ad Litem Board.

Chapter II. Standards of Practice

Rule 2.1 Appointment

(a) The Guardian ad Litem serves at the pleasure of the court. The Guardian ad Litem's appointment may be terminated at any time.

(b) The Guardian ad Litem shall report to the respective Chief Justice of the Superior Court or Administrative Judge of the District, Probate or Family Division courts any time the Guardian ad Litem becomes a litigant in any case in the respective level of court.

Rule 2.2 Scope of Representation

(a) The Guardian ad Litem shall be the representative for and of the best interest of the child or represented person. All rules, regulations, and standing

orders of the superior, district, probate and family division courts shall ordinarily apply to Guardians ad Litem.

(b) The Guardian ad Litem serves as an officer of the court and shall have such standing and make such accountability in the proceedings as the court deems appropriate.

Rule 2.3 Guardian ad Litem as Witness

(a) The Guardian ad Litem may be called as a witness in the proceeding by either party or at the request of the court.

(b) The parties may agree to accept the Guardian ad Litem's report and to limit a Guardian ad Litem's role so that the Guardian ad Litem may not be called as a witness except upon order of the court.

Rule 2.4 Subpoenas

A Guardian ad Litem shall not issue or obtain the issuance of a subpoena without good cause.

Rule 2.5 Regulation of Solicitation

A Guardian ad Litem shall not solicit employment from an individual. The terms "solicit" and "solicitation" include contact in person, by telephone, or telegraph, by letter or other writing, or by other communication directed to a specific recipient who is so situated that the recipient might in general find the services useful. Provided, however, that nothing in this rule shall be construed to prohibit the general advertising of services.

Rule 2.6 Communication of Fields of Practice

A Guardian ad Litem may communicate the fact that the Guardian ad Litem has certain areas of expertise. A Guardian ad Litem may communicate that the Guardian ad Litem has passed the training course required by the New Hampshire Guardian ad Litem Board and has been certified by the New Hampshire Guardian ad Litem Board to serve. The Guardian ad Litem may set forth his or her educational background and professional certifications, if any.

Rule 2.7 Judicial and Legal Officials

(a) A Guardian ad Litem shall make no public statements relating to pending cases.

(b) A Guardian ad Litem shall maintain the integrity of the judicial process.

Chapter III. Appeals

Rule 3.1 Appeals

(a) In the event that either party to an action shall appeal the decision of the Master or of a Justice to the Supreme Court, the Guardian ad Litem may, in his/her discretion or upon order of the court, participate in said appeal if it is determined by the Guardian ad Litem, Master or Justice that the issues appealed substantially affect the child or represented person.

(b) The Guardian ad Litem may initiate an appeal to the Supreme Court on behalf of the child or represented person in the event that the Guardian ad Litem shall determine that issues exist which are adverse to the child or represented person and which substantially affect the child's or represented person's interests.

(c) In the event of an appeal by other parties to the action, the Guardian ad Litem should examine the Notice of Appeal to determine if issues exist which may require that a brief be filed by the Guardian ad Litem. If such issues exist, the Guardian ad Litem shall promptly file a motion seeking leave of the Supreme Court to file the brief after the Guardian ad Litem has had sufficient time to examine the briefs of both parties. A specific period of time shall be specified in the motion.

(d) The Guardian ad Litem may participate in any appeal even though the Guardian ad Litem may have been called upon to testify in underlying hearings. Counsel will not be retained to represent the Guardian ad Litem on appeal except upon approval of the trial court upon petition by the Guardian ad Litem. The Justice ruling upon the petition may establish any conditions he/she may deem appropriate and will determine chargeability for additional counsel fees.

(e) The fees of the Guardian ad Litem upon appeal shall be paid in accordance with the ruling set forth in the underlying action, unless upon request of any party, the trial court shall order otherwise.

APPENDIX K

Repeal Superior Court Rule 212 in its entirety.

APPENDIX L

Adopt new Supreme Court Rule 37A(II)(d)(2)(D) as follows:

(D) *Special Rule for Suspensions of Six Months or Less.* Notwithstanding the provisions of Rule 37A(II)(d)(2)(B), a lawyer who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated by the court following the end of the period of suspension by filing with the court and serving upon disciplinary counsel a motion for reinstatement accompanied by: (1) an affidavit stating that he or she has fully complied with the requirements of the suspension order and has paid any required fees and costs; and (2) evidence that he or she has satisfactorily completed the Multistate Professional Responsibility Examination since his or her suspension.

APPENDIX M

Amend Supreme Court Rule 40(4)(b) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format)::

(b) A grievance shall be filed with the committee **[on judicial conduct]** by sending or delivering it to the ~~New Hampshire Supreme Court Committee on Judicial Conduct, Frank Rowe Kenison Supreme Court Building, P.O. Box 1476, Concord, New Hampshire 03301-1476~~ **[committee]**. A grievance shall be deemed filed when received by the committee.

[Comment

The committee's address and telephone number are available on the Internet at the committee's website, which can be found at: http://www.courts.state.nh.us/committees/judconductcomm/index.htm]

APPENDIX N

Amend Supreme Court Rule 40 by adding a new subsection (13-A), which shall state as follows:

(13-A) *Expenses Relating to Discipline Enforcement.*

In all cases in which discipline is imposed, including cases resolved by informal resolution or adjustment, all expenses incurred by the committee on judicial conduct in the investigation and enforcement of discipline may, in whole or in part, be assessed to a disciplined judge to the extent appropriate.

APPENDIX O

Amend Supreme Court Rule 51B as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(1) There shall be an Advisory Committee on Rules, which shall be composed of ~~fourteen~~ **[fifteen]** members as follows:

(a) One judge from each of the following courts shall be appointed by the supreme court: district court, probate court, superior court, and supreme court.

(b) Two attorneys shall be appointed by the supreme court.

(c) Three lay persons shall be appointed by the supreme court.

(d) One member shall be appointed by the Governor.

(e) One member of the senate shall be appointed by the president of the senate.

(f) One member of the house shall be appointed by the speaker of the house.

(g) One clerk of court shall be appointed by the supreme court.

(h) One member of the New Hampshire Bar Association Board of Governors shall be appointed by the president of the New Hampshire Bar Association.

[(g) One judge or master from the family division shall be appointed by the supreme court.]

(2) Appointments by the supreme court shall, where possible, be made from the Committee on Judicial Conduct, the Committee on Professional Conduct, the New Hampshire Bar Association's Committees on Civil Procedure, Evidence and Ethics, and such other committees as may be either studying or enforcing rules for the administration of justice. All such committees shall channel recommended changes through the Advisory Committee on Rules and shall serve as its sub-committees for specific areas of rule-making.

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

(a) when a member ceases to be a member by resignation or otherwise;

(b) when a judge **[or master]** ceases to hold the office which he or she held at the time of selection;

(c) when a lawyer ceases to be admitted to practice in the courts of this State or is appointed to a judicial office;

(d) when a lay person becomes a lawyer or a judge;

(e) when a legislative member ceases to be a member of the general court;

(f) when a New Hampshire Bar Association Board of Governors member ceases to be a member of the Board of Governors.

(4) Members appointed by the Governor, the president of the senate, the speaker of the house, and the president of the New Hampshire Bar Association shall serve at the pleasure of the appointing authority.

(5) The secretary of the committee shall be the clerk of the supreme court or any other person designated by the supreme court.

APPENDIX P

Amend Superior Court Rule 45-A as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

> 45-A. A party **[who intends to use a video tape deposition at trial]** ~~objecting to a question asked of, or an answer given by, a witness whose testimony is being taken by videotape~~ shall provide the Court at the pretrial settlement conference **[or five business days prior to trial, whichever is earlier,]** with a transcript of the **[entire video tape proceedings.]** ~~videotape proceedings that is sufficient to enable the Court to act upon the objection before the trial of the case, or the objection shall be deemed waived.~~ **[This requirement may be waived in whole or in part only by the court; the parties may not dispense with this requirement by agreement alone.]**
>
> The provisions of Rule 41 with respect to objections to testimony or evidence shall also apply to a video tape deposition.

APPENDIX Q

Amend Supreme Court Rule 10 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

RULE 10. Appeal from Administrative Agency

(1) The supreme court may, in its discretion, decline to accept an appeal, or any question raised therein, from an order of an administrative agency, or may summarily dispose of such an appeal, or any question raised therein, as provided in Rule 25. Review of an order of an administrative agency, when authorized by law, shall be obtained by filing the original and 8 copies of (a) an appeal under RSA 541; (b) in the case of an appeal from the department of employment security, an appeal under RSA 282-A:67; or (c) a petition for writ of certiorari if otherwise, accompanied by the required entry fee within the time prescribed by law. No entry fee will be required for an appeal filed by an individual claiming benefits under the unemployment compensation statute in accordance with RSA 282-A:158.

NOTE: To appeal to the supreme court from an administrative agency under RSA 541, the appealing party must have timely filed for a rehearing with the administrative agency. *See* RSA 541:4 and *Appeal of White Mountains Education Association*, 125 N.H. 771 (1984). The time period for the appeal does not begin to run until the administrative agency has acted upon the motion.

The appeal or petition, including any appeal from the department of employment security filed pursuant to RSA 282-A:67, shall as far as possible and in the order listed below:

(a) Specify the names of the parties seeking review of the order, the names of all other parties of record, the names of all counsel, the addresses of all parties and counsel, and the New Hampshire Bar identification numbers of counsel for the parties seeking review of the order.

(b) Contain, or have annexed to it, a copy of the administrative agency's findings and rulings, a copy of the order sought to be reviewed, a copy of the motion for rehearing and all objections thereto, and a copy of the order on the motion for rehearing. The appeal or petition, and any appendix that may be filed, shall contain a table of contents.

(c) Specify the questions presented for review, expressed in the terms and circumstances of the case, but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court.

(d) Specify the provisions of the constitutions, statutes, ordinances, rules, or regulations involved in the case, setting them out verbatim, and giving their citation. If the provisions to be set out verbatim are lengthy, their citation alone will suffice at that point and their pertinent text shall be annexed to the petition. If the provisions aggregate more than 5 pages, their text may be filed as a separate appendix, including a table of contents referring to numbered pages, and 8 copies shall be filed.

(e) Specify the provisions of insurance policies, contracts, or other documents involved in the case, setting them out verbatim. If the provisions to be set out verbatim are lengthy, their pertinent text shall be annexed to the petition. If the provisions aggregate more than 5 pages, their text may be filed as a separate appendix, including a table of contents referring to numbered pages, and 8 copies shall be filed.

(f) Set forth a concise statement of the case containing the facts material to the consideration of the questions presented, with appropriate references to the transcript, if any.

(g) State the jurisdictional basis for the appeal, citing the relevant statutes or cases.

(h) A direct and concise statement of the reasons why a substantial basis exists for a difference of opinion on the question and why the acceptance of the appeal would protect a party from substantial and irreparable injury, or present the opportunity to decide, modify or clarify an issue of general importance in the administration of justice.

(i) A statement that every issue specifically raised has been presented to the administrative agency and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

(2) The order sought to be reviewed or enforced, the findings and rulings, or the report on which the order is based, and the pleadings, evidence, and proceedings before the agency shall constitute the record on appeal.

[NOTE: The moving party in any appeal brought pursuant to RSA chapter 541 is required initially to bear the full, reasonable cost of preparing a transcript for inclusion in the record. *Appeal of City of Manchester*, 149 N.H. 283, 290 (1999). To request that a transcript be prepared and included in the record on appeal, the moving party should consult the administrative agency's regulations and/or RSA 541-A:31. Unless the moving party requests that a transcript be prepared, in compliance with the administrative agency's regulations and/or RSA 541-A:31, no transcript will be prepared for inclusion in the record.

Absent a transcript of the proceedings below, the supreme court generally will assume that the evidence was sufficient to support the

result reached by the administrative agency. If the appealing party fails to ensure that a transcript is prepared, the supreme court may not review issues that the appealing party has raised. *Cf. Bean v. Red Oak Prop. Mgmt.*, 151 N.H. 248 (2004).]

(3) The administrative agency, complying with the provisions of Rule 6(2) as to form, shall file the record with the clerk of the supreme court as early as possible within 60 days after it has received the supreme court's order of notice. The original papers in the agency proceeding or certified copies may be filed. At the beginning of the record there shall be inserted a table of contents with references to the page of the record at which each item listed in the table of contents begins.

(4) The parties may designate by stipulation filed with the clerk of the supreme court that no part, or that only certain parts, of the record shall be filed with the court.

(5) If anything material to any party is omitted from the record by error or accident or is misstated in the record, the parties by stipulation may provide, or the supreme court on motion or on its own initiative may direct, that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

~~(6) The entire record of the agency proceeding, whether filed with the supreme court or not, shall be a part of the record on appeal.~~

(~~7~~ **[6]**) In lieu of the record as defined in section (2) of this rule, the parties may prepare and sign a statement of the case showing how the questions of law transferred arose and were decided, and setting forth only so many of the facts as are essential to a decision of the questions presented.

(~~8~~ **[7]**) Notice by serving, delivering or mailing a copy of the appeal or petition upon all parties or opponents below as well as the agency involved and the attorney general is the responsibility of the moving party, and a certificate of compliance stating their names and addresses must be filed with the petition.

(~~9~~ **[8]**) If a timely appeal or petition is filed by a party appealing from an administrative agency, any other party may file a cross-appeal or cross-petition within 10 days from the date on which the appeal or petition was docketed with this court, and shall pay a filing fee therewith, provided that the party filing the cross-appeal or cross-petition must have timely filed any required motion for rehearing with the administrative agency.

APPENDIX R

Amend Family Division Rule 1.20 on a temporary basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

1.20 WITHDRAWAL AND NEW REPRESENTATION: ~~Other than limited representation by attorneys as allowed by Family Division Rule 1.19, and Professional Conduct Rule 1.2(f), no attorney shall be permitted to withdraw that attorney's appearance in a case after the case has been scheduled for trial or hearing, except upon motion to permit such withdrawal granted by the Court for good cause shown, and on such terms as the Court may order. Any motion to withdraw filed by counsel shall clearly set forth the reason therefor and contain a certification that copies have been sent to all other counsel or opposing parties, if appearing pro se, and to counsel's client at the client's last known address, which shall be fully set forth within the body of the motion. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet the financial obligations to pay for the attorney's services. Upon receipt of a motion to withdraw, a hearing may be scheduled. Notice by mail shall be sent to all counsel of record, or parties if unrepresented by counsel, and to the client of withdrawing counsel, at the client's last known address. If withdrawing counsel's client fails to appear at said hearing, the Court may, in its discretion, and without further notice to said client, order the hearing date continued or make such other order as justice may require.~~

[A. Subject to limited representation under Family Division Rule 1.19 and subject to Professional Conduct Rule 1.2(f), an attorney may withdraw at any time unless a hearing or trial is scheduled within 60 days. If a hearing or trial is scheduled within 60 days, an attorney must file a motion to withdraw.

B. Any motion to withdraw filed by counsel shall clearly set forth the reason for the request and contain a certification that copies have been sent to all other counsel or opposing parties, if appearing pro se, and to counsel's client at the client's last known address, which shall be fully set forth within the body of the motion. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet the financial obligations to pay for the attorney's services. Notice by mail shall be sent to all counsel of record, or parties if unrepresented by counsel, and to the client of withdrawing counsel, at the client's last known address.

C. Upon receipt of a motion to withdraw and any related objections, the court will give the motion and any objections expedited consideration, rule upon the motion to withdraw, or schedule a hearing as promptly as the docket allows. If withdrawing counsel's client fails to appear at said hearing, the Court may, in its discretion, and without further notice to said client, grant the withdrawal, order the hearing date continued, or make such other orders as justice may require.]

APPENDIX S

Amend Family Division Rule 1.22 on a temporary basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

1.22 TESTIMONY OF ATTORNEY OR WITNESS:

[A.] No attorney shall be compelled to testify in any case unless provided with five (5) days' written notice.

[B. Witness Testimony: Witnesses may appear voluntarily on behalf of any party, or may be compelled to appear through the subpoena procedures set forth in RSA 516, et seq.]

APPENDIX T

Amend Family Division Rule 1.24 on a temporary basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

1.24 PLEADING REQUIREMENTS:

A. All pleadings and the appearance and withdrawal of counsel shall be signed by the attorney of record or an associate or by a pro se party. Names, addresses, New Hampshire Bar identification numbers, and telephone numbers, shall be typed or stamped beneath all signatures on papers to be filed or served. No attorney or pro se party will be heard until an appearance is properly filed.

B. The signature of an attorney ~~or pro se party to a pleading~~ **[, or a party under oath,]** constitutes a certificate that the pleading has been read by the person signing the document; that to the best of the person's knowledge, information and belief there is good ground to support it; and that it is not filed for delay. If a pleading is not signed, or is signed with an intent to defeat this rule, it may be stricken and the action may proceed as though the pleading had not been filed.

C. **[No exhibits shall be attached to pleadings unless necessary to support an affidavit.**

D.] If either party changes attorneys during the pendency of the action, the name of the new attorney shall be entered on the docket. Whenever the attorney of a party withdraws an appearance, and no other appearance is entered, the Clerk shall notify the party by mail of such withdrawal. If the party fails to appear by himself or attorney by a date fixed by the court, the Court may take such action as justice may require.

APPENDIX U

Amend Family Division Rule 1.25 on a temporary basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

1.25 DISCOVERY:

A. *General*. Unless specified in another section of these rules, these discovery rules apply in all family division case types. The Court, in its discretion, may limit or expand the scope of discovery in any case as justice requires.

B. *Discovery Methods*. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other property for inspection and other purposes; physical or mental examinations; and requests for admission. Unless the Court orders otherwise, or unless otherwise provided in these rules, the frequency of use of these methods is not limited.

C. *Scope of Discovery*. Unless otherwise ordered, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

D. *Expert Witnesses*.

(1) Within thirty (30) days of a request by the opposing party, or in accordance with an order of the Court, a party shall be required to supply a Disclosure of Expert Witness(es) as defined under Rule 702 of the Rules of Evidence, which document shall:

(a) identify each person, including any party, whom the party expects to call as an expert witness at trial;

(b) provide a brief summary of the expert's education and experience relevant to the expert's area of expertise;

(c) state the subject matter on which the expert is expected to testify; and

(d) state a summary of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

The party shall attach to the disclosure a copy of any expert report relating to such expert.

(2) A party may discover facts known or opinions held by an expert, who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (i) the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions 1.25 D (1) and 1.25 D (2) of this rule, and (ii) with respect and with respect to discovery obtained under subdivision 1.25 (D) (2), the Court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

E. *Written Interrogatories*.

(1) *General*. Any party may serve written interrogatories upon any other party, by mail or delivery by hand.

The parties may agree to transmit interrogatories electronically or by computer disk, enabling the answering party to provide answers directly after each separate question using the party's available word processing technology.

Interrogatories may include any topic not subject to privilege. Furthermore, it is not grounds for refusal to answer a question that the testimony would be inadmissible at the hearing, if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence and does not violate any privilege.

(2) *Notice*. The party requesting the interrogatories shall provide the other party with notice of the obligation to answer the interrogatories within thirty (30) days. The notice shall be at the top of the first page and printed in capital, typewritten letters or in ten-point, bold-face print. The form of the notice shall be as follows:

Notice: These interrogatories are propounded in accordance with Family

Division Rule 1.25. You must answer each question separately and fully in writing and under oath. You must return the original and one copy of your answers within thirty (30) days of the date you received them to the party or attorney who served them upon you. If you object to any question, you must note your objection and state the reason for your objection. If you fail to return your answers within thirty (30) days, the party who served them upon you may inform the court, and the Court shall make such orders as justice requires, including the entry of a conditional default against you.

Interrogatories may be served at any time after service of the action.

(3) Copies. The party serving the interrogatories shall furnish the answering party with an original and two copies. The interrogatories shall be arranged so that after each separate question space will be provided to enable the answering party to respond.

(4) Answers. Interrogatories shall be answered in writing under oath by the party upon whom served, if an individual, or, if a public or private corporation, a partnership or association, by an officer or agent who shall furnish all information available to the party.

Each question shall be answered separately, fully and responsively, such that the final document shall have each interrogatory immediately followed by its answer.

The party served with interrogatories shall provide the original and one copy of the answers, by mail or delivery in hand, to the party requesting them within thirty (30) days of receipt of the interrogatories. If, in any interrogatory, a copy of a paper or document is requested, only one copy need be included with the answers. If the copy is a report of an expert witness or a treating physician, it shall be the exact copy of the entire report or reports rendered by him, and the answering party shall certify that the existence of other reports of that expert, either written or oral, are unknown to the answering party and, if such become later known or available, the answering party shall serve them promptly on the requesting party.

(5) Extension of Deadlines. The parties may extend interrogatory deadlines by written agreement, provided any such extension is not inconsistent with discovery orders of the Court.

(6) Objections, Motions to Compel, Motions to Strike. If a party objects to any questions, that party may either answer the question by stating it is improper or may, within twenty (20) days after the service of interrogatories, move to strike any question, setting out the specific grounds of objection. The answering party shall make timely answer, however, to all questions to which that party does not object. All other interrogatories shall

nonetheless be answered within the thirty days allowed, or within such time as the Court directs.

The party requesting the interrogatories who receives a response that one or more questions are improper, may within twenty (20) days, move to compel answer(s) to the question(s), and, if the motion is granted, the question(s) shall be answered within such time as the Court directs.

If a party, who is served with interrogatories requesting copies of papers, objects to furnishing them, that party may either state with specificity the reasons for non-compliance or invite the party seeking the copies to inspect and copy the papers at a designated time and place. The party seeking a copy of a paper which is not provided may within twenty (20) days of receipt of the answers file a motion seeking compliance.

Motions to strike interrogatories or to compel more specific answers shall include a statement summarizing the nature of the action and shall include the text of the questions and answers, if any, objected to.

When objections are made to interrogatories or requests for admissions, before there is any hearing regarding the objections, counsel for the parties shall attempt in good faith to settle the objections. It shall be the responsibility of counsel for the objecting party to initiate such attempt and to notify the Clerk if the objections are settled. If, following such conference, counsel are unable to settle objections, counsel for the objecting party shall notify the Clerk and request a hearing.

Where an objection to an interrogatory has been withdrawn or has been overruled by the Court, the answer to the interrogatory shall be provided within ten (10) days.

(7) Frivolous Motions. If the Court finds that a motion, which is made pursuant to this rule, was made frivolously or for the purpose of delay or was necessitated by action of the adverse party that was frivolous or taken for the purpose of delay, the Court may order the offending party to pay the amount of reasonable expenses, including attorney's fees, incurred by the other party in making or resisting the motion.

(8) Limitations on Number of Interrogatories. A party may file more than one set of interrogatories to an adverse party, but the total number of interrogatories shall not exceed fifty (50), unless the Court otherwise orders for good cause shown after the proposed additional interrogatories have been filed. In determining what constitutes an interrogatory for the purpose of applying this limitation in number, it is intended that each question be counted separately, whether it is subsidiary or incidental to or dependent upon or included in another question, and however the questions may be grouped, combined or arranged.

The other party shall have the same privileges in answering written interrogatories as the deponent in the taking of a deposition.

(9) Supplementation of Responses. If a party, who has furnished answers to interrogatories, thereafter obtains information which renders such answers incomplete or inaccurate, amended answers shall be served in accordance with Family Division Rule ~~1.25 I.~~ **[1.25 J.]**

(10) Use of Interrogatories. Interrogatories and answers may be used at the hearing to the same extent as depositions. If less than all of the interrogatories and answers are marked or read into evidence by a party, an adverse party may read into evidence any other of the interrogatories and answers or parts necessary for a fair understanding of the parts read into evidence.

Neither the interrogatories nor the answers need be filed with the Clerk unless the Court so directs.

(11) Failure to Answer. If the party, upon whom interrogatories have been served, fails to answer the interrogatories within thirty (30) days, unless written objection to the answering of the interrogatories is filed within that period, such failure will result in a conditional default being entered by the Clerk upon motion being filed indicating such failure to answer. The party failing to answer shall receive notice of the conditional default. The conditional default shall be vacated if the defaulted party answers the interrogatories within ten (10) days of receiving notice and moves to strike the conditional default. If the defaulted party fails to move to strike the conditional default within ten (10) days of receiving notice, the adverse party may move to have a default judgment entered and damages assessed. If, upon review of an affidavit of damages, the Court determines that it does not provide a sufficient basis for determining damages, the Court may, upon its own motion, order a hearing.

[F. *Request for Admissions*

(1) Any party may ask the other to admit certain facts or the genuineness of documents or signatures by submitting a request for admissions with the court. If the request for admissions seeks the admission of the genuineness of documents or signatures, the documents and/or signatures shall be attached to the request. Copies of the complete request as filed with the court shall be delivered by mail or in hand to the other party.

(2) Each of the matters of which an admission is requested shall be considered to be admitted unless within 30 days after delivery of the request to the other party, the other party files with the clerk and delivers a copy by mail or in hand to the party requesting such admission,

or to that party's attorney, either a sworn denial or a written objection on the ground of privilege or that the request is otherwise improper. If an objection is made to part of a request, the remainder shall be answered within the time limit. When good faith requires that a party qualify an answer, or deny only part of the matter, the party shall specify so much of the answer as is true, or qualify or deny the remainder.]

~~F.~~ **[G.]** *Depositions.*

Notice shall be provided to any person whose deposition is requested. Twenty (20) days notice is considered reasonable in all cases, unless otherwise ordered by the Court.

Every notice of a deposition to be taken within the State shall contain the name of the stenographer/professional proposed to record the testimony.

When a statute requires **[formal]** notice of the taking of depositions to be given to the adverse party, it may be given to such party or the party's attorney of record. Notices given pursuant to this rule may be given by mail or by service in hand. **[See RSA 517 et seq.]**

The questions and answers shall be taken in shorthand or other form of verbatim reporting approved by the Court and transcribed by a competent stenographer/professional agreed upon by the parties or their attorneys. In the absence of such agreement, the stenographer/professional shall be designated by the Court. Failure to object in writing to a stenographer in advance of the taking of a deposition shall be deemed agreement to the stenographer/professional recording the testimony.

No deposition, as transcribed, shall be changed or altered, but any alleged errors may be set forth in a separate document attached to the original and copies.

Upon motion, the Court may order the filing of depositions, and, upon failure to comply with such order, the Court may take such action as justice may require.

The signature of a person outside the State, acting as an officer legally empowered to take depositions or affidavits, with an appropriate seal affixed, where one is required, to the certificate of an oath administered by him in the taking of affidavits or depositions, will be prima facie evidence of this person's authority.

The person being deposed shall ordinarily be required to answer all questions not subject to privilege or excused by the statute relating to depositions, and it is not grounds for refusal to answer a particular question

that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence and does not violate any privilege.

If any person being deposed refuses to answer any question asked in the deposition, the party asking the question may request an order of the Court compelling an answer. If the motion is granted, and if the Court finds that the refusal was without substantial justification or was frivolous or unreasonable, the Court may, and ordinarily will, require the person deposed and the party or attorney advising the refusal, or either of them, to pay the examining or requesting party the reasonable expenses incurred in obtaining the order, including reasonable attorneys fees. If the motion is denied and if the Court finds that the motion was made without substantial justification or was frivolous or unreasonable, the Court may, and ordinarily will, require the examining party or the attorney advising the motion, or both of them, to pay to the witness the reasonable expenses incurred in opposing the motion, including reasonable attorneys fees.

~~G.~~ **[H.]** *Use of Videotape Depositions.*

The Court, within its discretion, may allow the use of videotape depositions that have been taken by agreement; and provided further that, if the parties cannot reach such an agreement, the Court may, in its discretion, order the taking and/or use of such depositions. At the commencement of the videotape deposition, counsel representing the person deposed should state whose deposition it is, what case it is being taken for, where it is being taken, who the lawyers are that will be asking the questions, and the date and the time of the deposition. Care should be taken to have the witnesses speak slowly and distinctly and that papers be readily available for reference without undue delay and unnecessary noise. Counsel and witnesses shall comport themselves at all times as if they were actually in the courtroom.

If any problem arises as to the admissibility or inadmissibility of evidence, this should be handled in the same manner as written interrogatories.

A party objecting to a question asked of, or an answer given by, a witness whose testimony is being taken by videotape shall provide the court at the pretrial conference with a transcript of the videotape proceedings that is sufficient to enable the Court to act upon the objection before the hearing, or the objection shall be deemed waived.

~~H.~~ **[I.]** *Limits on Discovery.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the Court;

(6) that a deposition after being sealed be opened only by order of the Court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

~~I.~~ **[J.]** *Supplementation of Responses.* A party who has responded to a request for discovery with a response that was complete when made is under a continuing duty to supplement responses to include information thereafter acquired, as follows:

(1) A party is under a duty to supplement responses concerning any question regarding the identity:

(a) and location of persons having knowledge of discoverable matters; and

(b) of each person expected to be called as an expert witness, the subject matter on which the expert is expected to testify, and the substance of the testimony.

(2) A party is under a duty to amend a prior response if it is known that the response:

(a) was incorrect when made; or

(b) though correct when made, is no longer true.

~~J.~~ **[K.]** *Discovery Deadlines*. The discovery dates established at a scheduling conference or other hearing are Court orders and may not be extended by the parties without written permission of the Court.

~~K.~~ **[L.]** *Abuse of Discovery*. The Court, in its discretion, may sanction any party including through the use of fees and costs, for abusing the discovery process.

APPENDIX V

Amend Family Division Rule 1.26 on a temporary basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

1.26 MOTIONS:

A. Parties may not address written communications directly to the judge. All requests shall be by properly filed motion with certification of delivery of a copy of the motion to the other party, unless jointly filed. No exhibits shall be attached to motions unless necessary to support an affidavit.

[B. The court will not hear any motion based upon facts unless the facts are verified by affidavit, or are already contained in the court record. No exhibits shall be attached to motions unless necessary to support an affidavit. The same rule will be applied as to all facts relied upon in objections to any motions.]

~~B.~~ **[C.]** Any party filing a motion shall certify to the court that a good faith attempt has been made to obtain concurrence in the relief sought, except in the case of dispositive motions, motions for contempt or sanctions, or comparable motions where it can be reasonably assumed that the party or counsel will be unable to obtain concurrence.

~~C.~~ **[D.]** Motions to which all parties assent or concur will be ruled upon as court time permits.

~~D.~~ **[E.]** Motions that are not assented to will be held for 10 days from the date of the motion to allow other parties time to respond, unless justice requires an earlier Court ruling.

~~E.~~ **[F.]** *Motions to Reconsider:* A motion for reconsideration or other post-decision relief shall be filed within ten (10) days of the date on the Clerk's written notice of the order or decision, which shall be mailed by the Clerk on the date of the notice. The motion shall state, with particular clarity, points of law or fact that the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present; but the motion shall not exceed ten (10) pages. A hearing on the motion shall not be permitted except by order of the Court.

No answer to a motion for reconsideration or other post-decision relief shall be required unless ordered by the Court, but any answer or objection must be filed within ten (10) days of notification of the motion.

If a motion for reconsideration or other post-decision relief is granted, the court may schedule a further hearing.

The filing of a motion for reconsideration or other post-decision relief shall not stay any order of the Court unless, upon specific written request, the Court has ordered such a stay.

APPENDIX W

Amend Family Division Rule 2.10 on a temporary basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

2.10 CHILD IMPACT SEMINAR: In any action involving married or unmarried parents of minor children, the parties shall attend the child impact seminar as required by RSA 458-D as soon as possible after the commencement of the action but no later than forty-five (45) days after service of the petition upon the respondent. Parties shall not be required to attend the same seminar if there is **[a domestic violence order in effect under RSA 173-B.]** ~~an RSA 173-B order in effect. No permanent agreement will be approved until both parties have attended the child impact seminar, except by order of the Court for good cause shown. The Court, in its discretion, may schedule a show cause hearing, and issue sanctions, for any party failing to comply with the requirements of RSA 458-D.~~ **[Upon a party's failure to complete the seminar according to this rule, the Court may take appropriate action including, but not limited to, actions for contempt.]**

APPENDIX X

Amend Family Division Rule 2.11 on a temporary basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

2.11 FIRST APPEARANCE:

[A.] A First Appearance will be held within 30 days after service has been accomplished in divorces and legal separations in which there are minor children and in parenting petition cases. ~~Attendance by both parents is required, and is expected at the same First Appearance, unless good cause exists to allow separate attendance. If a protective order pertaining to the parents is in effect, each parent shall attend a separate First Appearance. Attendance by attorneys is optional.~~ At First Appearance, a judge will give information about the court process and mediation. Before the parties leave First Appearance, the court will schedule mediation or the next court event.

[B. Attendance by both parents is required, and is expected at the same First Appearance, unless good cause exists to allow separate attendance. If a protective order pertaining to the parents is in effect, each parent shall attend a separate First Appearance. Attendance by attorneys is encouraged but optional.

C. If parties or their counsel believe unique circumstances exist pertaining to their attendance at First Appearance, motions to be excused from attending First Appearance, in which the unique circumstances are specifically described, may be filed.]

APPENDIX Y

Amend Family Division Rule 2.28 on a temporary basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

2.28 ~~EFFECTIVE DATES:~~ **[QUALIFIED DOMESTIC RELATIONS ORDERS: Access to information contained in the qualified domestic relations order shall be restricted to court personnel, the parties, and counsel.]**

~~A. *Uncontested Matters.* Decrees in uncontested cases where the parties have filed a permanent agreement shall become final on the date signed by the judge pursuant to RSA 490-D:9, unless otherwise specified by the Court.~~

~~B. *Contested and Defaulted Matters.* In contested cases or upon the default of either party, where no post-decree motion has been filed, the decree will not become final until the thirty-first (31st) day from the date of the Clerk's notice of decision. If a timely appeal is filed, the decree will not become final until the expiration of the appeal period pursuant to Supreme Court Rule 7. If a timely post-decree motion is filed, and there is no appeal taken, the decree becomes final thirty (30) days from the Court's action on the post-decree motion.~~

~~C. *Inactive Cases.* All domestic relations cases which have been placed on hold by request of the parties shall be dismissed after six (6) months unless there is a request by a party to reactivate the case, or a request for a further extension for good cause.~~

~~D. Once a decree becomes final, any further request for relief must be by petition, accompanied by a filing fee and a personal data sheet, with notice given to the other party, as set forth in Family Division Rule 2.4. Prior to a decree becoming final, no filing fee is required, and notice may be provided by regular US mail.~~

APPENDIX Z

Amend current Family Division Rules 2.28, 2.29 and 2.30 by renumbering them as Rules 2.29, 2.30, and 2.31, on a temporary basis, as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

~~2.28~~ **[2.29] EFFECTIVE DATES:**

A. *Uncontested Matters.* Decrees in uncontested cases where the parties have filed a permanent agreement shall become final on the date signed by the judge pursuant to RSA 490-D:9, unless otherwise specified by the Court.

B. *Contested and Defaulted Matters.* In contested cases or upon the default of either party, where no post-decree motion has been filed, the decree will not become final until the thirty-first (31st) day from the date of the Clerk's notice of decision. If a timely appeal is filed, the decree will not become final until the expiration of the appeal period pursuant to Supreme Court Rule 7. If a timely post-decree motion is filed, and there is no appeal taken, the decree becomes final thirty (30) days from the Court's action on the post-decree motion.

C. *Inactive Cases.* All domestic relations cases which have been placed on hold by request of the parties shall be dismissed after six (6) months unless there is a request by a party to reactivate the case, or a request for a further extension for good cause.

D. Once a decree becomes final, any further request for relief must be by petition, accompanied by a filing fee and a personal data sheet, with notice given to the other party, as set forth in Family Division Rule 2.4. Prior to a decree becoming final, no filing fee is required, and notice may be provided by regular US mail.

~~2.29~~ **[2.30] MODIFICATION OF FINAL DECREE:**

A. *General.* After a decree becomes final, either party may petition the court to change the final court order in their case. The petition must be provided to the other party as though it were a new case, with service to be accomplished as set forth in Family Division Rule 2.4. Regardless of which party files the petition, the parties will maintain original party designations.

The original petitioner is always the petitioner, and the original respondent is always the respondent, even though the respondent may be the party requesting change.

B. *Proper Filing*. A properly filed petition to change the court order includes: A Petition to Change Court Order that states the names, dates of birth, and address(es) of the parties; the names and dates of birth the parties' children; the parts of the Court's order that are being requested to be changed; the specific changes that are being sought; reason(s) why the Court should change the order; a statement about the receipt of public/medical assistance; a personal data sheet; and the filing fee.

C. *Where to File Petitions to Change Court Order.*

(1) A Petition to Change Court Order that refers to a family division order should be brought in the family division location that issued the order.

(2) A Petition to Change Court Order that refers to a superior court order issued before the existence of the family division should be filed in the family division location where it would have been filed under Family Division Rule 2.3 B if the family division had been in existence at the time of original filing.

D. *Mediation*. If the issues raised in the petition are not resolvable at the first post-decree hearing, the Court may order the parties to engage in mediation before scheduling further hearings.

E. *By Agreement*. If the parties agree to change the final order, they may file an agreement with the court. No petition, service, or filing fee is required. The Court, in its discretion, may approve an agreement to change the final order without a hearing.

F. *Legal Separation To Divorce*. Parties may agree in writing to change a decree of legal separation to one of divorce, subject to the Court's determination that justice requires such a change.

~~2.30~~ **[2.31] ENFORCEMENT OF COURT ORDER:**

A. *General*. Any party may request that another party be found in contempt for violating an order of the Court by way of motion or petition, as the case may require.

B. *Requirements.*

(1) Open cases. When a contempt action is brought in an open case, a proper filing includes: A Motion for Contempt that explains what court order is believed to have been violated; what specific conduct is alleged to have

occurred in violation of the court order; and what relief is being requested of the Court. No filing fee is required. Notification to all parties may be accomplished by regular US mail.

(2) Closed cases. When a contempt action is brought in a closed case, a proper filing includes: A Petition for Contempt that explains what court order is believed to have been violated; what specific conduct is alleged to have occurred in violation of the court order; and what relief is being requested of the Court. A filing fee and personal data sheet are required. Notice to the party alleged to be in contempt must be accomplished by sheriff's service in New Hampshire, or by any person authorized to make service if done outside of New Hampshire. Notice to other parties of the original action may be by regular US Mail.

C. *Attachments, Arrests, Incarceration.* Attachments or arrests and incarceration for civil contempt may be ordered by the Court upon a finding of the violation of any Court order, after notice and an opportunity to be heard. Parties may be arrested upon Court order and required to post bonds for appearance and compliance with court orders in any case where it shall be deemed necessary.

APPENDIX AA

Amend the Index to the Family Division Rules as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

RULES OF THE FAMILY DIVISION OF THE STATE OF NEW HAMPSHIRE

NOTE: The rules as published herein are subject to revisions promulgated from time to time by the New Hampshire Supreme Court and published in the New Hampshire Bar News. *See* Supreme Court Rules 1 and 51.

GENERAL PROVISIONS

These rules are established and relate to the Judicial Branch Family Division pursuant to RSA 490-D.

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APPENDIX BB

Amend Supreme Court Rule 15(2) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(2) (a) *Mandatory appeals.* The moving party shall have completed the notice of appeal form which includes the transcript information, including the date of the proceedings to be transcribed, the length of the proceedings, and the deposit required. A transcript of the parts of the proceedings necessary for appeal and not already on file in the trial court shall be prepared. The supreme court clerk's office shall issue a scheduling order notifying the moving party that within 15 days from the date on the written notice, the moving party must pay the deposit to the transcriber designated by the court to prepare the transcript or to the transcriber's agent. If payment is not received by the date specified, the appeal may be deemed waived and the case dismissed. Upon timely receiving the required deposit, the transcriber shall proceed with the transcription and shall notify the clerk of the supreme court that the deposit was received and that the transcriber will begin preparation of the transcript. If the required deposit is not timely received, the transcriber shall immediately so notify the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may be considered a moving party, and in cases of multiple appeals **[(including cross-appeals)]**, the ~~court~~ **[clerk]**, within ~~it's~~ **[the clerk's]** discretion, may assess transcription costs as justice requires.

(b) *Other appeals from trial court decisions on the merits.* The moving party shall have completed the notice of appeal form which includes the transcript information, including the date of the proceedings to be transcribed, the length of the proceedings, and the deposit required. If the appeal is accepted by the court for briefing, the supreme court clerk's office shall issue a scheduling order notifying the moving party that within 15 days from the date on the written notice, the moving party must pay the deposit to the transcriber designated by the court to prepare the transcript or to the transcriber's agent. If payment is not received by the transcriber by the date specified, the appeal may be deemed waived and the case dismissed. Upon timely receiving the required deposit, the transcriber shall proceed with the transcription and shall notify the clerk of the supreme court that the deposit was received and that the transcriber will begin preparation of the transcript. If the required deposit is not timely received, the transcriber shall immediately so notify the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may be considered a moving party, and in cases of multiple appeals **[(including cross-appeals)]**, the ~~court~~ **[clerk]**, within ~~it's~~ **[the clerk's]** discretion, may assess transcription costs as justice requires.

APPENDIX CC

Amend New Hampshire Rule of Evidence 804(b)(6) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(6) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions ~~by~~ **[but]** having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

APPENDIX DD

Adopt the definition of "mandatory appeal" in Supreme Court Rule 3 on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

"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 an appeal from a final decision on the merits 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;

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

(9) an appeal from a final decision on the merits issued in, or arising out of, a domestic relations matter filed under RSA Title XLIII (RSA chapters 457 to 461-A); provided, however, that an appeal from a final divorce decree or decree of legal separation shall be a mandatory appeal.

Comment

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.

Under paragraph (9), only appeals from final divorce decrees or decrees of legal separation are mandatory appeals. Any other appeal from a final decision on the merits issued in, or arising out of, a domestic relations matter filed under RSA Title XLIII (RSA chapters 457 to 461-A) is not a mandatory appeal. The amendment to this rule that added paragraph (9) shall apply to any appeal in which the notice of appeal is docketed in the supreme court on or after January 1, 2008.

APPENDIX EE

Adopt Supreme Court Rule 37(1)(e) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(e) *Professional Continuity Committee and New Hampshire Lawyers Assistance Program Exemption*: For the purposes of Rule 8.3 of the rules of professional conduct, information received by members of the New Hampshire Bar Association during the course of their work on behalf of the professional continuity committee or the New Hampshire Lawyers Assistance Program which is indicative of a violation of the rules of professional conduct shall be deemed privileged to the same extent allowed by the attorney-client privilege.

APPENDIX FF

Adopt Supreme Court Rule 37(2)(c), 37(2)(f) and 37(2)(k) on a permanent basis as follows (No changes are being proposed to the temporary rules now in effect):

[Rule 37(2)(c)]

(c) *Complaint*: "Complaint" means a grievance that, after initial review, has been determined by the attorney discipline office to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint as set forth in Supreme Court Rule 37A, and that is docketed by the attorney discipline office, or a complaint that is drafted and docketed by the attorney discipline office after an inquiry by that office. If after docketing, the attorney discipline office or the complaint screening committee determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

[Rule 37(2)(f)]

(f) *Grievance*: "Grievance" means a written submission filed with the attorney discipline office to call to its attention conduct that the grievant believes may constitute misconduct by an attorney. A grievance that is determined, after initial screening, not to be within the jurisdiction of the attorney discipline system and/or not to meet the requirements for docketing as a complaint shall not be docketed and shall continue to be referred to as a grievance. A grievance that is determined, after initial screening, to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint shall be docketed as a complaint and shall be referred to thereafter as a complaint; provided, however, that if the attorney discipline office or the complaint screening committee later determines that the docketed complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

[Rule 37(2)(k)]

(k) *Warning*: "Warning" means non-disciplinary action taken by the general counsel, the complaint screening committee or the professional conduct committee when it is determined that an attorney acted in a manner which involved behavior requiring attention although not constituting clear violations of the rules of professional conduct warranting disciplinary action.

APPENDIX GG

Adopt Supreme Court Rule 37(5)(b) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(b) The complaint screening committee shall have the power and duty:

(1) To consider and act on requests for reconsideration filed by grievants following a decision by general counsel not to docket a matter, to divert attorneys out of the system, or to dismiss a complaint after investigation.

(2) To consider and act on reports by staff members of the attorney discipline office with respect to docketed complaints.

(3) To remove complaints from the docket if it determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing.

(4) To dismiss complaints with a finding of no professional misconduct, with or without a warning.

(5) To dismiss complaints for any other reason, with or without a warning. If the committee determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.

(6) To divert attorneys out of the attorney discipline system when appropriate and subject to the attorney complying with the terms of diversion. All diversion would be public unless the complaint screening committee determined that a given matter should remain non-public based on one or more of the following issues: health, finances, family considerations or highly personal matters. If a respondent declines to accept diversion or violates the terms of a written diversion agreement, the complaint in such cases shall be acted upon as if diversion did not exist.

(7) To refer complaints to disciplinary counsel for the scheduling of a hearing only where there is a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence.

(8) To consider and act upon requests for reconsideration of its own decisions, subject to the further right of disciplinary counsel or respondents to request that the professional conduct committee review a decision to refer a complaint to disciplinary counsel for the scheduling of a hearing.

APPENDIX HH

Adopt Supreme Court Rule 37(6)(c) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(c) General counsel shall perform a variety of legal services and functions and shall have the power and duty:

(1) To receive, evaluate, docket and investigate professional conduct complaints.

(2) To remove complaints from the docket if it determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing.

(3) To dismiss complaints with a finding of no professional misconduct, with or without a warning.

(4) To dismiss complaints for other good cause, with or without a warning. If the general counsel determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.

(5) To divert attorneys out of the attorney discipline system when appropriate and subject to the attorney complying with the terms of diversion. All diversion would be public unless the general counsel determined that a given matter should remain non-public based on one or more of the following issues: health, finances, family considerations or highly personal matters. If a respondent declines to accept diversion or violates the terms of a written diversion agreement, the complaint in such cases shall be acted upon as if diversion did not exist.

(6) To present complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason (with or without a warning) or referral to disciplinary counsel for a hearing.

(7) To assist disciplinary counsel in performing the duties of disciplinary counsel as needed.

(8) To perform legal services as required for the committees of the attorney discipline system.

(9) To oversee and/or perform administrative functions for the attorney discipline system including but not limited to maintaining permanent records of the operation of the system, preparation of the annual budget, and preparation of an annual report summarizing the activities of the attorney discipline system during the preceding year.

APPENDIX II

Adopt Supreme Court Rule 37(20)(b)(1), 37(20)(j), 37(20)(k), and 37(20)(*l*) on a permanent basis as follows (No changes are being proposed to the temporary rules now in effect):

[Rule 37(20)(b)(1)]

(b) *Grievance Docketed as Complaint*: All records and proceedings relating to a complaint docketed by the attorney discipline system shall be available for public inspection (other than work product, internal memoranda, and deliberations) in accordance with Supreme Court Rule 37A upon the earliest of the following:

(1) When the Attorney Discipline Office general counsel, the complaint screening committee or the professional conduct committee finally disposes of a complaint;

[Rule 37(20)(j), 37(20)(k), and 37(20)(*l*)]

(j) *Disclosure to Lawyers Assistance Program*: The Attorney Discipline Office shall have the power to disclose otherwise confidential information to the New Hampshire Lawyers Assistance Program whenever the Attorney Discipline Office determines that such disclosure would be in the public interest.

(k) *Duty of Participants*: All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule.

Nothing in this section prevents a grievant from disclosing publicly the conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. The immunity from civil liability provided by section (7) does not apply to such disclosures. This section does prohibit a grievant, however, from disclosing publicly the fact that a grievance or complaint against the attorney about the conduct had been filed with the attorney discipline system pending the grievance or complaint becoming public in accordance with the provisions of this section.

(*l*) *Violation of Duty of Confidentiality*: Any violation of the duty of confidentiality imposed by section (20) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the proceedings earlier than would have been the case under section (20), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.

APPENDIX JJ

Adopt Supreme Court Rule 37A(I)(c) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(c) *Definitions*: Subject to additional definitions contained in subsequent provisions of this rule which are applicable to specific questions, or other provisions of this rule, the following words and phrases, when used in this rule, shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:

Answer: The response filed by, or on behalf of, the respondent to a complaint or a notice of charges.

Attorney: Unless otherwise indicated, "Attorney," for purposes of this rule, means any attorney admitted to practice in this State, any attorney specially admitted to practice by a court of this State, any attorney not admitted or specially admitted in this State who provides or offers to provide legal services in this State or any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1.

Complaint: A grievance that, after initial review, has been determined by the attorney discipline office to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint as set forth in section (II)(a)(3)(B) of this rule, and that is docketed by the attorney discipline office, or a complaint that is drafted and docketed by the attorney discipline office after an inquiry by that office. If after docketing, the attorney discipline office general counsel or the complaint screening committee determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

Court: The New Hampshire Supreme Court.

Disbarment: The termination of a New Hampshire licensed attorney's right to practice law in this State and automatic expulsion from membership in the bar of this State. A disbarred attorney may only apply for readmission to the bar of this State upon petition to the court, after having complied with the terms and conditions set forth in the disbarment order promulgated by the court which shall include all requirements applicable to applications for admission to the bar, including passing the bar examination and a favorable report by the professional conduct committee and the character and fitness committee.

Disciplinary Counsel: The attorney responsible for the prosecution of disciplinary proceedings before any hearings committee panel, the professional conduct committee and the supreme court. Disciplinary counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, such part-time attorney or attorneys as may from time to time be deemed necessary, and such other attorneys of the attorney discipline office as may from time to time be designated to assist disciplinary counsel.

Disciplinary Rule: Any provision of the rules of the court governing the conduct of attorneys or any rule of professional conduct.

Discipline: Any disciplinary action authorized by Rule 37(3)(c), in those cases in which misconduct in violation of a disciplinary rule is found warranting disciplinary action.

Diversion: Either a condition attached to discipline imposed by the professional conduct committee; or a referral, voluntary in nature, when conduct does not violate the rules of professional conduct; or non-disciplinary treatment by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee as an alternative to discipline for minor misconduct.

Formal Proceedings: Proceedings subject to section (III) of this rule.

General Counsel: The attorney responsible for (a) receiving, evaluating, docketing and investigating grievances filed with the attorney discipline office; (b)[dismissing or diverting complaints on the grounds set forth in Rule 37(6)(c) or presenting complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason with or without a warning or referral to disciplinary counsel for a hearing; (c) assisting disciplinary counsel in the performance of the duties of disciplinary counsel as needed; (d) performing general legal services as required for the committees of the attorney discipline system; and (e) overseeing and performing administrative functions for the attorney discipline system. General counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, and such part-time attorney or attorneys as may from time to time be deemed necessary.

Grievance: "Grievance" means a written submission filed with the attorney discipline office to call to its attention conduct that the grievant believes may constitute misconduct by an attorney. A grievance that is determined, after initial screening, not to be within the jurisdiction of the attorney discipline system and/or not to meet the requirements for docketing as a complaint shall not be docketed and shall continue to be referred to as a grievance. A grievance that is determined, after initial screening, to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint shall be docketed as a complaint and shall be referred to thereafter as a complaint; provided, however, that if the attorney

discipline office general counsel or complaint screening committee later determines that the docketed complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

Hearing Panel: A hearing panel comprised of members of the hearings committee.

Inquiry: A preliminary investigation of a matter begun by the attorney discipline office on its own initiative to determine whether a complaint should be docketed.

Investigation: Fact gathering by the attorney discipline office with respect to alleged misconduct.

Minor Misconduct: Conduct, which if proved, violates the rules of professional conduct but would not warrant discipline greater than a reprimand. Minor misconduct (1) does not involve the misappropriation of client funds or property; (2) does not, nor is likely to, result in actual loss to a client or other person of money, legal rights or valuable property rights; (3) is not committed within five (5) years of a diversion, reprimand, censure, suspension or disbarment of the attorney for prior misconduct of the same nature; (4) does not involve fraud, dishonesty, deceit or misrepresentation; (5) does not constitute the commission of a serious crime as defined in Rule 37(9)(b); and (6) is not part of a pattern of similar misconduct.

Notice of Charges: A formal pleading served under section (III)(b)(2) of this rule by disciplinary counsel.

Public Censure: The publication by the court or the professional conduct committee, in appropriate New Hampshire publications, including a newspaper of general statewide circulation, and one with general circulation in the area of respondent's primary office, as well as the *New Hampshire Bar News*, of a summary of its findings and conclusions relating to the discipline of an attorney, as defined in this section.

Referral: A grievance received by the attorney discipline office from any New Hampshire state court judge or from any member of the bar of New Hampshire, in which the judge or attorney indicates that he or she does not wish to be treated as a grievant.

Reprimand: Discipline administered by the professional conduct committee after notice of charges and after a hearing before a hearings committee panel and the right to request oral argument to the professional conduct committee in those cases in which misconduct in violation of the rules of professional conduct is found. A reprimand is administered by letter issued by the chair of the professional conduct committee, subject to an attorney's right to appeal such discipline to the court.

Suspension: The suspension of an attorney's right to practice law in this State, for a period of time specified by the court or by the professional conduct committee. Suspension by the professional conduct committee may not exceed six (6) months. The suspended attorney shall have the right to resume the practice of law, after the expiration of the suspension period, upon compliance with the terms and conditions set forth in the suspension order promulgated by the court or the professional conduct committee and pursuant to the procedure set forth in section (II)(d)(2) regarding reinstatement.

Warning: Non-disciplinary action taken by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee when it is believed that an attorney acted in a manner which involved behavior requiring attention although not constituting clear violations of the rules of professional conduct warranting disciplinary action.

APPENDIX KK

Adopt Supreme Court Rule 37A(I)(e)(2) and 37A(I)(e)(3) on a permanent basis as follows (No changes are being proposed to the temporary rules now in effect):

(2) The attorney discipline office general counsel, the complaint screening committee or the professional conduct committee may issue a warning to an attorney when it is deemed to be appropriate. The issuance of a warning does not constitute discipline.

(3) The attorney discipline office general counsel, the complaint screening committee or the professional conduct committee may divert a matter involving minor discipline, in lieu of discipline, subject to compliance with the terms of a written agreement. The professional conduct committee may require an attorney to participate in a diversion program as a condition of discipline. Any component of the attorney discipline system may refer to a diversion program, on a voluntary basis, an attorney who engages in conduct that does not violate the rules of professional conduct but which should be addressed as a corrective matter.

APPENDIX LL

Adopt Supreme Court Rule 37A(I)(g)(3) to 37A(I)(g)(8) on a permanent basis as follows (No changes are being proposed to the temporary rules now in effect):

(3) Discretionary diversion as an alternative to a formal sanction for minor misconduct may occur if:

(A) The misconduct appears to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee to be the result of poor office management, chemical dependency, behavioral or health-related conditions, negligence or lack of training or education; and

(B) There appears to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney similar to that which gave rise to the diversion.

(C) If the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee offers a written diversion agreement to an attorney, the attorney shall have thirty (30) days to accept and execute the diversion agreement.

(D) An attorney may decline to accept and execute a diversion agreement in which case the pending complaint shall be processed by the attorney discipline system in the same manner as any other matter.

(4) Diversion agreements shall be in writing and shall require the attorney to participate, at his or her own expense, in a remedial program acceptable to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee which will address the apparent cause of the misconduct. Remedial programs may include but are not limited to: law office assistance; chemical dependency treatment; counseling; voluntary limitation of areas of practice for the period of the diversion agreement; or a prescribed course of legal education including attendance at legal education seminars. A diversion agreement shall require the attorney to admit the facts of the complaint being diverted and to agree that, in the event the attorney fails to comply with the terms of the diversion agreement, the facts shall be deemed true in any subsequent disciplinary proceedings.

(5) The fact that a diversion has occurred shall be public in all matters. Written diversion agreements shall also be public unless the attorney discipline office general counsel, the complaint screening committee or the

professional conduct committee votes to make it non-public based on one or more of the following: health, personal finances, family considerations or other highly personal matters.

(6) If an attorney fails to comply with the terms of a written diversion agreement, the agreement shall be terminated and the complaint shall be processed by the attorney discipline system in the same manner as any other matter.

(7) If an attorney fulfills the terms of a written diversion agreement, the complaint shall be dismissed and written notice shall be sent to both the attorney and the complainant.

(8) The attorney discipline office shall a) prepare diversion agreements setting forth the terms determined by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee; b) monitor the progress of the attorney participating in the diversion program to insure compliance; and c) notify the complaint screening committee or the professional conduct committee whenever there is a voluntary or involuntary termination of the written diversion agreement or upon successful completion of the diversion program.

APPENDIX MM

Adopt Supreme Court Rule 37A(II)(a)(3), as amended, on a permanent basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(3) Procedure after Receipt of Grievance

(A) *Initial Screening of Grievance.* General counsel shall review each grievance upon receipt to determine whether the grievance is within the jurisdiction of the attorney discipline system and whether the grievance meets the requirements for docketing as a complaint.

When necessary, general counsel may request additional information or documents from the grievant. Except for good cause shown, failure of a grievant to provide such additional information and/or documents within twenty (20) days may result in general counsel processing the grievance based on the then existing file, or dismissing the complaint without prejudice.

Upon receipt of the above information, general counsel may allow a respondent thirty (30) days to file a voluntary response if it is deemed necessary to assist in the evaluation process.

Extensions of time are not favored.

(B) *Requirements for Docketing Grievance as a Complaint.* A grievance shall be docketed as a complaint if it is within the jurisdiction of the attorney discipline system and it meets the following requirements:

(i) *Violation Alleged.* It contains: (a) a brief description of the legal matter that gave rise to the grievance; (b) a detailed factual description of the respondent's conduct; (c) the relevant documents that illustrate the conduct of the respondent, or, if the grievant is unable to provide such documents, an explanation as to why the grievant is unable to do so; and (d) whatever proof is to be provided, including the name and addresses of witnesses to establish a violation of a disciplinary rule.

(ii) *Standing.* With the exception of an attorney discipline office-initiated inquiry or a referral by a judge or attorney, it must be filed by a person who is directly affected by the conduct complained of or who was present when the conduct complained of occurred, and ~~contains~~ **[contain]** a statement establishing these facts.

(iii) *Oath or Affirmation*. It is typed or in legible handwriting and, with the exception of an attorney discipline office-initiated inquiry or a referral by a judge or attorney, signed by the grievant under oath or affirmation, administered by a notary public or a justice of the peace. The following language, or language that is substantially equivalent, must appear above the grievant's signature: "I hereby swear or affirm under the pains and penalties of perjury that the information contained in this grievance is true to the best of my knowledge."

(iv) *Limitation Period*. It was filed with the attorney discipline office within the period of limitation set forth in section (I)(i).

(C) *Treatment of Grievance Not Within Jurisdiction of Attorney Discipline System or Failing to Meet Complaint Requirements.* A grievance that is not within the jurisdiction of the attorney discipline system or that does not meet the requirements for docketing as a complaint as set forth in section (II)(a)(3)(B) shall not be docketed and shall be dismissed in accordance with section (II)(a)(4).

APPENDIX NN

Adopt Supreme Court Rule 37A(II)(a)(6) and 37A(II)(a)(7) on a permanent basis as follows (No changes are being proposed to the temporary rules now in effect):

(6) *Investigation.*

Either prior to or following receipt of the respondent's answer, general counsel and his or her deputies and assistants shall conduct such investigation as may be appropriate.

Upon completion of the investigation, general counsel may (1) dismiss or divert a complaint on the grounds set forth in Rule 37(6)(c); or (2) present the complaint~~s~~ to the complaint screening committee with recommendations for diversion as provided in section (I)(g), dismissal for any reason (with or without a warning) or referral to disciplinary counsel for a hearing.

At any time while general counsel is investigating a docketed complaint, the respondent may notify general counsel that the respondent waives the right to have the matter considered by the complaint screening committee and consents to the matter being referred to disciplinary counsel for a hearing. Agreement by the respondent to referral for a hearing shall not be considered an admission of misconduct or a waiver of any defenses to the complaint.

Meetings of the complaint screening committee shall be in the nature of deliberations and shall not be open to the public, respondents, respondents' counsel, disciplinary counsel or the complainant. Records and reports of recommendations made shall in all respects be treated as work product and shall not be made public or be discoverable. However, the decision of the complaint screening committee shall be public.

(7) *Action By the Attorney Discipline Office General Counsel or the Complaint Screening Committee.*

(A) *Diversion.* In any matter in which the attorney discipline office general counsel or the complaint screening committee determines that diversion is appropriate, it shall be structured consistent with the provisions of section (I)(g).

(B) *Dismissal For Any Reason.* In any matter in which the Attorney Discipline Office General Counsel or the complaint screening committee determines that a complaint should be dismissed, either on grounds of no professional misconduct or any other reason, general counsel or the committee

shall dismiss the complaint and it shall notify the complainant and the respondent in writing and the attorney discipline office shall close its file on the matter.

(C) *Dismissal With A Warning.* If the Attorney Discipline Office General Counsel or the complaint screening committee determines that the complaint should be dismissed and that a warning should issue, general counsel or the committee shall notify the complainant and the respondent of such disposition in writing and shall notify the respondent of his or her rights, if any, pursuant to section (II)(b)(1)(B) of this rule.

(D) *Formal Proceedings.* If the respondent agrees with the recommendation of the Attorney Discipline Office General Counsel to refer a complaint to disciplinary counsel, or the complaint screening committee determines that formal proceedings should be held, the complaint shall be referred to disciplinary counsel for the issuance of notice of charges and the scheduling of a hearing on the merits before a panel of the hearings committee.

APPENDIX OO

Adopt Supreme Court Rule 37A(II)(b)(1)(B)(iii) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(iii) the fact that the record of such warning may be considered (a) by the Attorney Discipline Office General Counsel or the complaint screening committee to determine whether diversion may be appropriate in the event charges of minor misconduct are subsequently brought against the respondent; or (b) by the professional conduct committee in the event findings of misconduct are subsequently found against the respondent.

APPENDIX PP

Adopt Supreme Court Rule 37A(III)(b)(1) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(1) *General.*

Upon receipt of a file referred by the attorney discipline office general counsel or the complaint screening committee, disciplinary counsel may engage in such additional preparation to allow counsel to formalize allegations into a notice of charges. The notice of charges shall be served on the respondent by certified mail, return receipt requested, unless some other type of service is authorized upon application to the chair of the professional conduct committee. Throughout the proceedings, disciplinary counsel shall exercise independent professional judgment. Nevertheless, disciplinary counsel shall keep the complainant apprised of developments in the matter and consider input from the complainant.

APPENDIX QQ

Adopt Supreme Court Rule 37A(VI) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(VI) ***Request for Reconsideration***

(a) *Request.* A request for reconsideration shall be filed with the committee that issued the decision within ten (10) days of the date on that committee chair's written confirmation of any decision of the committee; provided, however, that a request for reconsideration of a decision of the attorney discipline office general counsel shall be filed with the complaint screening committee within ten (10) days of the date on the decision. The request shall state, with particular clarity, points of law or fact that have been overlooked or misapprehended and shall contain such argument in support of the request as the party making such request desires to present.

(b) *Answer.* No answer to a request for reconsideration shall be required unless specifically ordered by the committee considering the matter, but any answer or response must be filed within ten (10) days of the date on the notification of the request.

(c) *Committee Action.* If a request for reconsideration is granted, the committee considering the request, may reverse the decision or take other appropriate action, with or without a hearing.

(d) *Effect of Request.* The filing of an initial request for reconsideration of a sanction issued by the professional conduct committee shall stay the thirty (30) day period for filing an appeal pursuant to Supreme Court Rule 37(3)(c).

APPENDIX RR

Amend Supreme Court Rule 40(5), which was amended on a temporary basis by Supreme Court order dated January 15, 2008, and adopt said rule as amended on a permanent basis as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(5) *Committee Procedure After Receipt of Grievance.*

(a) The executive secretary of the committee shall acknowledge receipt of a grievance in a timely fashion.

(b) A copy of the grievance shall be sent to each member of the committee. The committee shall review each grievance at a meeting of the committee to determine whether the grievance is against a judge and whether the grievance meets the requirements for docketing as a complaint.

(c) **[Subject to subsection (5)(c)(5) below, a]** ~~A~~ grievance shall be docketed as a complaint if it is against a judge and it satisfies the following requirements:

(1) It contains a concise statement of the facts which, if true, would establish a violation of the Code of Judicial Conduct.

(a) A grievance that relates to a judge's findings, rulings or decision, which, in effect, is a substitute for an appeal, will not be considered by the committee.

(b) A grievance which is repetitive of a prior grievance or complaint, whether from the same or a different source, shall not be docketed as a complaint.

(2) It was filed by a person who is or was directly affected by the conduct complained of or who was present when the conduct complained of occurred, and it contains a concise statement establishing these facts.

(3) It is typed or in legible handwriting and signed by the grievant under oath or affirmation. The following language, or language that is substantially equivalent, must appear above the grievant's signature: "I hereby swear or affirm under the pains and penalties of perjury that the information contained in this grievance is true to the best of my knowledge."

(4) It was filed with the committee within the period of limitation set forth in section (4)(c).

(5) Provided, however, that upon the vote of seven or more of its members, the committee may authorize a review of the court record to include the file and any recordings of proceedings to determine whether the court record supports the allegations in the grievance. After review, the committee may dismiss the grievance if it finds that in light of the court record, there is no reasonable likelihood of a finding of judicial misconduct. If the grievance is not dismissed, the committee shall direct that it be docketed as a complaint.

(d) A grievance that is filed against a person who is not a judge or that fails to satisfy the requirements for docketing as a complaint as set forth in section (5)(c) shall be dismissed. The committee shall notify the grievant in writing of the reason for the committee's action. In addition, the committee shall take the following action:

(1) If the committee determines that the person who is the subject of the grievance is not subject to the Code of Judicial Conduct, it shall return the grievance to the grievant with a letter explaining the reason for the dismissal. No file on the grievance will be maintained; however, the committee shall retain a copy of the letter to the grievant returning the grievance, which shall be available for public inspection in accordance with section (16)(a). The committee may bring such matter to the attention of the authorities of the appropriate jurisdiction, or to any other duly constituted body which may provide a forum for the consideration of the grievance and shall advise the grievant of such referral.

(2) If the committee determines that the grievance does not allege conduct that violates the Code of Judicial Conduct, that the grievant lacks ~~standing, or that~~ **[standing, that]** the grievance was not filed within the period of limitation, or that in light of the court record there is no reasonable likelihood of a finding of judicial misconduct, the judge who is the subject of the grievance shall be provided with a copy of the grievance and the decision of the committee and will be given an opportunity to submit a reply within 30 days from the date of the notification or such further time as may be ordered by the committee. The reply shall be available for public inspection in accordance with section (16)(b).

(e) Notification to Administrative Judge. Whenever the executive secretary provides a judge with a copy of a grievance against such judge which has been dismissed, the executive secretary shall at the same time send a copy of the grievance to the chief justice or administrative judge of the court in which such person serves. In such instances, the chief justice or administrative judge shall send a copy of the grievance to the presiding justice of the particular court in which such person serves.

APPENDIX SS

Adopt Supreme Court Rule 42(4) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(4)(a) Every such applicant must furnish satisfactory proof that before beginning the study of law the applicant successfully completed at least three (3) years of work required for a bachelor's degree in an accredited college or received an equivalent education in the opinion of the court. An applicant who has not successfully completed at least three (3) years of work required for a bachelor's degree in an accredited college shall have the burden of proving that the requirements of this paragraph have been met. In addition to filing the petition and questionnaire for admission, any such applicant must submit information sufficient for the court to determine that the requirements of this paragraph have been met.

(b) Every such applicant must have graduated from a law school approved by the American Bar Association having a three (3) year course and requiring students to devote substantially all their working time to study, called a full-time law school, or from a law school approved by the American Bar Association having a course of not less than four (4) school years equivalent in the number of working hours to a three (3) year course in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school. A combination of study in full-time and part-time law schools will be accepted only if such law schools meet the above requirements, and the applicant shall have graduated from one or the other. Study in any law school which conducts its courses by correspondence or does not require attendance of its students at its lectures or classes shall not constitute compliance with the rule.

(c) Notwithstanding the foregoing paragraph, a person who has graduated from a law school in an English-speaking, common law country and who has pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association shall be eligible to apply for examination provided that such person is a member in good standing of the bar of that country, and (a) the holder of a master's degree from a law school approved by the American Bar Association, or (b) a member of the bar of one of the States of the United States who was admitted after examination and is in good standing. Any person who seeks admission to practice law in the State of New Hampshire who is a graduate of a law school in a foreign country shall have the burden of proving that the requirements of this paragraph have been met. In addition to filing the petition and questionnaire for admission, any foreign law school graduate seeking admission must file

an affidavit, signed under oath, attesting that the requirements of this paragraph have been met and submitting information sufficient for the court to determine that the requirements have been met.

APPENDIX TT

Adopt Supreme Court Rule 42(5)(h) and 42(5)(j) on a permanent basis as follows (No changes are being proposed to the temporary rules now in effect):

(h) The petition and questionnaire filed by an applicant, with the exception of the applicant's name and address, all matters referred to the committee for investigation, and all information relating to an applicant gathered by the committee shall be confidential. No member of the committee at any time, either while a member of the committee or thereafter, shall disclose any matter in any file, except at the request of the committee, or the supreme court or unless legally required to do so. All minutes or records circulated to members of the committee shall be kept confidential. All records relating to matters referred to the committee shall be retained in the committee's files.

(j) If the recommendation of the committee on character and fitness is in favor of admission, the court may accept the recommendation and grant the application for admission or decline to accept the recommendation. If the court determines that the recommendation of the committee should not be accepted, it shall either remand the matter to the committee for further investigation and consideration or refer the matter to a referee for an evidentiary hearing during which the applicant shall have the burden of proving his or her good moral character and fitness. If the recommendation of the committee on character and fitness is against admission, the report of the committee shall set forth the facts upon which the adverse recommendation is based and its reasons for rendering an adverse recommendation. The committee shall promptly notify the applicant about the adverse recommendation and shall give the applicant an opportunity to appear before it and to be fully informed of the matters reported to the court by the committee, and to answer or explain such matters.

APPENDIX UU

Adopt Supreme Court Rule 42(13) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(13) An applicant who is domiciled in the United States, is of the age of 18 years, and meets the following requirements may be admitted to the practice of law after taking and passing a variant of the New Hampshire bar examination to consist of rigorous, repeated and comprehensive evaluation of legal skills and abilities, the criteria for which will be established by the supreme court, and which will amount to more than the twelve hours of testing required for the conventional bar examination. The applicant shall:

(a) Have, prior to admission, and within one year of the date upon which the application for admission is filed, successfully completed, to the satisfaction of the board of bar examiners, the Daniel Webster Scholar Honors Program offered at the Franklin Pierce Law Center in Concord, New Hampshire, and been certified by the board of bar examiners as satisfying this requirement;

(b) Prior to admission, produce evidence that the Multistate Professional Responsibility Examination has been satisfactorily completed;

(c) Establish that the applicant is currently a member in good standing in all jurisdictions where admitted, if any;

(d) Establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;

(e) Establish that the applicant possesses the character and fitness to practice law in New Hampshire; and

(f) Designate the clerk of the supreme court for service of process.

An applicant seeking admission to the practice of law in accordance with this provision shall, not later than January 15 of the year in which the applicant intends to request admission, file with the clerk of the supreme court an application for admission pursuant to New Hampshire Supreme Court Rule 42(13), and two copies of the petition and questionnaire for admission to the bar. The questionnaire shall

contain a certificate signed by two (2) persons certifying the applicant's good moral character, and shall be executed under oath. The foregoing requirement as to the time of filing may be waived by the court for good cause shown. The application and petition shall be accompanied by the application fee payable to the State of New Hampshire, and the fee for character and fitness investigation, payable to the New Hampshire Supreme Court Character and Fitness Committee. Both fees shall be nonrefundable.

APPENDIX VV

Adopt Supreme Court Rule 49(I)(E)(3), 49(I)(H), and 49(I)(I) on a permanent basis as follows (No changes are being proposed to the temporary rule now in effect):

(I) **Fees**

. . . .

(E) Character and Fitness Investigation Fee

. . . .

(3) For Admission After Completion of Daniel Webster Scholar Honors Program $275.00

. . . .

(H) Application for Admission of Daniel Webster Scholar Honors Program Graduates $200.00

(I) Application to Appear *Pro Hac Vice* $225.00

. . . .

APPENDIX WW

Adopt Superior Court Rule 62(I), which was amended on a temporary basis by Supreme Court order dated November 16, 2007, on a permanent basis as amended as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

62. (I) **Initial Structuring Conference**

(A) The Clerk shall schedule a Structuring Conference for each case entered on the civil and equity dockets unless otherwise ordered by the court. The Structuring Conference shall be held within forty-five (45) days after the return date or at such other time as the court may order.

(B) (1) Participation in Structuring Conference. Unless otherwise ordered by the court, structuring conferences shall be held at the courthouse and shall require the personal attendance of counsel, or parties if unrepresented. However, any counsel, or party if unrepresented, desiring to participate in the structuring conference telephonically may file a motion to do so at least fifteen (15) days prior to the structuring conference, indicating in said motion whether or not a record is requested. Although such motions should generally be granted, the court may consider the following factors, among others, in ruling on a request for telephonic participation: the complexity of the case; whether there has been an objection to the request for telephonic participation; whether the parties have reached agreement on all matters specified in section (I)(C) of this rule and have filed the comprehensive stipulation described in section (I)(D) of this rule; whether any party is unrepresented; the distance counsel, or parties if unrepresented, must travel to attend the conference in person; and the potential for successful resolution or settlement of the case at the initial ~~screening~~ **[structuring]** conference.

(2) Counsel, or parties if unrepresented, shall participate in the Structuring Conference and shall be prepared and authorized to discuss the issues and set schedules for discovery and other case preparation, including additional conferences with the court, Alternative Dispute Resolution, Summary Jury Trial, and settlement or trial.

(3) The record, if any, for any telephonic conference will be taken by electronic recording device or such other method as may be approved by the court.

(C) No later than twenty days prior to the Structuring Conference counsel for all parties, or parties if unrepresented, shall either meet and confer personally or by telephone to discuss the claims, defenses and counterclaims and to attempt to reach agreement on the following matters: (1) a proposed date for trial and an estimate of the length of the trial; (2) an election to proceed either under standard discovery or fast track discovery; (3) a discovery schedule, including dates for the disclosure of each party's experts and experts' reports, and deadlines for the filing of pretrial motions of various kinds; (4) the scope of discovery, including particularly with respect to information stored electronically or in any other medium, the extent to which such information is reasonably accessible, the likely costs of obtaining access to such information and who shall bear said costs, the form in which such information is to be produced, the need for and the extent of any holds or other mechanisms that have been or should be put in place to prevent the destruction of such information, and the manner in which the parties propose to guard against the waiver of privilege claims with respect to such information; and (5) if the case is subject to ADR under Rule 170, a proposed agreement relating to Alternative Dispute Resolution (ADR), including an agreement upon the ADR process, the neutral to be used, and the schedule for mediation.

(D) Ten days prior to the Structuring Conference the parties shall file a comprehensive written stipulation, signed by all counsel, or by parties if unrepresented, addressing all of the foregoing matters on which agreement was reached. If the parties have been unable to reach agreement on one or more issues, each party shall submit a proposed order on those matters as to which agreement has not been reached with the exception of ADR. If the parties are unable to reach an agreement on ADR, the specifics of the ADR process shall be determined in accordance with Rule 170(B). At the same time, all parties shall file summary statements necessary to support their respective claims, defenses or counterclaims. This summary statement shall be comprehensive and made in good faith, but shall not be admissible at trial. The purpose of the summary statement is to apprise the court of the nature of the claims, defenses, and legal issues likely to arise.

(E) At the initial structuring conference, after consultation with counsel, or with parties if unrepresented, the court shall order that the case proceed under one of the following discovery options: (1) fast track; or (2) standard. In determining which discovery option shall be employed, the Court shall consider the following:

(a) the likely amounts in dispute;

(b) the nature and complexity of the issues presented;

(c) the resource equality of the parties; and

(d) the importance to a just adjudication of permitting discovery beyond that generally permitted under the fast track option.

Cases selected for standard discovery shall be governed by the Superior Court Rules other than Rule 62(II) below. Cases selected for fast track discovery shall be governed by the Superior Court Rules including Rule 62(II).

At or immediately after the initial structuring conference the court shall, and with the approval of the presiding justice the clerk may, issue a STRUCTURING CONFERENCE ORDER. Said order may approve the stipulation(s) reached by the parties, may adopt the proposals made by one or more of the parties, or may establish such other trial and pretrial dates and schedules as the court deems appropriate.

APPENDIX XX

Adopt Superior Court Rule 170-A, which was amended on a temporary basis by Supreme Court order dated January 15, 2008, on a permanent basis as amended as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

170-A. ARBITRATION

(A) *Cases for Arbitration.* Subject to RSA 542, non-criminal 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.*

(1) Prior to the commencement of any lawsuit, if all parties to the arbitration consent, a written request for arbitration may be made to the Administrator of the Office of Mediation and Arbitration. The administration of the Arbitration Hearing will be conducted pursuant to Superior Court Rule 170-A, unless the parties agree otherwise. In all cases, the parties should utilize the Office of Mediation and Arbitration and the list of approved arbitrators. The parties shall be subject to an administrative fee of $250.00 per party, which shall be paid to the Office of Mediation and Arbitration. Parties who are indigent may petition the superior court for waiver of the administrative fee.

In cases submitted under subsection (B)(1) of this rule in which administration of the Arbitration Hearing is conducted pursuant to Rule 170-A, all references in Rule 170-A(C) through 170-A(S) to the superior court shall be deemed to refer to the Office of Mediation and Arbitration.

(2) After commencement of any lawsuit, a written request for arbitration shall be made to the Superior Court. 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 Superior Court Rule 170-A.

(C) *Qualifications of and Approval Process for Arbitrators.*

The provisions of Superior Court Rule 170(G) shall apply to arbitrators.

(D) *Immunity for Arbitrators.*

An arbitrator selected to serve and serving under New Hampshire Superior Court Rule 170-A shall have immunity consistent with RSA 490-E.

(E) *Neutrality.*

All arbitrators, whether selected by a party, selected by all parties, selected by the court or the Office of Mediation and Arbitration, or selected by arbitrators, shall be neutral and shall serve with impartiality.

(F) *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.

(G) *Arbitrator's Disclosure.*

Upon receipt of notice of appointment in a case, an arbitrator shall disclose any circumstances likely to create a conflict of interest, the appearance of a conflict of interest, a reasonable inference of bias, or prevent the process from proceeding as scheduled. If an arbitrator withdraws, has a conflict of interest, or is otherwise unavailable, another shall be agreed to by the parties or appointed by the court.

(H) *Arbitration Panel.*

In all cases so assigned, the parties shall select arbitrator(s) from the court list of approved arbitrators. The parties may choose either a single or three-person panel. In the event the parties 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 parties. In the event the parties 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.

(1) When the parties choose arbitrator(s) from the list of approved paid arbitrators, the parties shall notify the arbitrator(s) and request that the arbitrator(s) provide the parties with a schedule of fees and expenses.

(2) Unless the court orders or the parties otherwise agree, arbitrators who are chosen from the list of approved paid arbitrators shall be compensated as follows. In the event a single arbitrator is selected, the parties shall equally share the costs of the arbitrator. 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 panel's fees.

(3) Parties may select arbitrator(s) who are not on the court's list of approved arbitrators if the parties agree on the choice of the arbitrator(s).

(4) If the parties cannot agree on the selection of arbitrator(s), they shall so indicate in the Stipulation required to be filed pursuant to Superior Court Rule 170(C)(1). In the event the parties cannot agree on an arbitrator for single-person panels, the court shall designate an arbitrator at the structuring conference. For three-person panels, if the parties cannot unanimously agree upon the arbitrators and there are two parties, each will select an arbitrator and the two arbitrators will select the third. In the event there are three parties, each will select an arbitrator. The three selected arbitrators will serve as the panel. In the event there are more than three parties and they cannot unanimously agree upon the panel, each party will submit one name to the court and the court shall select three individuals from the names submitted to serve as the arbitration panel.

(I) *Preliminary Hearing.*

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

(2) During the preliminary hearing, the parties 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 party's counsel and arbitrator are prohibited.

(J) *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 parties. Counsel and/or the parties shall respond to requests for hearing dates within seven (7) days of the request. Counsel or the parties 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 parties.

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

(K) *Postponement of Arbitration.*

In the event that counsel or any party 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.

(L) *Default and Sanctions.*

Upon failure of a party 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 party. 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.

(M) *Prehearing Submissions.*

(1) Unless otherwise agreed to at the preliminary hearing, the parties 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 parties 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 parties 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.

(N) *Case Summary.*

(1) All parties shall submit and exchange no later than ten (10) days prior to the arbitration hearing a double-spaced typewritten summary of not more 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 party, 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 party making such claims;

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

(vii) An itemized statement of special damages by each party 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.

(O) *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 parties shall produce for the Arbitration Hearing all witnesses requested in writing by another party 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~~ **[his/her]** defenses and any counterclaims. In the event of multiple defendants, one defendant will

complete ~~his~~ **[his/her]** evidence and then the remaining defendants will proceed.

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

(P) *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.

(Q) *Transcript of the Testimony.*

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

(R) *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 parties. 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.

(S) *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 party 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.

APPENDIX YY

Adopt Superior Court Rule 170-B, which was amended on a temporary basis by Supreme Court order dated December 21, 2007, on a permanent basis as follows (no changes are being proposed to the temporary rule now in effect):

170-B. *Judge-Conducted Intensive Mediation of Certain Cases.*

(A) For purposes of this rule only, the term "complex case" shall mean: (1) with respect to any case in which the relief sought is monetary damages, a case wherein there is a realistic possibility the damages awarded could exceed $250,000.00; and (2) with respect to any case in which relief other than monetary damage is sought, a case wherein the trial can reasonably be expected to last more than five trial days.

(B) Upon agreement of the parties, the presiding justice may assign a complex case for intensive mediation. Such assignment may be made at or at any time after the initial Rule 62 conference but shall not be made later than 90 days before the trial date except for good cause shown. Assignment of a case to intensive mediation shall not stay, alter, suspend, or delay pretrial discovery, motions, hearings, conferences or trial unless the presiding justice so orders.

(C) The mediator for intensive mediation conducted under this rule shall be an active, senior active or retired superior court justice other than the justice to whom the case has been assigned for trial or who has presided over any pretrial hearings or ruled upon any pretrial motions. The justice who serves as mediator and all persons who participate in the mediation shall have no communication with the justice to whom the case is assigned for trial concerning the mediation or any matter pertaining to the merits of the case. All justices who serve as mediators pursuant to this rule shall have completed an approved mediation training program. The provisions of Rule 170(C)(3) shall apply to all superior court justices who serve as mediators under this rule.

The litigants and counsel must recognize that the neutrals will not be acting as legal advisors or legal representatives. They must further recognize that, because the neutrals are performing quasi-judicial functions and are performing under the auspices of the Court, each such neutral has immunity from suit, and shall not be called as a witness in any subsequent proceeding relating to the parties' negotiations and/or his/her participation, except as set forth in Rule 170(F).

(D) The parties shall be provided at least 30 days advance notice of the date, time and location of the mediation session and of the name of the justice who will be serving as the mediator. Any party claiming grounds to recuse the justice assigned as mediator, shall file a motion for such relief within 10 days after the date of the notice scheduling the mediation. Any such motion shall be referred for ruling to the justice assigned as the mediator and said justice's ruling on the motion shall be final and not subject to further review. In the event the justice assigned as mediator grants the motion to recuse, the case shall be reassigned to another justice for mediation. Mediation sessions shall be held at a court facility but, subject to the availability of facilities, normally shall be held in a location other than the court wherein the case will be tried.

(E) Mediation under this rule shall be conducted in accordance with the procedures specified in Rule 170(D) and 170(F), except that the summaries submitted by the parties may be up to 10 pages in length.