

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(A)(7), the Supreme Court of New Hampshire adopts the following amendments to court rules.

Small Claims Rules – Service and Attachments

(These rule amendments are intended to bring the rules into conformity with amendments to RSA 503:6 and 503:12.)

1. Amend District Court Rule 4.8, regarding service of small claims upon defendants, on a temporary basis, as set forth in Appendix A.

2. Adopt District Court Rules 4.8-A, regarding pre-judgment attachment procedures in small claims, 4.8-B, regarding post-judgment attachment procedures in small claims, and 4.8-C, regarding discharge of attachments in small claims, on a temporary basis, as set forth in Appendix B.

Supreme Court Advisory Rules Committee – Annual Report Distribution

(Because invitations for public comment on the Rules Committee's Annual Reports, as well as the Annual Reports themselves, are now posted on the Judicial Branch website, this amendment deletes the requirement that copies be sent to each clerk of court and register of probate for posting.)

1. Amend Supreme Court Rule 51(A)(4)(a), regarding distribution of annual submissions and reports of the Advisory Rules Committee, as set forth in Appendix C.

Family Division – Technical Amendment re Date of Motions

(This amendment clarifies that the ten-day period to respond to a motion begins to run on the filing date of the motion.)

1. Amend Family Division Rule 1.26E, regarding response times for motions, on a temporary basis, as set forth in Appendix D.

Supreme Court – Appellate Mediation

(This amendment sets forth procedures allowing voluntary mediation of certain cases on appeal to the supreme court.)

1. Repeal Supreme Court Rule 12-A, regarding post-verdict settlement conferences, and replace it, on a temporary basis, with new Rule 12-A, regarding mediation, as set forth in Appendix E.

Superior Court – Alternative Dispute Resolution

(These amendments clarify that all neutrals are required to file an ADR report after the conclusion of an ADR proceeding other than binding arbitration, and provide for sanctions if the ADR report is not timely filed. In addition, the procedure for resolving issues concerning recusal of arbitrators is amended.)

1. Amend Superior Court Rule 170, regarding alternative dispute resolution, on a temporary basis, as set forth in Appendix F.

2. Amend Superior Court Rule 170-A(G), regarding arbitration, on a temporary basis, as set forth in Appendix G.

Effective Date

The amendments in Appendices C and D shall take effect immediately. The amendments in Appendices A, B, F and G shall take effect on July 1, 2009. The amendments in Appendix E shall take effect on September 1, 2009. The amendments in Appendices A, B, D, E, F, and G shall be referred to the Advisory Committee on Rules for its recommendation as to whether they should be adopted on a permanent basis.

Date: April 30, 2009

ATTEST: _____
Eileen Fox , Clerk of Court
Superior Court of New Hampshire

APPENDIX A

Amend District Court Rule 4.8, on a temporary basis, as follows
(additions are in **[bold and brackets]**; deletions are in ~~strike-thru~~
format):

4.8. [(a)] The clerk shall send ~~to the defendant~~ a copy of the claim by certified mail, return receipt requested. **[to the defendant by first class mail addressed to the defendant's last known post office address.]** The defendant will be requested **[required]** to indicate in writing within 30 days **[of the date the notice is mailed whether the defendant wants to be heard and shall be notified that failure to respond in writing shall result in service of the claim on the defendant by the sheriff at the defendant's expense.]** ~~his desire to be heard. If he fails to respond, judgment will be entered in favor of the plaintiff, who will be notified by the Court. If the copy of the claim is returned undelivered, the plaintiff will receive further instructions from the clerk concerning personal service.~~

[(b) If the notice is returned as undelivered or the defendant does not respond in writing within 30 days, then the court shall direct the plaintiff to complete service on the defendant, at the expense of the plaintiff, as in all other actions at law (See RSA 510). The defendant will be required to indicate in writing the defendant's desire to be heard on or before the return date selected by the court, which shall be at least 30 days from the date of filing. If, upon proof of proper service, the defendant fails to respond on or before the return date, judgment shall be entered for the plaintiff.

(c) If the defendant responds to the notice indicating a desire to be heard, the case shall be scheduled for hearing shortly thereafter. Both parties shall be notified by mail of the date and time of the hearing at least 14 days in advance of the hearing.]

APPENDIX B

Adopt new District Court Rules 4.8-A, 4.8-B, and 4.8-C, on a temporary basis, as follows:

4.8-A. Prejudgment Attachment Procedure

If the plaintiff seeks a prejudgment attachment prior to or after the filing of the small claim complaint and with or without notice to the defendant, the process and procedure set forth in RSA 511-A and District Court Rule 3.4 shall be followed, except that the words “Writ” and “Writ of Summons” shall refer to the Small Claim Complaint. Service upon the defendant in such cases may not be accomplished by first class mail and shall be completed as in all other actions at law at the expense of the plaintiff, but service in a small claims matter must take place after filing with the court.

4.8-B. Post-Judgment Attachment Procedure

Upon motion, a judgment creditor may obtain a writ of attachment to secure payment of a final judgment for money damages. The writ shall state the name of the court rendering the judgment, the docket number of the case in which judgment has been issued, the date of entry of judgment, the amount thereof, including interest and costs. Attachments made pursuant to this Rule may be served and recorded in the same manner and shall have the same effect as a pre-judgment attachment and shall remain in effect until the judgment is satisfied or until the attachment expires by operation of law. A judgment entered in a small claims matter may also be secured by real estate by recording, or re-recording at any time during the duration of the judgment, a certified copy of the judgment with the registry of deeds of the county in which the real estate is located.

4.8-C. Discharge of Attachments

When a small claims judgment secured by real estate is satisfied, the plaintiff shall deliver a discharge directly to the defendant within 30 days. It shall be the responsibility of the defendant to record said discharge.

If the plaintiff fails to deliver a discharge within 30 days of a request to do so, or if exigent circumstances require an immediate discharge, the defendant may petition the court in which the judgment

was issued for a court ordered discharge. The burden shall be on the defendant to establish that the judgment has been satisfied pursuant to RSA 503:12.

APPENDIX C

Amend Supreme Court Rule 51(A)(4)(a) as follows (additions are in **[bold and brackets]**; deletions are in ~~strike-thru~~ format):

(a) Upon receipt of the annual submissions and reports, the Clerk of the Supreme Court shall cause copies of proposed rules and amendments or the Committee's summary thereof, together with an invitation for comments, to be distributed as follows:

~~(1) Two copies to each clerk of court or register of probate, one to be posted by them in a conspicuous place in their respective offices; provided that no copies need be distributed to or posted by any court not affected by any of the proposed rules or amendments.~~

~~(2)~~ **[(1)]** Copies to the New Hampshire Bar News and such other publications as deemed appropriate.

~~(3)~~ **[(2)]** Copies to the President of the Senate, Speaker of the House and Chairpersons of the Senate and House Judiciary Committees.

~~(4)~~ **[(3)]** Copies to such other persons and places as the Chief Justice may direct.

APPENDIX D

Amend Family Division Rule 1.26E, on a temporary basis, as follows (additions are in **[bold and brackets]**; deletions are in ~~strike-thru~~ format):

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

APPENDIX E

Repeal Supreme Court Rule 12-A and replace it, on a temporary basis, with the following:

RULE 12-A. Mediation

(1) Cases pending at the supreme court may be referred to the Office of Mediation and Arbitration (OMA) for mediation as set forth in this rule. All mediation will be conducted by a retired full-time judge.

(2) With the exception of cases listed in the following paragraph, cases accepted by the court may be referred to the Office of Mediation and Arbitration (OMA) for mediation upon the agreement of all parties.

The following cases are not eligible for mediation: criminal cases; domestic violence cases; election cases; guardianship cases; involuntary commitment cases; juvenile cases, including abuse and neglect, CHINS, delinquency, and termination of parental rights cases; cases brought by a prisoner in the custody of a correctional institution; and stalking cases.

(3) When an acceptance order is issued in a case that appears to be eligible for mediation under this rule, the clerk shall provide the moving party with a mediation agreement form. If all parties agree to mediation, the moving party shall submit the completed mediation agreement form to the court within 15 days of the date of the acceptance order, and shall send a copy of the completed form to all parties. In a case in which more than one appeal has been filed, the order shall indicate who will be considered the moving party for the purpose of submitting the mediation agreement form.

(4) Upon receipt of a completed mediation agreement form, an order will be issued by the clerk referring the case to the OMA for mediation.

(5) Any order referring a case to the OMA for mediation shall impose a fee of \$200.00 per party to be paid to the OMA. This fee will be used by the OMA to pay mediator compensation, and is not refundable. On its own motion, or upon motion of the parties, the court may order an individual \$200.00 fee to apply to multiple plaintiffs or defendants, if under the circumstances of the case, the court determines that the per party fee would cause undue hardship if it were applied to individual parties, or if one fee for multiple parties on the same side is deemed

equitable by the court. Parties who are indigent may petition the court for waiver of the \$200.00 fee.

(6) Unless the order referring a case for mediation provides otherwise, when a case is referred to the OMA for mediation, further processing of the case by the court will be suspended for a period of 90 days. If the director of the OMA or the mediator believes that additional time is needed to complete the mediation, the director or mediator may file a notice with the court of an automatic extension of no more than 30 days. Upon filing of the notice, further processing of the case shall be suspended for the additional time without further order of the court. Extensions of time of more than 30 days may be requested only by motion to the court and are not favored.

(7) After a case has been referred to the OMA for mediation, the OMA shall be responsible for selecting a mediator and scheduling a mediation session. The parties shall comply with the OMA rules for appellate mediation. All communications and filings of the parties related to the mediation session shall be sent to the OMA and shall not be filed with the court, with the exception of filings relating to whether the case should be remanded to the court to resume processing of the case or requesting an extension of time to complete mediation.

(8) If the director of the OMA determines at any time after a case has been referred that the case should not be mediated, the director shall notify the clerk in writing. Thereafter, an order will be issued indicating that processing of the case will resume in accordance with Supreme Court rules.

(9) Within 15 days after the conclusion of a mediation, the mediator or the director of the OMA shall file a written report with the court of the results of the mediation. The report shall state whether a full or partial settlement was reached and describe the effect of the settlement on the pending case. The report shall not disclose the mediator's assessment of any aspect of the case or confidential matters discussed during the session or sessions.

(10) If the director of the OMA reports that there has not been a full settlement of a case referred for mediation, or upon expiration of the period during which processing of the case was suspended, the court ordinarily will resume processing the case in accordance with Supreme Court rules unless circumstances would make this inappropriate.

(11) Mediation proceedings and information relating to those proceedings shall be confidential. Information submitted or discussed during mediation shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party,

attorney, or other participant in aid of such proceeding shall be privileged and shall not be disclosed to any court or arbitrator or construed for any purpose as an admission against interest. Mediation proceedings under this rule are deemed settlement conferences consistent with the Rules of Evidence. Parties shall not introduce into evidence, in any subsequent proceeding, the fact that there was a mediation or any other material concerning the conduct of the mediation except as required by the Rules of Professional Conduct or the Mediator Standards of Conduct. Evidence that would otherwise be admissible in another proceeding shall not be rendered inadmissible as a result of its use in mediation.

(12) The OMA may adopt procedural rules to govern the appellate mediation process.

APPENDIX F

Amend Superior Court Rule 170, on a temporary basis, with the following (additions are in **[bold and brackets]**; deletions are in ~~strike-thru~~ format):

170. ALTERNATIVE DISPUTE RESOLUTION (ADR)

(A) Cases for Alternative Dispute Resolution.

(1) All writs of summons, transfers of actions from the district court, and such equity cases as the court may deem or the parties may agree are suitable, shall be assigned to ADR, with the exception of those exempted in paragraph (2).

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

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

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

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

(B) Election of Specific Alternative Dispute Resolution Procedure and Selection of a Neutral.

[(1) Unless the context of the rule indicates otherwise, the term "neutral" shall include any mediator, arbitrator or neutral evaluator who is selected from the court's lists of approved neutrals, and any mediator, arbitrator or neutral evaluator who is not on the court's approved lists but who is agreed upon by the parties.]

~~(1)~~ **[(2)]** Promptly after the filing of an answer or appearance in the superior court or upon removal from the district court, the parties shall confer and select an ADR process (that is, mediation, neutral evaluation,

or arbitration) and a neutral third party to conduct the process. If the parties cannot agree on the ADR process, they will be required to submit to mediation.

~~(2)~~ **[(3)]** The parties shall select a neutral third party to conduct the dispute resolution process from the court lists of approved neutrals. Prior to making such a selection, the parties shall determine whether they wish to select a neutral from the list of approved volunteer neutrals, or from the list of approved paid neutrals.

(a) If the parties choose a neutral from the list of approved paid neutrals, the parties shall notify the neutral and request that the neutral provide the parties with a schedule of fees and expenses.

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

(c) If the parties choose a neutral from the list of approved volunteer neutrals, the parties shall be subject to a one-time administrative fee of \$50.00 per party, which shall be paid to the court at the time the Stipulation for ADR is filed with the court. This is an administrative fee which will be designated for use by the Office of Mediation and Arbitration and is not refundable. Parties who are indigent may petition the court for waiver of the \$50.00 administrative fee.

(d) Parties may select a neutral who is not on the court's lists of approved neutrals if the parties agree on the choice of the neutral.

~~(3)~~ **[(4)]** If the parties cannot agree on the selection of a neutral, they shall so indicate in their Stipulation. The court shall designate a neutral at the structuring conference. If the parties have not selected an ADR method and neutrals by the time the structuring conference occurs, the court shall, at the structuring conference, set a date certain by which ADR shall have occurred.

(C) Stipulation and Court Order for Alternative Dispute Resolution.

(1) No later than ten days prior to the initial structuring conference provided for in Rule 62(I), the parties must file with the court a comprehensive written stipulation, signed by all counsel, or by parties if unrepresented, containing:

(a) An agreement to seek resolution of the issues involved in the action by designating one or more of the following alternative dispute resolution methods to be carried out as provided in this rule:

- i. Mediation;
- ii. Neutral Evaluation;
- iii. Binding Arbitration; or
- iv. Any other method of dispute resolution agreed upon by the parties.

(b) The designation of a Rule 170 neutral, to serve in the agreed-upon process, or an agreement to accept a neutral chosen by the court from a list provided by the clerk. However, prior to the designation of a Rule 170 neutral to serve in the agreed upon process, the parties or counsel (if parties are represented) shall contact each other in the first instance and agree upon a neutral and two alternates. They shall appoint one person to contact the neutral, or if need be, the alternates, to determine if the neutral is willing and able to serve and whether it will be on a volunteer or a paid basis.

(c) A schedule for the completion of the agreed-upon ADR process including the filing of case statements and the completion of any necessary discovery, or including the agreement to accept the assistance of the neutral designated under subparagraph (C)(1)(b) in setting a schedule for completion of the process. The schedule must provide for completion of the process within the shortest possible time after filing of the Stipulation, consistent with completion of the minimum amount of discovery necessary to make the process meaningful, but in any event not more than eight months after the date of the Stipulation.

(d) The location of the session and a date by which the session shall have occurred.

(2) The court may waive the initial structuring conference if, prior to the structuring conference, the court has received a completed and signed Rule 170 stipulation and a completed and signed Structuring Conference Order. If the court has not received either or both of these documents, then at the initial structuring conference, after consultation with counsel, or with parties if unrepresented, the court shall issue an order stating: (a) the specific ADR procedure to be used; (b) the identity of, and contact information for, the neutral; (c) the date by which the ADR procedure must be completed; (d) whether the ADR shall be at the courthouse or off-site; and (e) the anticipated time needed for the ADR method chosen. If the court chooses a neutral from the volunteer list,

the court shall order the parties to pay a one-time administrative fee of \$50.00 per party.

The court has discretion to waive this fee if the parties are indigent. At the request of the parties for good cause, the court may also permit an individual \$50.00 fee to apply to multiple plaintiffs or defendants, if under the circumstances of the case, the court determines that the per party fee would cause undue hardship if it were applied to individual parties, or if one fee for multiple parties on the same side is deemed equitable by the court.

If the neutral is chosen at the structuring conference either by the parties and counsel or by the court, the parties and counsel shall, within 10 days after the date of the structuring conference, contact the neutral or the alternates, if necessary, and schedule the ADR session with their choice of neutral.

Except for the date by which the ADR procedure must be completed, the structuring conference order regarding ADR may thereafter be amended by agreement of the parties by filing an amended Stipulation with the court. The court may permit an extension of the date by which the ADR procedure must be completed on the motion of either party for good cause shown.

(3) Upon receipt of notice of appointment in a case, the neutral 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 the neutral withdraws, has a conflict of interest, or is otherwise unavailable, another shall be agreed to by the parties or appointed by the court.

(D) Alternative Dispute Resolution Proceeding.

(1) Upon receipt of the structuring conference order, the parties or their counsel shall confirm the date, time and location for the ADR to take place and the neutral shall advise the parties in writing of the schedule for submission and exchange of summaries. Unless the neutral advises otherwise, each party shall exchange a summary, not to exceed five pages, of the significant aspects of their case. The parties may also attach to the summary copies of pertinent documents. Upon receipt of a party's submission, any party may send additional information responding to that submission. Unless the neutral advises otherwise, all submissions shall be exchanged with opposing counsel and shall contain a statement of compliance with the exchange requirement.

(2) Thirty days before the date of the first scheduled ADR session, each party must certify to the neutral that party's readiness to proceed

on the scheduled date or request that the neutral reschedule the ADR session. At any time, upon written request of a party for good cause shown, the neutral may reschedule the ADR session for a date prior to the date set forth in the structuring conference order for completion of the ADR proceeding.

(3) All parties and their counsel must attend a scheduled ADR session, unless the court, for good cause, excuses an individual from participation or authorizes an individual to participate by speaker telephone. A corporation, partnership, or other entity that is a party, and a liability insurer that is defending the action, must each be represented by a person, other than outside counsel, who has settlement authority and authority to enter into stipulations. With the agreement of all parties and the neutral, any person having an interest that may be materially affected by the outcome of the proceeding may be invited to attend the session in person or by counsel.

(4) Within 15 days after the conclusion of an ADR proceeding, other than binding arbitration, the neutral must report the results of the process to the court in writing. The report may not disclose the neutral's assessment of any aspect of the case or substantive matters discussed during the session or sessions except as is required to report the information required by this paragraph. The report **[(form no. NHJB-2488-S) contains] must contain** the following items:

(a) The date on which the session or sessions were held including the starting and finishing times;

(b) The names and addresses of all persons attending, showing their role in the session and specifically identifying the representative of each party who had decision-making authority;

(c) A summary of any substitute arrangement made regarding attendance at the session;

(d) The results of the session, stating whether full or partial settlement was reached and appending any agreement of the parties.

[Comment

**Form no. NHJB-2488-S is available on-line at
www.courts.state.nh.us/forms/nhjb-2488-s.pdf]**

(5) In any action in which ADR does not result in a settlement, the action will proceed in accordance with any agreement reached in the ADR process, or in the absence of an agreement, as ordered by the court.

(6) ADR proceedings shall not stay, alter, suspend, or delay pretrial discovery, motions, hearings, or conferences nor the requirements and time deadlines of New Hampshire Superior Court Rules 62 and 63.

[However, regardless of whether the neutral was selected from the court's approved lists or not, the ADR report must be filed no later than the date of the final pre-trial. If the ADR report is not timely filed, the parties and/or counsel will face sanctions, which may include fines or other sanctions appropriate to the circumstances.]

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

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

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

(F) *Sanctions.*

If a party or a party's counsel fails without good cause to appear at an ADR session scheduled pursuant to this rule, or fails to comply with any order made hereunder, the court may, on its own or upon motion of a party, impose any sanction that is just under the circumstances.

(G) *Qualifications of and Approval Process for Neutrals.*

(1) Qualifications of Neutrals

(a) Good standing. All neutrals (neutral evaluators, mediators, arbitrators) must be attorneys admitted to practice in New Hampshire who are in good standing.

(b) Moral character. Neutrals must be of good moral character and adhere to any standards of practice for mediators acting

pursuant to these Rules adopted by the Supreme Court.

(c) Disclosures. Applicants must disclose criminal convictions or findings of professional misconduct, which have not been annulled. The Administrative Council may refuse to approve an applicant who has been convicted of a criminal offense or has been found to have committed professional misconduct. Failure to disclose complete and accurate information may constitute grounds for decertification.

(d) Specific Requirements.

(i) Mediators -- All Rule 170 mediators must have at least 20 hours of training in civil mediation. The 20-hour training shall consist of at least 14 hours of course material, either sponsored by, or approved by, the Office of Mediation and Arbitration, along with at least 6 hours of mentoring time in mediating case(s) with an approved Rule 170 mediator/mentor. The 20-hour training requirement may be satisfied by way of training provided by the Office of Mediation and Arbitration for a fee, or the mediator may provide to the Office of Mediation and Arbitration documentation of equivalent training, subject to its approval. A mediator/mentor must be approved as a mediator/mentor by the Administrative Council before serving as a mentor.

New Rule 170 mediators shall be subject to the 20-hour training requirement. All mediators who were on the court's approved list of Rule 170 mediators prior to January 1, 2008, will not be subject to the 20-hour training requirement; they will, however, be subject to a biennial 8-hour refresher-training requirement. The 8-hour refresher training must be completed by January 1, 2009. The refresher training requirement may be satisfied by way of court-sponsored training, which shall be provided without charge to mediators, or a mediator may provide to the Office of Mediation and Arbitration documentation of equivalent training, subject to its approval.

(ii) Neutral Evaluators -- Neutral evaluators must be attorneys who have a minimum of 10 years experience in litigation in the subject matter areas to which they may be assigned as neutral evaluators. All neutral evaluators must have at least 20 hours of training in ADR and an additional 4 hours of training in neutral evaluation. The 20-hour training shall consist of at least 14 hours of course material, either sponsored by, or approved by, the Office of Mediation and Arbitration, along with at least 6 hours of mentoring time in neutral evaluation of case(s) with an approved Rule 170 neutral evaluator/mentor. The neutral evaluator/mentor must be approved by the Administrative Council before serving as a neutral evaluator/mentor.

(iii) Arbitrators -- Arbitrators must be attorneys who have a minimum of 10 years of experience in litigation in the subject matter areas which they may be assigned as arbitrators. All arbitrators must have a minimum of 20 hours of training in ADR and an additional 8 hours of training in arbitration under this rule. The 20-hour training shall consist of at least 14 hours of course material, either sponsored by, or approved by, the Office of Mediation and Arbitration, along with at least 6 hours of mentoring time in actual arbitration of case(s) with an approved Rule 170 arbitrator/mentor. The arbitrator/mentor must be approved by the Administrative Council before serving as an arbitrator/mentor. Arbitrators shall adhere to all codes of conduct generally applicable to both commercial and private arbitrations.

(2) Application and Approval Process

(a) In order to serve as a neutral, an attorney must apply and be approved by the Administrative Council. In approving neutrals, the Administrative Council may consider the applicant's alternative dispute resolution experience or other relevant factors, such as length of practice or trial experience.

(b) Neutrals may choose to be listed on the volunteer list, the paid list, or both. Neutrals shall pay an annual rostering fee pursuant to a fee schedule established by supreme court order. The amount of the fee may vary depending upon which list the neutral chooses to be included. The fee will be used to support the Office of Mediation and Arbitration. The neutral may provide biographical information for inclusion on the list, as well a description of those areas of the law in which the neutral has enhanced knowledge. All neutrals, regardless of whether they are on the paid or volunteer list, shall agree to act as a volunteer neutral for a minimum of at least two days but not more than four days annually. Neutrals in these volunteer cases must also agree to travel to the courthouse in which the case is located if the parties and counsel have chosen to have the ADR proceeding there.

(c) Neutrals shall apply for inclusion on the court's lists by submitting an application, the applicable rostering fee, and three letters of reference as set forth in this rule to the Office of Mediation/Arbitration. Inclusion on the court's list of approved neutrals remains valid for a one year period from July 1 through June 30 of each year. To request continued inclusion on the court's list or lists, a neutral, prior to June 1 of each year, shall:

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

(ii) File documentation that the neutral has completed required refresher training in the field of alternative dispute resolution in accordance with section (G)(1)(c).

(iii) Pay the rostering fee set for inclusion on the court's list of approved neutrals.

(d) All neutrals agree that as a condition of inclusion on the Court's list of approved neutrals, they may be required to provide at least two days but no more than four days of volunteer ADR sessions each year.

(H) *Immunity for Rule 170 Neutral.*

A "Neutral" (defined as a Neutral Evaluator, Mediator or Arbitrator) selected to serve and serving under Superior Court Rule 170 or Rule 170-A shall have immunity consistent with RSA 490-E:5.

APPENDIX G

Amend Superior Court Rule 170-A(G), on a temporary basis, with the following (additions are in **[bold and brackets]**; deletions are in ~~strike-thru~~ format):

(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.~~

[In cases where arbitration is selected after suit is filed, if an arbitrator withdraws, has a conflict of interest and there is an unresolved issue concerning recusal or if the arbitrator is otherwise unavailable, another shall be agreed to by the parties or the issue shall be referred to the Court if the issue of recusal cannot be resolved by the parties and the arbitrator.]

In cases where arbitration is selected pre-suit, if an arbitrator withdraws, has a conflict of interest and there is an unresolved issue concerning recusal or if the arbitrator is otherwise unavailable, another shall be agreed to by the parties or the issue shall be referred to the Office of Mediation and Arbitration if the issue of recusal cannot be resolved by the parties and the arbitrator.]