

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

ORDER

R-2014-0002, In re 2014 Annual Report of the Advisory Committee on Rules

The New Hampshire Supreme Court Advisory Committee on Rules (committee) has reported a number of proposed rule amendments to the New Hampshire Supreme Court with a recommendation that they be adopted. On or before **Monday, October 20, 2014**, members of the bench, bar, legislature, executive branch or public may file with the clerk of the supreme court comments on any of the proposed rule amendments. An original and seven copies of all comments shall be filed. Comments may also be emailed to the court at:

rulescomment@courts.state.nh.us

To see the language of the proposed rules changes and background regarding the proposals, please see the 2014 Advisory Committee on Rules Annual Report, which is available at <http://www.courts.state.nh.us/committees/adviscommrules/reports/2014-annual-report.pdf>. Copies of the 2014 Advisory Committee on Rules Annual Report are also available upon request to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The current rules of the New Hampshire state courts are also

available on the Internet at:

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

A summary of the proposals made in the 2014 Advisory Committee on Rules Annual Report is set forth below.

I. IOLTA And Title Companies

Supreme Court Rules 50 and 50-A. These proposed amendments would make services performed by attorneys who work for or own title companies subject to the requirements of Supreme Court Rules 50 and 50-A. The language of the proposed rule changes is set forth in Appendices A and B of the 2014 Advisory Committee on Rules Annual Report.

II. Motions to Seal

Rule 12 of the Superior Court of the State of New Hampshire Applicable in Civil Actions, Rule 59-B of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases, Rule 1.8 of the Rules of the Circuit Court of the State of New Hampshire-District Division, Rule 58-B of the Rules of the Circuit Court of the State of New Hampshire-Probate Division, Rule 1.26 of the Rules of the Circuit Court of the State of New Hampshire – Family Division, Supreme Court Rule 12(2)(b). These proposed amendments would amend trial court rules to address how a party may request that the court seal a case record or a portion of a case record and would amend Supreme Court Rule 12(2)(b) to establish a procedure to allow a party to withdraw documents from the public record if its motion to seal is denied.

The language of the proposed rule changes is set forth in Appendices C, D, E, F, G and H of the 2014 Advisory Committee on Rules Annual Report.

III. Continuity of Counsel in Circuit and Superior Court.

Rule 14 of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases. This proposed amendment would change the rule regarding appointment of counsel in the Superior Court to provide that once an appointment has been made in the Circuit Court in a criminal case, the appointment should continue throughout any appeal to the Superior Court. The language of the proposed rule change is set forth in Appendix I of the 2014 Advisory Committee on Rules Annual Report.

IV. Withdrawal of Court-Appointed Counsel in Abuse and Neglect Proceedings

Rule 3.11 of the Rules of the Circuit Court of the State of New Hampshire – Family Division. This proposed amendment would provide that the appearance of court-appointed counsel in abuse and neglect cases is deemed withdrawn thirty (30) days after the dispositional hearing, unless the court otherwise orders representation to continue and states the specific duration and purpose of the continued representation. The language of the proposed rule change is set forth in Appendix J of the 2014 Advisory Committee on Rules Annual Report.

V. Calculation of Mileage Reimbursement and Fee Caps for Attorneys and Guardians Ad Litem and Reimbursement of Attorneys for Work in Child Protection Matters

Supreme Court Rules 47, 48 and 48-A. These proposed amendments would clarify that mileage expenses are separate from the fee caps when a lawyer or guardian ad litem seeks reimbursement for his or her efforts on behalf of a criminal defendant or a parent or juvenile in a child protection matter. An additional proposed amendment to Supreme Court Rule 48 would permit payment of attorneys who work on behalf of parents in child protection matters for attending periodic review hearings held in the normal course of a case in the Family Division. The language of the proposed rule changes is set forth in Appendices K, L and M of the 2014 Advisory Committee on Rules Annual Report.

VI. Withdrawal of Court-Appointed Counsel in Criminal and Juvenile Matters

Circuit Court – District Division Rule 1.3(H) & (I), Circuit Court – Family Division Rule 1.20, Circuit Court – Family Division Rule 3.12, Rule 15 of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases filed in Superior Court. This proposal would amend court rules to permit notification of withdrawal in certain circumstances rather than a request to withdraw requiring court approval. These amendments are designed to expedite the appointment of new counsel in those instances where previously appointed counsel must withdraw due to a conflict of interest as defined in the Rules of Professional Conduct.

The language of the proposed rule changes is set forth in Appendices N, O, P and Q of the 2014 Advisory Committee on Rules Annual Report.

VII. Depositions: Notice or Subpoena Directed to an Organization

Rule 26 of the Rules of the Superior Court of the State of New Hampshire Applicable in Civil Actions. This amendment would add a provision which would allow a party to name as a deponent a public or private corporation, a partnership, an association, or a governmental agency, and require the named organization to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf.

The language of the proposed rule change is set forth in Appendix R of the 2014 Advisory Committee on Rules Annual Report.

VIII. Attorney Discipline Rules

Supreme Court Rules 37, 37A and 50. These proposed amendments would make the following changes to the rules relating to attorney discipline:

- amend Supreme Court Rule 37(16) to allow disciplinary counsel to participate separately in Supreme Court Disciplinary Proceeding if the PCC recommends greater than a six month suspension and disciplinary counsel believes that the PCC's decision is based on a clearly erroneous factual finding or is erroneous as a matter of law, as recommended by the subcommittee, with further amendment by the Committee;
- amend Supreme Court Rule 37(8) to authorize attorneys in the Attorney Discipline Office to issue subpoenas during the investigative stage of a proceeding, as recommended by the subcommittee, with further amendment by the Committee;
- amend Supreme Court Rule 37A(III)(b) to make prehearing conferences mandatory, add details regarding exhibits, and change the timing in two provisions, as recommended by the subcommittee;
- amend Supreme Court Rule 37(20)(a) to eliminate the requirement that the Attorney Discipline Office retain and make available to the public letters sent to grievants who file complaints against individuals who are not subject to the rules;
- amend Supreme Court Rule 37(20) and delete Supreme Court Rules 37(21) and 37(23) to reorganize the "pre-2000" and the "post-2000" confidentiality and public access rules into a single, unified rule, create retention rules and add a provision to make clear that 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 PCC, as recommended by the subcommittee;
- amend Supreme Court Rule 37A(IV) as part of the reorganization of the confidentiality and public access rules into a single, unified rule, as recommended by the subcommittee;
 - amend Supreme Court Rule 37(9) to make clear that suspension pending final disciplinary proceedings when a certified copy of a court record is filed that indicates that the attorney has been convicted of a serious crime is immediate and summary, as recommended by the subcommittee;
 - amend Supreme Court Rule 37(9), to require that any attorney who has been convicted of a crime shall notify the court within ten days of sentencing on the conviction, as recommended by the subcommittee;
 - amend Supreme Court Rule 37A(II)(d) to delete the provision relating to “Conviction of Crime; Determination of Serious Crime;”
 - amend Supreme Court Rule 37 to adopt a new subsection (9-A) to provide that the Attorney Discipline Office may file a petition for interim suspension alleging that an attorney has engaged in conduct that poses a substantial threat of serious harm to the public, and sets out the process to be followed when such a petition is filed, as recommended by the subcommittee;
 - amend Supreme Court Rule 37A(II)(a)(7) to allow for the waiver of formal proceedings and the filing of stipulations as to facts, rule violations and/or sanction, as recommended by the subcommittee;
 - amend Supreme Court Rule 37A(III) to expand upon the rules governing the use and effect of both dispositive and partial stipulations in attorney discipline proceedings, as recommended by the subcommittee;
 - amend Supreme Court Rule 37A(I) to add a new subsection (j) to make clear that complainants are not parties to disciplinary matters, as recommended by the subcommittee;
 - amend Supreme Court Rule 37A(III)(b) to eliminate the requirement that disciplinary counsel forward a copy of the entire file to the panel, and to add the requirement that disciplinary counsel provide the respondent with bates-stamped copies of all relevant documents at the time of filing of the notice of charges, as recommended by the subcommittee;
 - amend Supreme Court Rule 37A(I)(i) to require that a grievance be filed within one year of the conclusion of a civil proceeding involving the same conduct, as recommended by the subcommittee;
 - amend Supreme Court Rule 50 to require lawyers to direct a depository institution to provide the New Hampshire Attorney Discipline Office with a notice whenever a trust account contains

insufficient funds or shows a negative balance, as recommended by the subcommittee, with further amendment by the Committee.

The language of the proposed rule changes relating to Attorney Discipline is set forth in Appendices S, T and U of the 2014 Advisory Committee on Rules Annual Report.

IX. Superior Court Administrative Rules

Superior Court Admin. Rules 11-1 et. seq., Superior Court Admin. Rules 12-1 et. seq. These proposed amendments would repeal both sets of rules, as set forth in Appendices V and W of the 2014 Advisory Committee on Rules Annual Report.

X. Temporary Rules Currently in Effect

Supreme Court Rule 49, Rule 169 of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases, Circuit Court – District Division Rule 3.3, Circuit Court – Probate Division Rule 169, Circuit Court – Family Division Rule 1.3. These proposed amendments would make permanent temporary rule amendments adopted by the Court on June 26, 2013. The amendments increased the fees charged in the New Hampshire Supreme Court and in the New Hampshire trial courts. The fees are intended to provide additional funds to the judicial branch information technology fund for the maintenance of the technology related to the New Hampshire e-Court project. The rules the Committee recommends that the Court adopt on a permanent basis are set forth in Appendices X, Y, Z, AA and BB of the 2014 Advisory Committee on Rules Annual Report.

August 27, 2014

ATTEST:



Eileen Fox, Clerk
Supreme Court of New Hampshire