

Court Provides Update on Rule 170 Changes

The following was submitted to Bar News by the NH Judicial Branch's Office of Mediation and Arbitration (OMA).

The Supreme Court is currently reviewing written submissions from NH Bar members as well as proposals made by Bar leadership and practitioners regarding proposed changes to the Rule 170 program. These submissions and proposals have been generated during the formal rules comment period, which has been extended to Oct. 1, and in discussions with Chief Justice John T. Broderick Jr., Senior Associate Justice Linda Dalianis, who chaired the ADR Services Committee, and Karen Borgstrom, the new director of the Office of Mediation and Arbitration.

Proposals now under review are:

- Establish a statewide market-based program, as recommended by both the Committee on Alternative Dispute Resolution Services, and the Advisory Committee on Rules. Mediators would pay \$200 to be included on a list of court approved mediators and would charge clients market rates for their mediation services. Participation would be mandatory in all 10 counties.

The Office of Mediation and Arbitration, established by statute on July 1, has overall responsibility for managing, developing and overseeing all of the court system's alternative dispute resolution (ADR) programs. The law provided funding for the office for one year after which the legislature expects the office to be self-funding.

- Maintain and enhance the current volunteer system, now in five counties, expand it to all 10 counties and make it mandatory. In order to generate funds to support the ADR office, as required by law, all current volunteer mediators would pay \$200 to be listed on the court roster of approved mediators. In exchange, those volunteers would receive refresher training for which they would receive CLE credit. In exchange for the \$200 rostering fee, lawyers would receive a full-day of CLE training and credits. The Judicial Branch hopes to sponsor mediation training.
- Develop a “hybrid” dispute resolution program, with both the market-rate plan and the voluntary system. To help fund the ADR office under that plan, market-rate and volunteer lawyers pay \$200 to be included on the court list of mediators. In exchange, both volunteer and market-rate mediators would receive training and refresher courses, for which they would receive CLE credit.
- Under the hybrid system, mediation sessions could be held outside the courthouse at locations convenient to the mediator, parties and counsel. Mediations would be scheduled by the presiding judge at the structuring conferences where attorneys and parties will agree on a mediator and on the deadline by which mediation (or arbitration) must be completed. If parties who elect to use volunteer mediators prefer, court facilities will still be available for mediation.

- Mediators currently on the court-approved mediator list would be “grandfathered” into the system, but would be required to take “refresher” mediation training sponsored by the court in exchange for which they would receive CLE credit.
- For new Rule 170 mediators, the proposal now under review would require 20 hours of training, in exchange for which mediators would receive CLE credit. This 20-hour training proposal is a change from the Rule 170 proposal that would have required 40 hours of training.

If, after the comment period, the Supreme Court decides to amend that proposed rule, those changes would be reviewed by the Advisory Committee on Rules, and there would be another opportunity for public comment on the amended proposal. The court will continue its cooperative efforts with members of the Bar and organizations of lawyers within the bar to adopt the ADR program that provides the most benefit and value to the public and the Bar.

Visit www.nhbar.org for more commentary on the Rule 170 changes, including a “frequently asked questions” article providing more details on the potential changes to the Rule 170 program.

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