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July 11, 2007

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RE: Proposed Elimination of Rule 170 Mediation Plan

Dear Eleanor, Ellen, Jim and Dave:

I am writing you as the officers of the New Hampshire Bar Association and Chair of the Committee on Cooperation with the Courts to alert you to an issue that I think is of importance to the Association. As you may know, the Supreme Court is soliciting comments for the deadline of August 31, 2007 with respect to the mandatory mediation program that has been reported out of the Rules Committee. This proposal essentially eliminates Rule 170, which has been a very successful and longstanding project profiling the volunteerism of New Hampshire Lawyers in assisting the justice system. For the New Hampshire Bar Association as a unified organization, it seems to me there is probably no better example of how New Hampshire lawyers have stepped up to the plate and volunteered their services to assist our court system than this program. The success rate of mediation has been high and I am aware of no public or widespread discontent with the system.

The proposal to substitute the Rule 170 program with a paid mediated system, which I think will develop a cadre of professional mediators, has been of longstanding discussion, and is now served up in this proposal. I have in the works a very detailed opposition to this proposal which I will be submitting on my own, but I think this is an issue which the Association needs to wade in on. I have spoken with David Slawsky as Chairman of the Committee on Cooperation with the Courts about this as this proposal has been winding its way through the approval process

and am hopeful that Dave will be working closely with the Bar leadership to coordinate a response. I know that enhancing ADR services is a priority of the Chief Justice, and I think that any opposition to this Rule needs to very clearly point out we greatly favor enhancing the Rule 170 program in terms of its scope, administration, and outreach. I believe all of that can be well done within a system that is largely driven by volunteer efforts of mediators.

I am going to be submitting my memorandum in the near future and will send a copy of it to each of you and to David Slawsky. It will certainly not be the final word on this, but will hit quite hard three critical points which I believe should underscore our discussions:

1. Eliminating a very successful program of volunteer participation is a mistake. This is an excellent opportunity to enhance that type of service by New Hampshire lawyers. Rule 170 certainly deserves better administration and expansion, but not at the expense of a program which is critical to the New Hampshire Bar Association as an integrated organization.
2. The substitution of a voluntary base system for the "pay as you go" mediation plan is both unnecessary and inadvisable. It will not work because the individuals who will go through the extensive training and bureaucracy which is attendant with this proposal will not replicate the high quality Rule 170 mediators that we currently utilize. The "pay as you go" system in the Federal Court Mediation process is essentially unused by New Hampshire practitioners. Court-annexed mediation under this proposal will evaporate as lawyers opt out of the system in favor of simply paying for private mediators. If we are going to have a paid mediation system, people will flock to those mediators with proven track records. Supposedly, the Rule under consideration is based on the Maine experience, but my analysis of that system suggests it is a very different plan. In fact, most of the mediations under the Maine Rule are done by a very small number of very successful mediators. They do not have the bureaucracy which this mediation proposal entails.
3. The proposed Rule is simply poorly drafted and an odd combination of mediation theory, philosophy, and administrative provisions. Rule 170 program deserves modification, great administration, centralized oversight in the court system, recruitment of new mediators, and a sensible program of assuring competence and training for mediators. Unfortunately, the proposal goes off in a very different and impractical direction and will not be embraced by those mediators who currently willingly serve. Even a casual perusal of the entire list of existing Rule 170 mediators tells the reader that it is composed of some of the best and brightest of New Hampshire's lawyers and it would be a shame to lose their cooperation and participation.

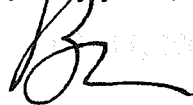
I am hopeful that each of you will recognize the importance of this issue to the Association and to public and urge the Association to make a measured and tactful response that

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is appropriate to the circumstances. I look forward to talking with each of you about it and hope that we can end up with a system that substantially enhances the work of Alternative Dispute Resolution in New Hampshire.

Best wishes.

Very truly yours,



Bruce W. Felmly

BWF/mco

cc: Jeannine McCoy, NH Bar Association

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The Honorable John A. Roddenberry

I am pleased to hear that the Board of the New Hampshire Bar Association and the Executive Committee of the Board have decided to discontinue the current program of the Association. I hope that the Board's decision will be a step towards the goal of August 11, 2007, which is to have a mandatory dispute resolution program in the State of New Hampshire. The program is a good one and has been a successful one and the existing program will be a good one. I am sure that the Board will continue to have a good relationship with the Board of the New Hampshire Bar Association and the Executive Committee of the Board. I am sure that the Board will continue to have a good relationship with the Board of the New Hampshire Bar Association and the Executive Committee of the Board. I am sure that the Board will continue to have a good relationship with the Board of the New Hampshire Bar Association and the Executive Committee of the Board.

The proposed program of the Board of the New Hampshire Bar Association and the Executive Committee of the Board is a good one and will be a good one. I am sure that the Board will continue to have a good relationship with the Board of the New Hampshire Bar Association and the Executive Committee of the Board. I am sure that the Board will continue to have a good relationship with the Board of the New Hampshire Bar Association and the Executive Committee of the Board. I am sure that the Board will continue to have a good relationship with the Board of the New Hampshire Bar Association and the Executive Committee of the Board.