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Please respond to the Concord office

January 23, 2007

David S. Peck, Esquire
New Hampshire Supreme Court
Advisory Committee on Rules
One Charles Doe Drive
Concord, NH 03301

Re: New Hampshire Rules of Civil Procedure

Dear Mr. Peck:

I am pleased to report that the Committee to Restructure, Update and Simplify the state court rules of civil procedure has completed its task. Enclosed you will find the New Hampshire Rules of Civil Procedure (January 18, 2007).

Our mission is reflected in what came to be the name of this committee; that is, to review the existing rules of civil procedure in superior, district and probate courts and recommend improvements. Our goal was to craft a simple set of rules that would better enable the public, bar and bench to utilize civil procedures to obtain the best and most efficient justice our courts are capable of producing. Taken together, we believe that these rules represent a great improvement over the existing set. From our perspective, retaining the traditional rules of New Hampshire practice will be a better fit for this state than adopting a modification of the federal rules of civil procedure.

These rules are derived primarily from existing superior court rules. The existing rules have been simplified by eliminating the distinction between law and equity. The remaining rules have been reorganized, following the organizational scheme in the federal rules (modified slightly to incorporate traditional New Hampshire practices). The result has been polished. A few of the federal rules have been incorporated where appropriate and where they express procedures consistent with existing New Hampshire practice. For example, Rule 1, Fed.R.Civ.P. (These rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action") is incorporated as Rule 1(b), N.H.R.Civ.P. but modified to read: "The rules shall be construed and administered to secure the just, speedy, and cost-effective determination of every action."

January 23, 2007

Page 2

Our goal has been to improve the rules, remaining loyal to traditional New Hampshire practice without becoming involved in a greater battle over more controversial individual rules that can be considered at some later time. Our hope is that one set of civil rules will govern procedures in all three trial courts.

Perhaps the biggest practical change follows from the elimination of the distinction between law and equity. Civil actions will be initiated by the filing of a complaint. Upon receipt of the complaint, civil cover sheet and filing fee, the clerk will issue a summons for service (using existing methods of service under New Hampshire law). The summons will show two dates selected by the plaintiff: the filing date, and the return date. Service will be made at least 14 days before the return date; defendant will have 30 days after the return date to answer or move to dismiss.

LexisNexis, publishers of our rules, provided typesetting at no charge, courtesy of Jim Mallon, Associate Director of Government Relations and Contracts, with assistance in formatting the text from Rita Reid.

I would like to thank my partners at Upton & Hatfield who graciously supported my commitment to this project which would never have been completed without critical clerical and secretarial support from my assistant, Nancy Landry-Milligan.

I am pleased to recommend these rules to the Advisory Committee for further review, and circulation to the public, bench and bar.

Sincerely,

David P. Slawsky, Chair
Committee to Restructure, Update
and Simplify

DPS/nm

cc: Chief Justice John T. Broderick, Jr.
Chief Judge Robert J. Lynn
Chief Judge Edwin W. Kelly
Chief Judge David D. King
Kimberly Kirkland, Esq.
Martin P. Honigberg, Esq.

New Hampshire Rules of Civil Procedure
Presentation Draft

Acknowledgments

This project began in March 2006 with a telephone call from Chief Justice Broderick, who asked whether the Bar Association Committee on Cooperation with the Courts (a committee I have chaired for a number of years) would examine the state rules of civil procedure to recommend ways in which they might be improved.

The development of this project has involved input from dozens of members of the bench and bar, as noted below.

The Committee on Cooperation with the Courts (2005 and 2006) spent many hours considering this proposal. While I recall clearly the sidelong glances of apprehension from committee members when I first mentioned the project (I believe it was John Lassey who asked for the Tums), the committee quickly accepted the challenge and became actively engaged after the original rough draft was circulated and after members of the committee reviewed individual sections. Paula Hurley, Craig Donais and Tom Pappas suggested improvements on the original organizational scheme; Dan Will worked on the section about commencement of an action; Ken Barnes reviewed the section on pleadings and motions; Jeanne Herrick worked on the trial section; John Lassey took on the rules of discovery; and Craig Donais worked on the remedies section. Other committee members who participated in the discussions were Peter Cowan; Mike Iacopino; Bob Moses; Superior Court Chief Judge Robert Lynn; Probate Court Judge Richard Hampe; Superior Court Associate Judge Larry Smukler; District Court Judge Tom Barry; Don Goodnow; Peter Cowan; Eileen Fox; Chris Keating; Chris Marshall; Jeff Osburn; Dan Proctor; Anne Edwards; Barbara Hogan; Kim Memmesheimer; Soudabeh Tahmassebpour; Debra Walsh; and Jane Young.

During the summer of 2006, I worked closely with Kimberly Kirkland (Professor of Civil Procedure at Franklin Pierce Law Center), and Martin Honigberg (a former assistant Attorney General, current partner with the Sulloway & Hollis firm, and current member of the Advisory Committee on Rules). Kimberly was able to arrange for federal work-study assistance from Franklin Pierce law student A.J. Carrasco who scoured the RSAs looking for statutes that might conflict with the developing rules. Kimberly also brought to the project a national network of civil procedure experts through the technology of an internet listserv.

When the first working draft was completed in August, I circulated binders to a few dozen members of the bench and bar for review and preliminary comment. Dan Will actively involved attorneys at the Devine firm. Stephanie Bray of Wiggin & Nourie shared her thoughts during a meeting at that office. Franklin Pierce law professor Marcus Hurn weighed in with significant comments about traditional common law writs. I received important and thoughtful comments from a number of members of the bar, including Mike Hall, Frank Spinella, and Ken Bouchard. From the Probate Court, we

received detailed suggestions from Janelle Laylagian and Judge Gary Cassavechia. Jim Soucy proofread one of the final drafts.

David Nixon spent many hours considering an earlier draft of these rules. While David has indicated that he opposes the project (which he believes unnecessarily complicates New Hampshire practice), he produced a ten-page critique filled with constructive considerations I found to be both thoughtful and wise. Many of David's suggestions have been incorporated in the enclosed draft.

Copies of written comments I have received (along with some of my responses) are attached for consideration by the Advisory Committee.

Richard Uchida (president of the New Hampshire Bar Association, 2005-6) and Richard McNamara (president of the New Hampshire Bar Association, 2006-7) provided important support as the Bar Association Board of Governors considered early drafts. The project was discussed at two meetings of the New Hampshire Bar Association Board of Governors.

Matthew Cox (president of the New Hampshire Trial Lawyers Association, 2005-6) and Heather Burns (president of the New Hampshire Trial Lawyers Association, 2006-7) also allowed us to address the rules project at two busy meetings of the Trial Lawyers Association Board of Governors.