

**HONEY HASTINGS**  
COUNSELOR AT LAW

31 August 2007

**TO:** New Hampshire Supreme Court

**COPY:** Karen Borgstrom, Director  
Office of Mediation & Arbitration

**FROM:** Honey Hastings  
Bar Number 1112  
Certified Marital Mediator Number 75

**RE: Proposed Amendments to Rule 170**

**Background** - I have a contract with the Judicial Branch to do court-referred mediation of divorce and parenting cases and I am a certified neutral evaluator. For 12 years I have had a private mediation practice focusing on the same types of cases. For 25 years I have represented parties facing divorce. I practice both law and mediation in a small town in Hillsborough County, a county that does not yet have the Family Division.

**Summary of my comments** - I oppose the proposal that mediators in civil cases may charge their “market rate” while marital mediators under contract with court are limited to \$60 an hour and neutral evaluators are paid nothing. This is a return to the unequal treatment of the era when divorce cases were heard in the basements of many courthouses. If this rule were adopted, the Rule 170 mediator handling a case of a dispute worth \$100,000 would be able to charge \$150 or \$250 an hour. Meanwhile, in the high income divorce with 1 million in assets, the court-contracted mediator is limited to \$60 an hour.

This would not be fair.

Instead, the Court should make a study of the role of neutrals in all courts and replace the current hodge-podge of requirements for training, appointment, funding/compensation, and continuing education with a rational, equitable system. This study should evaluate the existing programs, what is working and what isn't. Solicit input from neutrals.

Include in the study the question of what background and skills are needed for each type of case and type of ADR. The requirements for a neutral to conduct a 2 hour evaluative ADR in a damage case is different than for one to work for 6-10 hours assisting divorcing parents with a parenting plan.

**Different NH Court ADR Programs** -The programs for various courts need not be *identical*, as the “job descriptions” vary. Other than one equity case, in which I was counsel, I have not participated in any Rule 170 mediation. It is my understanding that they usually are one session of 2-3 hours, with the mediator shuttling between the 2 lawyer-client groups and offering an evaluation of what might happen in court. Currently, only lawyers are on the Rule 170 list.

By contrast, most divorce mediation consists of 2-6 sessions of 2 hours each, plus some preparation and drafting work outside of sessions. Counsel may or may not be present. Both parties and the mediator are in the same room; evaluations are *not* usually given. Given the skills and time commitment required, this work cannot be done on a *pro bono* basis. The most recent list I have of those contracting with the court to do this work shows 41 mediators, 12 of whom are lawyers.

**Fees for Mediation** - Paying neutrals fees is not a bad thing. *Pro bono* is great - whether acting as counsel or as neutral. However, most lawyers (and other professionals) must limit the number of hours a month or year that they volunteer.

Serving as a contracted mediator in divorce/parenting cases is currently a semi-*pro bono* activity as \$60 is less than half the going rate for private divorce mediators and one-third to one-quarter the rate for lawyers. I have mediated cases for \$60 an hour with counsel who were being paid \$200 or more an hour for the same time.

I was on the Bench-Bar-Legislator committee that worked on both the legislation and the procedures for the court-referred divorce mediation program. Fees were discussed at length. A judicial officer on the committee said that the court could not order people to mediation that cost more than \$60 an hour.

**Fees for Court Work** -The \$60 rate for all those who support the Judicial Branch by serving as marital mediators, appointed counsel, and GAL needs to be increased, as it has not kept up with the cost of maintaining an office, malpractice insurance, and continuing education. (Experienced GALs have left the system in droves as the new certification process clicked in on 1 July. The rate for state-paid cases is one of several reasons for this.)

**Conclusion** - Rule 170 needs more work. It is time for comprehensive study of the various ADR programs, to be followed by an undated system that is equitable both within programs and between programs.