

Summary of Proposed Rule 2013-015: Withdrawal of Court – Appointed Counsel in Abuse and Neglect cases

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To submit comments to Court (deadline is October 20, 2014):

Two methods for submission:

- 1) Submit original and seven copies of recommendations to:

Attn: Eileen Fox, Clerk of Supreme Court
New Hampshire Supreme Court Building
1 Charles Doe Drive
Concord NH 03301

- 2) Send via email to rulescomment@courts.state.nh.us, but they prefer submissions by mail.

Language of proposed rule change

Amend Rule 3.11 of the Rules of the Circuit Court of the State of New Hampshire-Family Division as follows (new material is in **[bold and in brackets]**; deleted material is in strikethrough format):

3.11. **Automatic Withdrawal of Court-Appointed Counsel:** In all Juvenile Delinquency[, **Abuse and Neglect**] and Children in Need of Services matters brought pursuant to RSA 169-B[, **RSA 169-C**] and RSA 169-D respectively, the appearance of counsel for the child **[and/or parent (in cases brought pursuant to RSA 169-C)]** shall be deemed to be withdrawn thirty (30) days after the date of the Clerk's notice of the dispositional order unless a post- dispositional motion is filed within that thirty (30) day period or the court otherwise orders representation to continue. Where a post-dispositional motion is filed within thirty (30) days, the appearance of counsel for the juvenile shall be deemed to be withdrawn thirty (30) days after the court rules on said motion. Where the court otherwise orders representation to continue, the order shall state the specific duration and purpose of the continued representation. Counsel for the juvenile shall be deemed to be withdrawn immediately at the end of the ordered duration.

Notes from Sept 2013 meeting of Rules Committee

The Committee considered the proposal made in the July 26 letter from Judge Kelly to Justice Lynn, in which Judge Kelly proposes an amendment to Circuit Court-Family Division Rule 3.11. The letter states, in relevant part:

The current version of Family Division Rule 3.11 provides that the appearance of court appointed counsel in CHINS and Delinquency cases is deemed withdrawn thirty (30) days after the dispositional hearing, unless the court otherwise orders representation to continue and states the specific duration and purpose of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. Given the recent amendment to RSA 169-C which now requires the appointment of counsel for parents accused of abuse or neglect and for-non accused parents in limited circumstances, we believe it would be helpful in our enforcement of Supreme Court Rule 48's limitation on fees for counsel in these cases, to amend Rule 3.11 to include Abuse and Neglect cases.

Jeanne Herrick stated that the relevant statute, RSA 169-C:10, may preclude such a rule change. She noted that the statute says, "In any case of neglect or abuse brought pursuant to this chapter, the court shall appoint an attorney to represent an indigent parent alleged to have neglected or abused his or her child. . . ." Given the language, "court shall appoint," it is not clear that the Court has the authority to adopt a rule that says that the appearance of court appointed counsel will be deemed withdrawn 30 days after the dispositional hearing.

Justice Lynn suggested that the proposal be put out for public hearing as is in December. He also notes that this issue is related to the issues raised by Attorney Keating in his September 3, 2013 email to Carolyn Koegler. In his email, Attorney Keating proposes amendments to Supreme Court Rules 47(3), 48(2) and (3) and 47-A(3). Justice Lynn proposes putting Judge Kelly's proposal out for public hearing, along with Attorney Keating's proposals. Jeanne Herrick noted that it is important to try to understand what these changes would mean for the system, and what the financial impact would be.

One Committee member suggested that it might make sense to ask Attorney Keating to address the Committee at the public hearing in December. Another Committee member suggested that it also would make sense to ask Judge Kelly or a representative to attend the meeting in December to provide more information about this issue. In particular, the Committee would like to understand what the standard procedure would be if it were to adopt the rule proposed by Judge Kelly. If counsel is in the case only until the dispositional hearing, then what happens after that? If counsel comes back in, is this a "new case," for reimbursement purposes? One committee member noted that it probably makes sense to have counsel for the entire length of the litigation. If counsel is to remain counsel for the length of the litigation [sic], then it might make sense to increase the fee cap.

Upon motion made by Attorney Honigberg and seconded by attorney Taylor, the Committee voted to put Judge Kelly's proposal to amend Circuit Court-District Division Rule 3.11, and attorney Keating's proposals to amend Supreme Court Rules 47, 48 and 48-A out for public hearing in December. The Committee directed Carolyn Koegler to invite Attorney Keating and Judge Kelly, or a representative, to attend the public hearing.

Notes from December 2013 public hearing

Justice Lynn explained that this proposal would amend Circuit Court Family Division Rule 3.11 to 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.

Judge Kelly was present at the hearing and spoke in support of this proposal. He stated that the proposal would bring these cases in line with criminal cases and that the proposal was prompted by: (1) a desire, from a case management perspective, to set out clearly the parameters [sic] of representation; and (2) to address a fiscal concern about the over-reimbursement of attorneys at the expense of the state.

Notes from December 2013 post-hearing meeting of Rules Committee

Committee members generally agreed that the proposed amendment to Rule 3.11 of the Rules of the Circuit Court of the State of New Hampshire – Family Division to state that appointment of counsel in abuse and neglect cases automatically terminates after the dispositional hearing unless a motion is filed makes sense.

Upon motion made by Attorney Honigberg and seconded by Representative Berch, the Committee voted to recommend that the Supreme Court adopt the proposed amendment.

Media and social media coverage

- Blog post about change:
<http://www.nhfamilylawblog.com/2014/09/articles/abuseandneglect/proposed-changes-to-a-parents-right-to-counsel-in-abuseandneglect-cases/>
- Story in NH Union Leader:
<http://www.unionleader.com/article/20140914/NEWS07/140919537>