

HOUSE RECORD

Second Year of the 162nd General Court Calendar and Journal of the 2012 Session

Vol. 34 Concord, N.H.
Contains: Meetings and Notices.

Friday, June 29, 2012

No. 50

HOUSE CALENDAR

MEMBERS OF THE HOUSE:

Proofs of the photographs of the House taken in the Chamber on June 6th, along with ordering information, are available for your review in the Speaker's Reception area.

The Committee on Redress of Grievances continues to issue its reports and findings with regard to petitions submitted to the Committee. These reports will appear in the House Calendar for informational purposes and are intended to inform legislators and the public of complaints by citizens against state government, whether those complaints appear to be founded, and possible legislative remedies. The committee does not adjudicate individual disputes; therefore, these reports are limited to proposed legislative remedies.

Starting with the month of July and continuing through the end of this legislative term, legislative mileage will be limited to reimbursement for travel on one day a week to Concord for official legislative or constituent work in addition to those days that members are required to be in Concord for official committee or leadership work. Reimbursement for committee or leadership purposes is limited to attendance as a member of a policy, chaptered or statutory committee or for Democrat or Republican caucus leadership or legislative leadership. Members should not schedule meetings for Mondays or Fridays.

Let me again express to the members my appreciation and, by extension, the appreciation of their constituents for their diligent service this term in what is surely the largest "volunteer" legislature in the world. Relatively few outside this body and our families know the extent of individual sacrifices that most legislators accept, but each of us can be proud that we have been so giving of our time to our state this term.

William L. O'Brien, Speaker

NOTICE

There will be NO House Calendar next week.

During the summer months the House Calendar will be published every two weeks. Please note Calendar **will close on Wednesdays at noon.**

CLOSES NOON WEDNESDAY:

July 11
July 25
August 8

AVAILABLE THURSDAY:

July 12
July 26
August 9

August 22
September 5
September 19

August 23
September 6
September 20
Karen O. Wadsworth, Clerk of the House

HOUSE DEADLINES FOR 2012 SESSION

Monday, September 17, 2012	First day for incumbent members running for reelection to file LSRs for 2013 session.
Wednesday, September 26, 2012	Last day for incumbent members running for reelection to file LSRs for 2013 session prior to the general election.
Friday, November 2, 2012	Last day to file Interim Study reports.
Tuesday, November 13, 2012	First day for all members elected for the 2013 session to file LSRs for the 2013 session.
Friday, December 7, 2012	Last day for all members elected for the 2013 session to file LSRs for the 2013 session. Last day for a member to declare sponsorship of an LSR filed by an unelected incumbent member.
Friday, January 11, 2013	Last day to sign off all House LSRs, other than petitions involving the election or qualifications of a member to serve in the House.
Friday, February 1, 2013	Last day to introduce House legislation including, but not limited to, House Bills and petitions
Wednesday, February 13, 2013	Last day to amend House Rules by majority vote.

All deadlines are subject to the close of business at 5:00 p.m. each day, except amending House Rules, which shall be the ending of the last House session day on or prior to February 13, 2013.

COMMITTEE FOR REDRESS OF GRIEVANCES REPORTS

The following reports are the result of committee hearings and deliberations on the petitions presented to it. They are printed here for informational purposes.

PETITION #21: grievance of Arthur Ginsberg

MAJORITY

Grievance Unfounded.

Committee Majority Findings:

The Petitioner alleged being aggrieved by both the Attorney Discipline System (ADS) and the New Hampshire Supreme Court in the handling and disposition of his professional conduct complaint against his former wife's divorce counsel, the result of which was dismissal of his complaint with a warning.

In order for a petition for redress of grievance to be determined by this Committee to be "founded," it is not enough for a petitioner merely to show wrongful conduct or unjust acts of a governmental entity or official. He must also show the existence of a lawful legislative remedy. Further, by reason that - unlike the judicial branch and executive branch administrative agencies against which allegations of grievance are typically brought - this Committee is not designed and lacks the resources to conduct fundamentally fair adversary proceedings, a petitioner must be prepared to show that any such allegation admits of no reasonable alternative explanation other than corruption, incompetence, or willful disregard of law. The Committee concludes that the Petitioner in this case has failed to meet his burden of persuasion in either regard.

The alleged wrongs that were the basis of the Petitioner's professional conduct complaint occurred in the course of his and his then-wife's divorce. Those wrongs, even accepting them to have occurred exactly as articulated and with all the consequences asserted by the Petitioner, were part of that judicial proceeding, and if left unraised, unaddressed or unremedied at the time of and within the context of that proceeding, their effects cannot be remedied by legislative action, as the legislative branch has no authority to interfere with or disturb the results of judicial proceedings. Similarly, the dismissal with a warning resulting from wrongs allegedly perpetrated by personnel or agents of the ADS, again accepting those wrongs to have occurred exactly as articulated by the Petitioner, and accepting as well his conviction of the inadequacy of the punishment imposed, also cannot be changed by legislative action. In summary, the Committee is satisfied that there is no set of facts the Petitioner alleged or could allege which, even if accepted by the Committee as true and incontrovertible, would support any legislative remedy directed to the specific judicial or ADS proceedings in question.

The only other basis for a determination of "founded" by the Committee would be if the Petitioner demonstrated systemic unfairness of the ADS, of which that alleged to have occurred in his case was symptomatic. The Petitioner focused in particular on amendments made in 2007 to Subdivisions (5)(b)(5) and (5)(b)(7) of Supreme Court Rule 37, which allegedly changed the standard of review in the initial screening of professional conduct complaints, retrospectively in his case, from "preponderance of the evidence" to "reasonable likelihood that a complaint can be proven by clear and convincing evidence." The Committee notes that "clear and convincing evidence" has always been the standard of proof in ADS cases once they have reached the hearing level before the Professional Conduct Committee (Supreme Court Rule 37(3)(c)(2); *Young's Case*, 154 NH 359 (2006); *Edes' Case*, 118 NH 815(1978); *Decato's Case*, 117 NH 885 (1977)). Accordingly, in opposition to the Petitioner's allegation of corrupt motivation in making the amendments is the alternative explanation that they were made merely to harmonize the complaint screening process with the "clear and convincing evidence" standard, and thereby relieve an unnecessary burden on ADS staff and avoid unrealistic expectations of complainants by reducing the number of complaints entering the system that plainly cannot be resolved other than by their eventual dismissal. The Committee is aware of no groundswell of public discontent or pattern of injustice that has emerged over the five years since the Supreme Court's amendments were implemented, and the Petitioner has not, among the numerous documents with which he has favored the Committee, offered one containing proof to the contrary. The objection offered to the changes that they make it more difficult for lay people to file, pursue and prevail in the attorney disciplinary process is countered by the observation that, the ultimate subject of a professional conduct complaint being a person's livelihood, the process should not be easy but should be rigorous and exacting.

Finally, the Petitioner complains against the Supreme Court for vacating an earlier order

accepting for review his Supreme Court Rule 11 petition from the ADS dismissal of his complaint. The Committee notes that, by its terms, petitions filed under Supreme Court Rule 11 are granted “only when there are special and important reasons for doing so,” such as when a judicial or administrative agency proceeding “has so far departed from the accepted or usual course...as to call for an exercise of [the] court’s power of supervision.” In opposition to the Petitioner’s allegation of corrupt motivation in vacating its acceptance of his petition is the reasonable alternative explanation that, once the Court had clarified the matter of the proper standard to apply in the screening of professional conduct complaints, the Petitioner’s Rule 11 petition no longer met the Rule’s threshold requirements, and the Court’s prior acceptance of that petition was therefore properly vacated. **Vote 10-1.**

Rep. Gregory M. Sorg for the Majority of the Committee.

MINORITY

Grievance Founded.

Minority Committee Findings:

The Minority believes Mr. Ginsberg conclusively documented that until 2007 the rules of New Hampshire’s Attorney Disciplinary System only allowed “clear and convincing” evidence to be used at the hearing stage of a complaint. “Preponderance of evidence” was the standard used for screening, and investigating complaints. In January of 2007, on a “temporary basis,” the rules were changed to “clear and convincing” at all stages of a complaint. The new rules actually violate the 1st and 14th constitutional amendments, and deny citizens access to the courts. These rules further provide immunity to unethical and dishonest attorneys in New Hampshire.

It is recommended that the Professional Conduct Committee adopt the American Bar Association recommendations of “preponderance of evidence,” but if “clear and convincing” evidence is used it is to be only at the hearing level. The PCC must adhere to their rules and truly discipline attorneys that are violating these rules (Code of Ethics and Laws of NH). When the state legislature passes a law (RSA) that may be unconstitutional, it is the Supreme Court which rules. When the Supreme Court acts as a legislature and publishes written laws (Supreme Court Rules), then the General Court (NH State Legislature) has the responsibility of reviewing those laws. 73a does not prevent the General Court from overruling the Supreme Court when they institute rules that violate citizens’ rights...it is our duty to take action. No one is above the law.

Rep. Stella Tremblay for the Minority of the Committee.

NOTICE

Legislative Ethics Committee

The Legislative Ethics Committee has voted unanimously to issue the following interpretive ruling, which is printed below in its entirety.

INTERPRETIVE RULING 2012-#2

(June 28, 2012)

RSA 15-B:2 and 3

Bulk Gifts to Legislative Offices Intended for Redistribution to Legislators or Employees

Greg Moore, House Chief of Staff, has requested a ruling based on the following information he submitted to the Committee:

“Recently, the House of Representatives received an estimated 400 tickets [to forthcoming circus performances]. Enclosed with the tickets is a notification, stating, ‘Dear Employer: Enclosed is a supply of FREE TICKETS for your employees.’ Presumably, the intent of the mailing is to encourage each House member to have access to a free ticket to the circus. On each ticket, the pass indicates a value of \$7.50 for a total estimated value of \$3,000.

“I would ask for a ruling as to whether it would be permissible for the House to distribute these tickets to members or employees. Further, I would also ask if it would it be

permissible to give each member/employee access to up to three tickets, as the aggregate value would still be less than \$25.”

The reference to “a value of \$7.50” derives from recitations on the ticket that it is a “Free Ticket—Admit one child 13 years or under” and “\$7.50 value.” In addition, the copy of the promotional material transmitted with the tickets was good for a “Free Guest Pass—Admit One Adult” as “our way of saying thank you” to the “employer” for distributing the tickets. According to the circus’s recorded telephone message, the price of an adult ticket is \$32. This suggests that in addition to the total value of the children’s tickets, the bulk donation also included the value of a free adult ticket, \$32, bringing the total value of the 401 tickets to \$3032.

The Committee responds as follows:

Relevant Provisions of Law

RSA 15-B:2, V(a)(2); RSA 15-B:3, I and III

The gist of the issue presented is whether a bulk donation to a legislative office of tickets to an event, with a total value well in excess of \$25, constitutes a prohibited gift, even though the individual value of the ticket may be less than \$25.

The full value of the bulk donation described in Mr. Moore’s request would be \$25 or more, and would plainly fall within the definition of “gift” in RSA 15-B:2, V(a) (2):

“(2) Any other tangible thing, intangible thing, service, or the use thereof having more than insignificant economic value. Any such item with a value of less than \$25 is presumed to be of insignificant economic value.”

The conditions for the exception in RSA 15-B:2, V(b)(9) for “Tickets or free admission to a charitable, ceremonial, or political event” would not appear to be met, and no other exception in RSA 15-B:2, V(b) would appear to apply.

It follows that even if the value of the individual tickets were less than \$25, the value of the bulk donation of tickets, if \$25 or more, to a legislative office for redistribution to members or employees, would appear to be a prohibited gift.

Nothing in RSA 15-B or the Ethics Guidelines distinguishes between gifts to individual legislators and legislative offices, even where the intent of the donor is redistribution to individual legislators or employees. On the contrary, to create such a distinction would open up a new loophole in the law, whereby donors could use substantial gifts to curry favor, merely by enlisting a legislative official, officer or employee to receive the bulk donation, and then act as intermediary for distribution of tickets in amounts less than \$25 to individual legislators and employees. This would also require the official or employee to put a value on the individual ticket, and to police distribution so that no individual would receive tickets in excess of that amount. It would also create the appearance of a patronage opportunity for the recipient of the bulk gift.

RSA 15:3, I and III provide:

15-B:3 Prohibition on Gifts.—

I. It shall be unlawful to knowingly give any gift as defined in this chapter, directly or indirectly, to any elected official, public official, public employee, constitutional official, or legislative employee.

III. No elected official, public official, public employee, constitutional official, or legislative employee shall knowingly accept, directly or indirectly, any gift, as defined in this chapter.

Accordingly, RSA 15-B:2, V(a)(2) and RSA 15-B:3 are interpreted as prohibiting the making or acceptance of bulk donations of event tickets to a legislative office for redistribution to individual legislators or employees, as well as redistribution of such donations to legislators or employees, unless the value of the bulk donation is less than \$25, or the donation otherwise qualifies for a specific exception under RSA 15-B:2, V(b).

For the Committee,
Martin L. Gross
Chairman

[Vote 7-0]

COMMITTEE MEETINGS

MONDAY, JULY 9

ADVANCED MANUFACTURING EDUCATION ADVISORY COUNCIL (RSA 188-E:21), Room 100, State House.

3:00 p.m. Regular meeting.

ECONOMIC STRATEGIC COMMISSION TO STUDY THE RELATIONSHIP BETWEEN NEW HAMPSHIRE BUSINESSES AND STATE GOVERNMENT (RSA 359-K:2), Room 303, LOB.

10:00 a.m. Regular meeting.

TUESDAY, JULY 10

EDUCATION, Room 207, LOB.

9:00 a.m. Interim study subcommittee work session on **HB 1467**, relative to educational requirements for teacher certification.

10:00 a.m. Interim study subcommittee work session on **HB 1606-FN**, adopting the interstate compact on educational support for military children.

REDRESS OF GRIEVANCES, Room 303, LOB.

9:30 a.m. Full committee work session on **PETITION 11**, grievance of David D. Vandenberg, **PETITION 30**, grievance of Bethany Capen.
Executive session may follow.

WEDNESDAY, JULY 11

ETHICS COMMITTEE (RSA 14-B:2), Room 104, LOB.

10:00 a.m. Regular meeting.

10:30 a.m. Joint meeting with the Executive Branch Ethics Committee (RSA 21-G:29).

COMMITTEE TO STUDY THE 2009 NEW HAMPSHIRE CHILD SUPPORT GUIDELINES REVIEW AND RECOMMENDATIONS (HB 1193, 26:2), Room 206, LOB.

8:30 a.m. Process subcommittee meeting.

THURSDAY, JULY 12

REDRESS OF GRIEVANCES, Room 303, LOB.

9:30 a.m. Continued executive session on **PETITION 5**, grievance of David Johnson.

TUESDAY, JULY 17

EDUCATION, Room 207, LOB.

1:00 p.m. Interim study work session on **HB 296**, relative to procedures for juvenile delinquency petitions filed by a school district or school official.

FINANCE – (DIVISION I), Room 212, LOB.

10:00 a.m. Interim study work session on *HB 625-FN-A*, relative to New Hampshire correctional industries.

THURSDAY, JULY 19

ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 305-307, LOB.

9:00 a.m. Regular meeting.

COMMISSION TO STUDY THE EFFECTS OF SERVICE-CONNECTED POST-TRAUMATIC STRESS DISORDER AND TRAUMATIC BRAIN INJURY (RSA 115-D:1), Room 203, LOB.

2:30 p.m. Regular meeting.

COMMITTEE TO STUDY LAWS RELATING TO CONDO AND HOMEOWNERS' ASSOCIATIONS (RSA 356-B:70), Room 305, LOB.

11:00 a.m. Regular meeting.

SHORELAND ADVISORY COMMITTEE LAKES SUBCOMMITTEE (RSA 483-B:21), Department of Environmental Services, Room 214, 29 Hazen Drive, Concord.

9:00 a.m. Regular meeting.

FRIDAY, JULY 20

GUARDIANS AD LITEM BOARD (RSA 490-C:1), Room 101, LOB.

1:00 p.m. Regular meeting.

MONDAY, JULY 23

FISCAL COMMITTEE (RSA 14:30-a), Rooms 210-211, LOB.

10:00 a.m. Regular business.

TUESDAY, JULY 24

COUNTY-STATE FINANCE COMMISSION (RSA 28-B:1), Primex Building Training Room, 48 Donovan Street, Concord.

10:00 a.m. Regular meeting.

WEDNESDAY, JULY 25

JOINT HEALTH INSURANCE REFORM OVERSIGHT COMMITTEE (RSA 420-N:3), Room 302, LOB.

10:00 a.m. Regular meeting.

THURSDAY, AUGUST 2

ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 305-307, LOB.

9:00 a.m. Continued regular meeting.

HEALTH AND HUMAN SERVICES OVERSIGHT COMMITTEE, (RSA 126-A:13), Room 205, LOB.

1:00 p.m. Medical sharps subcommittee meeting.

MONDAY, AUGUST 6

**COLLEGE TUITION SAVINGS PLAN ADVISORY COMMISSION (RSA 195-H:2), NH
Higher Education Assistance Foundation, 4 Barrell Court, Concord.**

9:00 a.m. Investment committee meeting.
10:00 a.m. Regular meeting.

FRIDAY, AUGUST 10

**WORKERS' COMPENSATION ADVISORY COUNCIL (RSA281-A:62), Room 307,
LOB.**

9:00a.m. Regular meeting.

MONDAY, AUGUST 13

**ADVANCED MANUFACTURING EDUCATION ADVISORY COUNCIL (RSA 188-
E:21), Room 100, State House.**

3:00 p.m. Regular meeting.

THURSDAY, AUGUST 16

ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 305-307, LOB.

9:00 a.m. Regular meeting.

FRIDAY, AUGUST 17

GUARDIANS AD LITEM BOARD (RSA 490-C:1), Room 101, LOB.

1:00 p.m. Regular meeting.

OFFICIAL NOTICES

COUNTY DELEGATION NOTICE

Rockingham County Executive Committee will meet for the second quarter budget review on Friday, **July 20**, 2012 at 9:30 a.m. in the Hilton Auditorium at the Rockingham County Nursing Home in Brentwood.

Rep. David A. Welch, Clerk
Rockingham County Executive Committee

When the House Clerk's Office is aware of House Members who are hospitalized or homebound by serious illness, we will publish a list of names and addresses as requested. Rep. Frank G. Case, 44 Beach Head Road, Nottingham, New Hampshire 03290-4921. Colleagues who so desire may send cards and greetings to the address listed above.

Karen O. Wadsworth, Clerk of the House

MEMBERS' NOTICES

The following notices are published in the House record as a courtesy to the member(s) requesting publication. These are not official public notices and will be limited to legislative policy or legislative social activities and political meetings or events. Publication should not be construed as support for either the events listed or the views espoused by the individual or

organization sponsoring the event.

The Water Quality and Standards Advisory Committee will meet on **July 12** at 1:30 p.m. at the Department of Environmental Services, 29 Hazen Drive, Concord. At this meeting there will be a continued discussion of Class A criteria with presentations/updates on wetland water quality standards and water temperature in NH rivers and streams.

Rep. Andrew Renzullo

Smart Girl Politics NH invites legislators to join for a day of firearm safety, education and training at our First Annual SGP NH "Armed & Fabulous" Shoot, **July 14** from 10:00 a.m. to 2:00 p.m. at the Londonderry Fish and Game Club. For more information or to register, contact Susan Olsen at smartgirlpoliticsnh@hotmail.com.

Rep. Carol McGuire

The New Hampshire Liberty Alliance, publisher of the Gold Standard, invites all members to attend our annual Liberty Dinner. The NHLA Legislator of the Year award will be announced and the annual Liberty Rating legislative report card will be distributed.

Date/time: Sunday, **July 15** at Chateau Restaurant, 201 Hanover St. in Manchester, 5:00 p.m. VIP reception, 6:00 p.m. dinner. Legislators receive a discounted price of only \$25 which may be paid at the door. RSVP to info@nhliberty.org. More details at nhliberty.org.

Reps Seth Cohn, Carol McGuire & Dan McGuire

All Republican members are invited to the Strafford County Republican Committee 2012 Annual Picnic. This picnic will be held on Saturday, **August 4** (rain or shine) at the Dover Elks located at 282 Durham Road, Dover. The picnic runs from 11:00 a.m. to 3:00 p.m. This is a family friendly event with lots to do for kids and adults. This is also a great opportunity to meet candidates running for state and federal offices too. If you'd like to purchase tickets in advance, please call Rep. Bill O'Connor (absoconnor@gmail.com) or Rep. Fred Leonard (fleonard@metrocast.net). We also have sponsorship and booth spaces available too.

Rep. Fred Leonard