

#2015-021



STATE OF NEW HAMPSHIRE  
OFFICE OF THE GOVERNOR

MARGARET WOOD HASSAN  
Governor

June 2, 2016

Advisory Committee on Rules  
New Hampshire Supreme Court  
One Charles Doe Drive  
Concord, NH 03301

Re: Proposed Revisions to Circuit Court Rule 2.7

Dear Committee Members:

I understand that your Committee has proposed changes to Circuit Court Criminal Rule 2.7 under consideration and, that the proposal was jointly submitted by the American Civil Liberties Union of New Hampshire ("ACLU-NH") and the Circuit Court Administrative Judges.


In September 2015, I publically noted my concern about the findings set forth in the ACLU-NH's report that individuals were being incarcerated for failure to pay fines for criminal offenses and violations without a meaningful hearing including a determination of an ability to pay and a willful failure to do so. In response, my staff met with representatives of ACLU-NH, as well as the Circuit Court, to discuss the findings and I learned there was a common legal belief that, under Circuit Court Rule 2.7, no individual can be incarcerated for the failure to pay a fine unless there has been a court determination that an individual has the ability to pay and willfully is failing to do so. Namely, an individual should never be incarcerated based solely on an inability to pay a fine. I commend the ACLU-NH and Circuit Court for working together to draft changes to the rule that properly reflect that core principle and insure those findings are made by a judge before incarceration occurs. I also appreciate the support the proposed amendment to Rule 2.7 has received from the New Hampshire Bar Association, the New Hampshire Public Defender's Office, New Hampshire Legal Assistance and the New Hampshire Association of Criminal Defense Lawyers.

My understanding is that the Committee has heard differing legal opinions about whether the right to counsel when an individual is faced with incarceration for failure to pay a fine is a constitutional right. I also understand the proposed changes to Rule 2.7 can be adopted without reaching a conclusion on this matter as, under the New Hampshire Constitution Part II, Article 73-a, the New Hampshire Supreme Court has the right to establish a rule appointing counsel and has done so in previous instances.

I respectfully join the sentiments of Executive Director Christopher Keating from the Judicial Council in his letter dated March 8, 2016 and ask the Committee to give due consideration to adopting the revisions to Circuit Court Rule 2.7, as proposed by the ACLU-NH and Circuit Court Administrative Judges. Director Keating correctly states that the proposed rule has a mechanism to properly reduce the number of individuals potentially facing incarceration and therefore would not cause an increase in expenditure from appropriations for indigent counsel.

I believe that providing legal counsel to individuals who face incarceration for an inability to pay fines serves our justice system as a whole in that it protects both individual rights and insures due process within our Courts.

With every good wish,

A handwritten signature in black ink, appearing to read "Maggie L", followed by a long horizontal line extending to the right.

Margaret Wood Hassan  
Governor