THE STATE OF NEW HAMPSHIRE
SUPREME COURT
ADVISORY COMMITTEE ON RULES

Frank Rowe Kenison
Supreme Court Building
One Charles Doe Drive
Concord, NH 03301
603-271-2646

TDD Access:
Relay NH 1-800-735-2964

Carolyn Koegler, Secretary

August 14, 2014

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

Dear Ms. Fox:

Pursuant to Supreme Court Rule 51, I hereby submit on behalf of the Supreme Court Advisory Committee on Rules ("Committee") the Committee's annual report, which contains the final draft of proposed rules and amendments recommended for adoption by the Committee. Not included in this submission are proposals that were previously submitted to the Court during the past year. The Committee held meetings on September 20, 2013, December 13, 2013, March 14, 2014 and June 6, 2014. The Committee held public hearings on December 13, 2013 and June 6, 2014. The Committee also held a public information session on the proposed electronic filing rules on March 14, 2014.

The Committee voted to recommend adoption of the following proposed rules and amendments.

A. IOLTA and Title Companies

Supreme Court Rules 50 and 50-A. These proposed amendments would

make the services performed by attorneys who work for or own title companies subject to the requirements of Supreme Court Rules 50 and 50-A.

This issue was first raised in a December 22, 2011 letter from attorney Middleton to Chief Justice Dalianis, in which attorney Middleton proposed that the Annual Trust Accounting Compliance Certificate be amended to include questions relative to whether the attorney completing the form has an interest in a title or closing company that handles real estate closings. Because the Court had some concerns about whether title companies are "practicing law," the Court referred the issue to the Advisory Committee on Rules. At its March 2012 meeting, the Committee briefly discussed the issue and voted to refer it to a subcommittee.

At its June 2013 meeting, the Committee reviewed a March 21, 2013 letter from Attorney Herbert Cooper, Co-Chair of the IOLTA & Title Companies Subcommittee. The subcommittee concluded that "the activities surrounding the purchase or refinance of New Hampshire real estate . . . do, in our opinion, constitute the practice of law." The subcommittee proposed that Supreme Court Rules 50 and 50-A be amended to include the services performed by attorneys who work for or own title companies. Following brief discussion, the Committee voted to put the proposal out for public hearing in December 2013.

Following the June meeting, at Justice Lynn's request, I updated the Court about the pending proposal. Thereafter, in an email to me, Clerk Fox stated that she was concerned that the language of the proposed amendment to Rule 50-A would not have the effect the Committee intended. She suggested that the proposed amendment to Rule 50-A be amended to reframe the certification option as a positive statement. She also suggested that the Committee consult Janet DeVito and Craig Calaman at the Attorney Discipline Office about the proposal.

Shortly thereafter, at Justice Lynn's request, I forwarded the Committee's proposal to Janet DeVito and Craig Calaman, for their review and comment. Comments from the Attorney Discipline Office related to Supreme Court Rule 50-A are set forth in a September 13, 2013 letter from Janet DeVito and Craig Calaman.

A number of people, including Attorneys Doug Hill and Rob Howard, and Ms. Carol Brooks, a retired real estate agent, spoke in favor of the proposal at the December 2013 public hearing. One Committee member expressed concern about what the legislature's reaction to the proposed rule amendment would be, and whether the legislature might find that the amendments go beyond the authority of the judicial branch to regulate attorneys. He noted that the issue of when someone is practicing law is not always clear.

Following the December 2013 public hearing, the Committee voted to recommend that the Court adopt amendments to Supreme Court Rules 50 and 50-A to make the services performed by attorneys who work for or own title companies subject to the requirements of the rules, as set forth in Appendices A and B.

B. Motions to Seal

Rule 12 of the Superior Court of the State of New Hampshire Applicable in Civil Actions, Rule 59-B of the Superior Court of the State of New Hampshire Applicable in Criminal Cases, Rule 1.8 of the Rules of the Circuit Court of the State of New Hampshire-District Division, Rule 58-B of the Rules of the Circuit Court of the State of New Hampshire-Probate Division, Rule 1.26 of the Rules of the Circuit Court of the State of New Hampshire – Family Division, Supreme Court Rule 12(2)(b). These proposed amendments would amend trial court rules to address how a party may request that the court seal a case record or a portion of a case record and would amend Supreme Court Rule 12(2)(b) to establish a procedure to allow a party to withdraw documents from the public record if its motion to seal is denied.

In May 2013, the Superior Court requested that the Committee consider whether there should be a system-wide rule similar to Supreme Court Rule 12(2)(b) to address how a party may go about requesting that the court seal a case record or a portion of a case record. The request was prompted by the fact that the Superior Court has seen an increasing number of motions filed "under seal" in both criminal and civil cases.

At the June 2013 meeting, the Committee requested that I draft rules for the trial courts similar to Supreme Court Rule 12(2)(b) to address how a party may go about requesting that the court seal a case record or portion of a case record. I submitted a set of draft rules in a September 12, 2013 memorandum to the Committee. They did not include a proposal to amend the criminal rules, or a proposal to amend Supreme Court Rule 12(2)(b) to allow a party to withdraw documents if its motion to seal is denied. At its September 2013 meeting, the Committee voted to put the proposals out for public hearing in December.

At the December 2013 meeting, following the public hearing, the Committee agreed that: (1) the Superior Court criminal rules should also be amended to include the language regarding the procedure for filing motions to seal; (2) a provision should be added to each of the rules setting out the procedure to allow a party to withdraw documents if its motion to seal is denied; and (3) Supreme Court Rule 12(2)(b) should be amended to include a

provision setting out the procedure to allow a party to withdraw documents if its motion to seal is denied.

Following the December 2013 public hearing, the Committee voted to recommend that the Court amend Rule 12 of the Superior Court of the State of New Hampshire Applicable in Civil Actions, adopt Rule 59-B of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases, amend Rule 1.8 of the Rules of the Circuit Court of the State of New Hampshire-District Division, adopt Rule 58-B of the Rules of the Circuit Court of the State of New Hampshire-Probate Division, amend Rule 1.26 of the Rules of the Circuit Court of the State of New Hampshire – Family Division out for public hearing in December, and amend Supreme Court Rule 12(2), as set forth in Appendices C, D, E, F, G, and H.

C. Continuity of Counsel in Circuit and Superior Court

Rule 14 of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases. This proposed amendment would change the rule regarding appointment of counsel in the Superior Court to provide that once an appointment has been made in the Circuit Court in a criminal case, the appointment should continue throughout any appeal to the Superior Court.

Chief Judge Nadeau proposed this change to the Superior Court Criminal Rules in May 2013. At the time the proposal was made, the Public Defender had reviewed it. At its meeting in June, the Committee considered the proposal and asked me to forward it to both attorney Christopher Keating, Executive Director of the Judicial Council, and the Attorney General's Office and to request comment on the proposal. Attorneys Keating and Rice both support the proposed amendment, although Attorney Rice suggested one minor language change.

The proposal was put out for public hearing in December 2013. No comments were submitted regarding the proposal. However, there was some discussion by Committee members following the public hearing about how the fee cap would operate in these circumstances. Justice Lynn inquired whether representation in the appeal would be subject to a separate fee cap. Committee members generally agreed that an appeal to the Superior Court would trigger a new fee. In other words, this new subsection is not intended to alter the practice by which attorneys for indigent defendants are compensated.

Following the December 2013 public hearing, the Committee voted to recommend that the Court amend Rule 14 of the Rules Superior Court of the

State of New Hampshire Applicable in Criminal Cases to provide that once an appointment has been made in the circuit court in a criminal case, the appointment should continue throughout any appeal to the superior court, as set forth in Appendix I.

D. Withdrawal of Court-Appointed Counsel in Abuse and Neglect Proceedings

Rule 3.11 of the Rules of the Circuit Court of the State of New Hampshire – Family Division. This proposed amendment would 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 proposed this change in a July 26, 2013 letter to Justice Lynn. 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.

During the Committee's discussion about the proposal at the September 2013 meeting, attorney Herrick suggested that the relevant statute, RSA 169-C:10, might 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 noted that this issue is related to the issues in attorney Keating's proposed amendments to Supreme Court Rules 47(3), 48(2) and (3) and 47-A(3). Justice Lynn proposed putting Judge Kelly's proposal out for

public hearing, along with attorney Keating's proposals. Attorney 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. The Committee voted to put the proposal out for public hearing.

Judge Kelly was present at the public hearing in June 2013 and spoke in support of his 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 of representation; and (2) to address a fiscal concern about the over-reimbursement of attorneys at the expense of the State.

Following the December 2013 public hearing, the Committee voted to recommend that the Court amend Rule 3.11 of the Rules of the Circuit Court of the State of New Hampshire – Family Division to state that the appointment or counsel in abuse and neglect cases automatically terminates after the dispositional hearing unless a motion is filed, as set forth in Appendix J.

E. Calculation of Mileage Reimbursement and Fee Caps for Attorneys and Guardians Ad Litem and Reimbursement of Attorneys for Work in Child Protection Matters

Supreme Court Rules 47, 48 and 48-A. These proposed amendments would clarify that mileage expenses are separate from the fee caps when a lawyer or guardian ad litem seeks reimbursement for his or her efforts on behalf of a criminal defendant or a parent or juvenile in a child protection matter. An additional proposed amendment to Supreme Court Rule 48 would permit payment of attorneys who work on behalf of parents in child protection matters for attending periodic review hearings held in the normal course of a case in the Family Division.

Attorney Chris Keating, Executive Director of the New Hampshire Judicial Council, proposed these rule amendments in a September 3, 3013 email to me. Attorney Keating was present at the Committee's September meeting and at the December 2013 public hearing and spoke in support of his proposal to modify the rules to clarify that mileage expenses are separate from the fee caps when a lawyer or guardian ad litem seeks reimbursement for his or her efforts on behalf of a criminal defendant or a parent or juvenile in a child protection matter. He explained that it has been the long-time practice of the Judicial Council to treat mileage expenses as part of the fee cap. He noted that when the Supreme Court reimburses attorneys for work done on appeals, it reimburses mileage separately from the calculation of the fee cap. He stated

that the Judicial Council would like to follow this approach, but would like to have the relevant rules modified to authorize this. He explained that in the past, the Judicial Council's approach has not caused much of a problem because the fee caps were not being strictly enforced. However, now that the fee cap is being enforced, people feel that they are really being "nickel and dimed," which is what has prompted this request. Attorney Keating stated the amendment would probably result in an additional cost of between $5,000 and $10,000.

Attorney Keating stated that he views his proposal to amend Supreme Court Rule 48 to permit payment of attorneys who work on behalf of parents in child protection matters for attending periodic review hearings held in the normal course of a case in the Family Division as merely a housekeeping matter. He noted that the schedule in the rules governing the reimbursement of attorneys for work on behalf of parents in child protection matters does not contain a provision allowing for the payment of attorneys to attend the periodic review hearings held in the normal course of a case in the Family Division.

Following the December 2013 public hearing, the Committee voted to recommend that the Court amend Supreme Court Rules 47, 48 and 48-A, as set forth in Appendices K, L and M.

F. Withdrawal of Court-Appointed Counsel in Criminal and Juvenile Matters

Circuit Court – District Division Rule 1.3(H) & (I), Circuit Court – Family Division Rule 1.20, Circuit Court – Family Division Rule 3.12, Rule 15 of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases filed in Superior Court. This proposal would amend court rules to permit notification of withdrawal in certain circumstances rather than a request to withdraw requiring court approval. These amendments are designed to expedite the appointment of new counsel in those instances where previously appointed counsel must withdraw due to a conflict of interest as defined in the Rules of Professional Conduct.

Judge Kelly proposed this change in an April 8, 2013 letter to Justice Lynn. The Committee voted in June 2013 to put the proposal out for public hearing in December 2013.

At the meeting following the December 2013 public hearing some concerns were expressed about the proposal, relating to the circumstances under which automatic withdrawal would be permitted. There was extensive discussion about this issue, and Justice Lynn asked Attorney Ryan to change

the language of the proposal to state that when the conflict arises close to trial, for example, within two weeks or thirty days of trial, then the withdrawal would have to be approved. Pat Ryan agreed to amend the language and resubmit the proposal.

Attorney Ryan submitted an amended proposal to the Committee at the March 2014 Committee meeting. Following a review of the amended language and brief discussion, the Committee voted to recommend that the Court amend Circuit Court – District Division Rule 1.3(H) and (I), Circuit Court – Family Division Rule 1.20, Circuit Court – Family Division Rule 3.12, and Rule 15 of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases filed in Superior Court, as set forth in Appendices N, O, P, Q.

G. Depositions: Notice or Subpoena Directed to An Organization.

Rule 26 of the Rules of the Superior Court of the State of New Hampshire Applicable in Civil Actions. This amendment would add a provision which would allow a party to name as a deponent a public or private corporation, a partnership, an association, or a governmental agency, and require the named organization to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf.

In October 2013, Judge McNamara requested that the Committee consider recommending the adoption of a rule or rules to allow depositions similar to those permitted by the Federal Rules of Civil Procedure 30(b)(6), which provides:

> Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

The Committee voted in December to put this provision out for public hearing.

Following the June 2014 public hearing, the Committee voted to recommend that the Court amend Rule 26 of the Rules of the Superior Court of the State of New Hampshire Applicable in Civil Actions as set forth in Appendix R.

Following the public hearing and meeting, I received a letter dated June 6, 2014 from attorney Irvin Gordon, expressing concerns about the proposal.

H. Attorney Discipline Rules: Supreme Court Rules 37, 37A and 50.

Supreme Court Rules 37, 37A and 50. These proposed amendments would make the following changes to the rules relating to attorney discipline:

- amend Supreme Court Rule 37(16) to allow disciplinary counsel to participate separately in Supreme Court Disciplinary Proceeding if the PCC recommends greater than a six month suspension and disciplinary counsel believes that the PCC's decision is based on a clearly erroneous factual finding or is erroneous as a matter of law, as recommended by the subcommittee, with further amendment by the Committee;
- amend Supreme Court Rule 37(8) to authorize attorneys in the Attorney Discipline Office to issue subpoenas during the investigative stage of a proceeding, as recommended by the subcommittee, with further amendment by the Committee;
- amend Supreme Court Rule 37A(III)(b) to make prehearing conferences mandatory, add details regarding exhibits, and change the timing in two provisions, as recommended by the subcommittee;
- amend Supreme Court Rule 37(20)(a) to eliminate the requirement that the Attorney Discipline Office retain and make available to the public letters sent to grievants who file complaints against individuals who are not subject to the rules;
- amend Supreme Court Rule 37(20) and delete Supreme Court Rules 37(21) and 37(23) to reorganize the "pre-2000" and the "post-2000" confidentiality and public access rules into a single, unified rule, create retention rules and add a provision to make clear that upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the PCC, as recommended by the subcommittee;
- amend Supreme Court Rule 37A(IV) as part of the reorganization of the confidentiality and public access rules into a single, unified rule, as recommended by the subcommittee;
- amend Supreme Court Rule 37(9) to make clear that suspension

pending final disciplinary proceedings when a certified copy of a court record is filed that indicates that the attorney has been convicted of a serious crime is immediate and summary, as recommended by the subcommittee;

- amend Supreme Court Rule 37(9), to require that any attorney who has been convicted of a crime shall notify the court within ten days of sentencing on the conviction, as recommended by the subcommittee.
- amend Supreme Court Rule 37A(II)(d) to delete the provision relating to "Conviction of Crime; Determination of Serious Crime;"
- amend Supreme Court Rule 37 to adopt a new subsection (9-A) to provide that the Attorney Discipline Office may file a petition for interim suspension alleging that an attorney has engaged in conduct that poses a substantial threat of serious harm to the public, and sets out the process to be followed when such a petition is filed, as recommended by the subcommittee;.
- amend Supreme Court Rule 37A(II)(a)(7) to allow for the waiver of formal proceedings and the filing of stipulations as to facts, rule violations and/or sanction, as recommended by the subcommittee;
- amend Supreme Court Rule 37A(III) to expand upon the rules governing the use and effect of both dispositive and partial stipulations in attorney discipline proceedings, as recommended by the subcommittee;
- amend Supreme Court Rule 37A(I) to add a new subsection (j) to make clear that complainants are not parties to disciplinary matters, as recommended by the subcommittee;
- amend Supreme Court Rule 37A(III)(b) to eliminate the requirement that disciplinary counsel forward a copy of the entire file to the panel, and to add the requirement that disciplinary counsel provide the respondent with bates-stamped copies of all relevant documents at the time of filing of the notice of charges, as recommended by the subcommittee;
- amend Supreme Court Rule 37A(I)(i) to require that a grievance be filed within one year of the conclusion of a civil proceeding involving the same conduct, as recommended by the subcommittee;
- amend Supreme Court Rule 50 to require lawyers to direct a depository institution to provide the New Hampshire Attorney Discipline Office with a notice whenever a trust account contains insufficient funds or shows a negative balance, as recommended by the subcommittee, with further amendment by the Committee.

At its March 2013 meeting, the Committee considered a February 4, 2013 letter and enclosure from Justice Conboy to Justice Lynn. Justice Lynn explained that the Court had reviewed a report from the ABA's Standing

Committee on Professional Discipline. The report made a number of recommendations for changes to the current disciplinary process and court rules. As is stated in Justice Conboy's letter:

> The Supreme Court solicited comments on the ABA report from the Professional Conduct Committee, the New Hampshire Bar Association, and the staff of the Attorney Discipline Office. The court then reviewed the recommendations in the ABA report as well as the comments submitted by these entities, and decided upon the action that should be taken on the recommendations.

Enclosed with Justice Conboy's letter is a summary reflecting the Court's decision regarding each of the recommendations in the ABA report. Regarding each recommendation, the Court either: (1) adopted the recommendation; (2) decided not to adopt the recommendation; or (3) concluded that further review of the ABA recommendations was required before deciding whether the process should be changed. According to Justice Conboy's letter:

> In order to implement the recommendations that the court has approved, it will be necessary to amend Supreme Court Rules 37 and 37A. The Supreme Court requests that the Advisory Committee on Rules draft the amendments necessary to implement the recommendations approved by the Supreme Court. As for the recommendations that the court believes require further study, the court requests that the Advisory Committee on Rules consider these recommendations and submit a recommendation to the court on whether further action should be taken. It suggests that the Advisory Committee on Rules create a subcommittee which includes members of the bar association and individuals involved in the Attorney Discipline process, to solicit input on the recommendations and to recommend whether the changes should be made.

In addition to the recommendations made by the ABA, the Court also requested that the Advisory Committee on Rules consider two additional modifications to the Attorney Discipline System.

A subcommittee, chaired by attorney Herrick, was formed at the March 2013 meeting. The subcommittee, which included attorneys David Rothstein, Derek Lick, Jennifer Parent, Maureen Smith, Mitch Simon, Sara Greene and Elizabeth Murphy, was comprised of practicing attorneys familiar with the current disciplinary process – members of the Professional Conduct Committee, the Attorney Discipline Office and practitioners who have represented respondent attorneys. The subcommittee's recommendations are

set forth in a comprehensive memorandum dated March 6, 2014. The Committee considered each recommendation in turn at its March 14, 2014 meeting and voted to put most of the recommendations out for public hearing in June. *See* March 14, 2014 minutes (summarizing the Committee's discussion about each proposal).

The Committee received two letters regarding the proposal to authorize the Professional Conduct Committee or the Court to order a respondent attorney to forfeit legal fees or pay restitution as a sanction for misconduct. The letters had been distributed to the members of the Committee prior to the public hearing. One letter, dated June 3, 2014 is from attorney Russell Hilliard. The other, dated June 4, 2014 is from attorney William Saturley. Both expressed concern about the proposal, and noted that it would be important to limit or, at least, define the meaning of "restitution." Attorney Saturley also wrote in support of the proposed change to Rule 37(2), concerning non-disciplinary decisions with a warning. No other written comments were submitted to the Committee prior to the hearing.

Attorney Rothstein, Chair of the Professional Conduct Committee, and attorney DeVito, General Counsel of the Attorney Discipline Office, were present at the June 2014 public hearing and offered comment on many of the items put out for public hearing by the Committee. *See* June 6, 2014 minutes, 1(b) (summarizing comments made by attorneys Rothstein and DeVito). Attorney John Funk addressed the Committee on behalf of the New Hampshire Banker's Association regarding the proposal to amend Supreme Court Rule 50. *See* June 6, 2014 minutes, 1(c) (summarizing comments made attorney Funk).

The Committee voted, following the June public hearing, to recommend that that Court make a number of the amendments to Supreme Court Rules 37, 37A and 50 that had been recommended by the subcommittee. The Committee believed that a few of the recommendations made by the subcommittee warranted further discussion, and directed me to place those items on the agenda for the Committee's September meeting.

One of the more controversial amendments proposed by the subcommittee was the proposal to amend Supreme Court Rules 37(20) and 37A(IV) to make all "non-disciplinary decisions with a warning" confidential, but retained for review by the Attorney Discipline Office and the Professional Conduct Committee. Some committee members expressed concern that making these warnings confidential would contradict the public policy decision that was made in 2000 to make changes in the court system to make things more public and would undermine the goal of instilling public confidence in attorneys and the judicial system. Other committee members expressed

concern that warnings are now posted on the Attorney Discipline Office website, which might lead members of the public to erroneously conclude that the attorney has been disciplined. The Committee ultimately voted to recommend that the Court not amend the confidentiality rules as proposed by the subcommittee but to "consider eliminating the warning process."

Following the public hearing, I spoke with Justice Lynn and noted that substantial changes would need to be made to Rule 37A to "eliminate the warning process," and that it seemed that the Committee was recommending an enormous substantive change without having solicited input from the public, the Attorney Discipline Office and the Professional Conduct Committee. The issue that had been put out for public hearing was whether warnings should be made confidential, not whether they should be eliminated. Justice Lynn asked me to state in this Annual Report that the Committee had voted to recommend that warnings be eliminated, but to not include the change in the draft appendices, and to add this item to the Advisory Committee on Rules September agenda.

The amendments that the Committee voted to recommend for adoption following the public hearing in June are set forth in Appendices S, T and U.

I. Superior Court Administrative Rules.

Superior Court Admin. Rules 11-1 et. seq., Superior Court Admin. Rules 12-1 et. seq. These proposed amendments would repeal both sets of rules.

At its September 2012 meeting, the Committee considered a brief memo inquiring about the need for a "rules cleanup" of the Superior Court Administrative Rules. The memorandum noted that Superior Court Administrative Rules 11-1 and 12-1 et. seq. might need to be updated.

Attorney Ray Taylor agreed at the Committee's March 2013 meeting to review the rules and submit a proposal to the Committee to amend them. In March 2014, attorney Taylor reported that the marital master program is now totally obsolete, and that, therefore, the Administrative Rules 12-1 et. seq. should be repealed. After concluding that repeal of the rules would be a technical amendment, and that no public hearing would be required, and upon motion made and seconded, the Committee voted to recommend that the Court repeal Admin. Rules 12-1 et. seq., as set forth in Appendix W.

At the June 2014 meeting, attorney Taylor recommended that the Committee recommend that the Court repeal Administrative Rules 11-1 et. seq. He explained that Administrative Rules 11-1 et. seq. were set up under an

entirely different statutory scheme, and now no longer apply. After concluding that repeal of the rules would be a technical amendment, and that no public hearing would be required, and upon motion made and seconded, the Committee voted to recommend that the Court repeal Admin. Rules 11-1 et. seq., as set forth in Appendix V.

J. Temporary Rules Currently In Effect

Throughout the year, the Supreme Court adopted a number of rule amendments on a temporary basis and referred the rules to the Committee for its recommendation as to whether the rules should be adopted on a permanent basis. A number of the temporary rules are still pending before the Committee.

1. Fees

Supreme Court Rule 49, Rule 169 of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases, Circuit Court – District Division Rule 3.3, Circuit Court – Probate Division Rule 169, Circuit Court – Family Division Rule 1.3.

At its September meeting, the Committee considered a June 26, 2013 order adopting amendments to court rules increasing the fees charged in the New Hampshire Supreme Court and in the New Hampshire trial courts. The fees are intended to provide additional funds to the judicial branch information technology fund for the maintenance of the technology related to the New Hampshire e-Court project. The Committee voted to put the temporary amendments out for public hearing in December 2013.

No comments were received regarding this proposal at the December 2013 public hearing. Upon motion made and seconded, the Committee voted to recommend that the Court adopt on a permanent basis the fee increases that were adopted on a temporary basis, as set forth in Appendices X, Y, Z, AA and BB.

The Committee did not vote to recommend that the Supreme Court hold a public hearing on its annual submission.

Very Truly Yours,

Carolyn A. Koegler
Secretary

APPENDIX A

Amend Supreme Court Rule 50 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 50. Trust Accounts.

(1) *Interest-Bearing Pooled Trust Accounts.* In addition to any individual client trust accounts, a member of the New Hampshire Bar who is not exempt from this requirement pursuant to Rule 50(1)(F) shall create or maintain a pooled, interest-bearing trust account known as "Interest on Lawyers Trust Accounts program" or "IOLTA" account for clients' funds which are nominal in amount or to be held for a short period of time and must comply with the following provisions:

A. An interest-bearing trust account shall be established with any bank or savings and loan association authorized by federal or State law to do business in New Hampshire and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or other financial institution with adequate federal insurance covering client funds ("financial institution"). Funds in each interest-bearing trust account shall be subject to withdrawal upon demand.

B. The rate of interest payable on any interest-bearing trust account shall be the same rate of interest paid by the depository institution for all other holders of similar accounts. Interest rates higher than those offered by the institution on regular checking or savings accounts may be obtained by a lawyer or law firm on some or all deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately.

C. Lawyers, law firms or others acting on their behalf when depositing clients' funds in a pooled, interest-bearing account shall direct the depository institution:

(i) to remit interest or dividends, as the case may be, at least quarterly, to the New Hampshire Bar Foundation; and

(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the account number(s), and rate of interest applied for the reporting period; and

(iii) to transmit to the depositing lawyer or law firm at the same time a report showing the accounts number(s), rate of interest applied for the reporting period, and amount paid to the Foundation.

D. The interest or dividends received by the Foundation shall be used solely by the Foundation for the following purposes:

(i) for the support of civil legal services to the disadvantaged;

(ii) for public education relating to the courts and legal matters;

(iii) for such other programs as may be approved by the supreme court.

Such income shall be applied only to activities permitted to be conducted by organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as from time to time amended.

E. Attorneys, either individually or through their firm organizations, shall complete an annual Trust Accounting Compliance Certificate by August 1 of each year which includes a listing of all interest-bearing trust account(s) for clients' funds under paragraph (1). Any pooled non-interest bearing client trust account(s) must be converted to interest-bearing trust account(s) under provisions of Rule 50(1).

Each attorney who has been on active status at any time during a reporting year must file such a certificate. An attorney who is requesting a change in membership status from active to inactive or retired status, or who is resigning from the New Hampshire Bar, must file such a certificate prior to the submission of the request for change in status or resignation.

F. A lawyer is exempt from the requirement that he or she create or maintain a pooled, interest-bearing trust account known as “Interest on Lawyers Trust Accounts program” or “IOLTA” account if:

(i) the lawyer is not engaged in the private practice of law;

(ii) the lawyer is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law;

(iii) the lawyer is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;

(iv) the nature of the lawyer's practice is such that the lawyer does not hold IOLTA-eligible funds of any client or third person; or

(v) the lawyer does not have an office within the State of New Hampshire, does not have a trust account in a financial institution within the State of New Hampshire, and any trust accounts the lawyer has in a foreign jurisdiction are maintained in compliance with the rules and regulations of that jurisdiction.

[G. Ownership of, or employment by an entity that collects, holds, and disburses closing funds of clients, customers, or third parties related to New Hampshire real estate as, or performs other services customarily performed by an attorney, such as determining marketability of title, preparing contracts, deeds, mortgages or other legal instruments, and conducting closings does not exempt the attorney or entity from compliance with this rule and Rule 50-A. Such activities constitute the practice of law.]

~~G.~~ **[H.]** This rule may be subsequently amended to effectuate its purposes or to comply with any amendments to the Internal Revenue Code.

(2) *Attorney's Financial Records:*

A. *Account Designation.* All funds of clients or third parties received by attorneys in connection with a representation shall be deposited in one or more clearly designated trust accounts (collectively, "client trust accounts"), separate from the attorney's own funds in financial institutions. Any attorney depositing client or third party funds into an out-of-state financial institution shall file a written authorization with the Clerk of the Supreme Court authorizing the Court or its agents to examine and copy such out-of-state account records. Under no circumstances may any attorney deposit client or third party funds with out-of-state financial institutions other than those located in Maine, Vermont, Massachusetts, or the state in which the attorney's office is situated, without obtaining prior written approval from the Supreme Court.

B. *Recordkeeping Generally*. A lawyer who practices in this jurisdiction shall maintain current financial records as provided in these Rules and required by Rule 1.15 of the New Hampshire Rules of Professional Conduct, and shall retain the following records for a period of six years from the time of final distribution:

(i) receipt and disbursement journals or comparable records containing a record of deposits to and withdrawals from each client trust account, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(ii) ledger or comparable records showing, for each separate trust client or beneficiary, the source of all funds deposited in a client trust account for or on their behalf, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

(iii) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(iv) copies of records showing disbursements on behalf of clients or third parties;

(v) the physical or electronic equivalents of all checkbook registers, statements, records of deposits, and canceled checks, provided by a financial institution;

(vi) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(vii) copies of monthly reconciliations of the client trust accounts maintained by the lawyer.

C. *Client Trust Account Safeguards.* With respect to client trust accounts required by Rule 1.15 of the New Hampshire Rules of Professional Conduct:

(i) only a lawyer admitted to practice law in this jurisdiction or, to the extent such person is bonded, a person under the direct supervision of the lawyer shall be an authorized signatory on or may authorize transations with respect to a client trust account;

(ii) attorneys who have authorized persons under their direct supervision to deal with a client trust account shall remain responsible for any and all transactions authorized by such persons;

(iii) each transfer of funds to or from a client trust account by way of electronic funds transfers must be specifically authorized by a party described in Rule 50(2)(C)(i).

(iv) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item;

(v) withdrawals shall be made only by check payable to a named payee and not to cash, or authorized electronic transfer;

(vi) each account at a financial institution that is required by Rule 50, except those accounts excluded by Rule 50-A(3), shall be reconciled by the lawyer or law firm on a monthly basis. Such reconciliation shall disclose (a) the balance of the account according to the financial institution's records; (b) the balance of the account according to the lawyer or law firm's records; (c) a detailed listing of all differences between items (a) and (b); (d) a listing of all clients' and third parties' funds in the accounts as of the reconciliation date; and (e) a detailed listing of all differences between items (b) and (d);

(vii) funds received as retainers shall not be withdrawn from the client trust account of the attorney or law firm until earned;

(viii) all funds received as proceeds of collections or awards on behalf of a client shall be deposited in gross in a client trust account, and shall not be charged with a fee until authorized or permitted distribution; and

(ix) the practice of law in the form of an entity that is permitted by these Rules shall not relieve an attorney from the obligation of compliance with this Supreme Court Rule.

D. *Availability of Records*. Records required by Rule 50(2)(B) and (C) may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer and shall not be dependent upon or solely available to the attorney via access to third party electronic sources.

E. *Dissolution of Law Firm*. Upon dissolution of a law firm, the lawyers shall make reasonable arrangements for the maintenance of the client trust account records specified in Rule 50(2)(B) and (C). The specific details of the arrangements must be provided to the Attorney Discipline Office and to the New Hampshire Bar Association.

F. *Sale of Law Practice*. Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in Rule 50(2)(B) and (C). The specific details of the arrangements must be provided to the Attorney Discipline Office and the New Hampshire Bar Association.

APPENDIX B

Amend Supreme Court Rule 50-A as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 50-A. Certification Requirement

(1) In order to assure compliance with the requirements of Rule 50 and in order to ascertain that the records and accounts described in Rule 50 are properly maintained, all attorneys and foreign legal consultants licensed to practice in the State of New Hampshire, whether in private practice or not, other than those in inactive status, shall individually or through their firm organizations file an annual Trust Accounting Certificate of Compliance on or before August 1st of each year. For purposes of this rule, an attorney shall not be considered to be "in inactive status" if the attorney's New Hampshire Bar Association membership status was active at any time during the one-year period beginning on June 1 of the year preceding the reporting year and ending on May 31 of the reporting year. The Trust Accounting Certificate of Compliance shall certify to one of ~~two~~ **[three]** things:

A. That the attorney or foreign legal consultant does not maintain a trust account and does not possess any assets or funds of clients **[or third persons dealing with clients]**; or

[B. That the attorney is an owner or employee of an entity that collects, holds and disburses closing funds of clients, customers or third parties related to New Hampshire real estate, or performs other closing or title related services customarily performed by an attorney, such as determining marketability of title, preparing contracts, deeds, mortgages and other legal instruments, and conducting closings, and that all client and third party funds are held in full compliance with the requirements of Rule 50.]

~~B~~**[C.]** That client funds maintained by the attorney or foreign legal consultant are held in accounts in full compliance with the requirements of Rule 50.

A prescribed Trust Accounting Certificate of Compliance form will be sent to the attorney or foreign legal consultant annually by the New Hampshire Bar Association with the attorney's annual dues and court fees assessments or foreign legal consultant's annual dues and court fees assessments. The self-certification may be completed by the attorney or foreign legal consultant or by

a private accountant employed for this purpose by the attorney or foreign legal consultant. The completed Trust Accounting Certificate of Compliance forms shall be filed with the New Hampshire Supreme Court by delivery to the New Hampshire Bar Association by August 1st of each year. The self-certification procedure shall be supplemented by annual compliance checks by an accountant selected by the Supreme Court. The accountant's purpose in conducting a compliance check will be to determine whether the minimum standards set forth in Rule 50 are being maintained. All information obtained by the accountant shall remain confidential except for purposes of transmitting notice of violations to the Professional Conduct Committee or the Supreme Court. The information derived from such compliance checks shall not be disclosed by anyone in such a way as to violate the attorney-client privilege except by express order from the Supreme Court. The certification requirements of this rule shall not apply to any full-time judge, full-time marital master, or full-time supreme, superior, and district court clerk or deputy clerk, except that the certification requirement shall apply where such judge, marital master, clerk, or deputy clerk was in the active practice of law at any time during the twelve (12) months immediately preceding August 1st of any year.

(2) An attorney or foreign legal consultant who fails to comply with the requirements of Rule 50 with respect to the maintenance, availability, and preservation of accounts and records, who fails to file the required annual Trust Accounting Certificate of Compliance, or who fails to produce trust account records as required shall be deemed to be in violation of Rule 1.15 of the Rules of Professional Conduct and the applicable Supreme Court Rule. Unless upon petition to the Supreme Court an extension has been granted, failure to file the required annual Trust Accounting Certificate of Compliance by August 1st shall, in addition, subject the attorney or foreign legal consultant to one or more of the following penalties and procedures:

A. A fine of $100 for each month or fraction thereof after August 1st in which the Trust Accounting Certificate of Compliance remains unfiled; in addition, an attorney or foreign legal consultant who has been fined $300 or more under this section may be suspended from the practice of law in this State;

B. Audit of the attorney's or foreign legal consultant's trust accounts and other financial records at the expense of the attorney or foreign legal consultant, if the certificate remains unfiled on December 1st; and

C. Based upon results of the audit, initiation of proceedings for further sanctions, including suspension.

Any check, draft or money order received as payment of any fine imposed pursuant to this rule, which is returned to the court as uncollectable, shall be returned to the sender and shall not constitute payment of the fine. Whenever any check, draft or money order issued in payment of any fine imposed pursuant to this rule is returned to the court as uncollectable, the court shall charge a fee of $25, plus all protest and financial institution fees, in addition to the amount of the check, draft or money order to the person presenting the check, draft or money order to cover the costs of collection. The fine shall not be considered paid until the fine plus all fees have been paid.

Reinstatement following a suspension ordered pursuant to Rule 50-A(2)(A) above shall be only by order of the Supreme Court, upon petition to the court following the filing of the Trust Accounting Certificate of Compliance and payment of the fine. If the petition is filed more than one year after the date of the order suspending the person from the practice of law in this State, then the petition shall be accompanied by evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness. If the evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness, are satisfactory to the court, the court may order reinstatement upon such conditions as it deems appropriate.

If the evidence of continuing competence and learning in the law is not satisfactory to the court, the court shall refer the motion for reinstatement to the Professional Conduct Committee for referral to a panel of the hearings committee. The hearing panel shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competency and learning in law required for reinstatement. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the Professional Conduct Committee. The Professional Conduct Committee shall review the report of the hearings committee panel, the record and the hearing transcript and shall file its own recommendations and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument, if any, the court shall enter a final order.

If the evidence of continuing moral character and fitness is not satisfactory to the court, the court shall order the applicant to file with the committee on character and fitness and with the clerk of the supreme court the petition and questionnaire referred to in Supreme Court Rule 42(5)(e). Further proceedings shall be governed by Rule 42.

(3) Except for requirements of Rule 50, subparagraph (2)A, requiring the inclusion of probate accounts in the index of trust accounts, the provisions of Rule 50, paragraph (2), and of this Rule 50-A shall not apply to probate accounts (including estate, testamentary trusts, guardian, and conservator accounts).

(4) The Supreme Court may at any time order an audit of such financial records or trust accounts of an attorney or foreign legal consultant, and take such other action as it deems necessary to protect the public.

APPENDIX C

Amend Rule 12 of the Superior Court of the State of New Hampshire Applicable in Civil Actions as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 12. Motions – Specific

(a) *Motions to Amend.*

(1) No plaintiff shall have leave to amend a pleading, unless in matters of form, after a default until the defendant has been provided with notice and an opportunity to be heard, to show cause why the amendment should not be allowed.

(2) Amendments in matters of form will be allowed or ordered, as of course, on motion; but, if the defect or want of form be shown by the adverse party, the order to amend will be made on such terms as justice may require.

(3) Amendments in matters of substance may be made on such terms as justice may require.

(4) Amendments may be made to the Complaint or Answer upon the order of the court, at any time and on such terms as may be imposed.

(b) *Motions to Consolidate.* Whenever a Motion is filed in any county requesting the transfer of an action there pending to another county for trial with an action there pending, arising out of the same transaction or event or involving common issues of law, and/or fact, the court may, after notice to all parties in all such pending actions and hearing, make such order for consolidation in any one of such counties in which such actions are pending, as justice and convenience require.

(c) *Motions to Continue.*

(1) Continuances may be granted upon such terms as the court shall order.

(2) All motions for continuance or postponement shall be signed and dated by the attorney, non-attorney representative, or self-represented

party filing such motion. Any other party wishing to join in any such motion shall also do so in writing. Each such motion shall contain a certification by the attorney, non-attorney representative, or self-represented party filing such motion that the party so filing the motion has been notified of the reasons for the continuance or postponement, has assented thereto either orally or in writing, and has been forwarded a copy of the motion.

(3) Where a trial has been scheduled in one case prior to the scheduling of another matter in another court, or elsewhere, where an attorney, non-attorney representative or self-represented party has a conflict in date and time, the case first scheduled shall not be subject to a continuance because of the subsequently scheduled matter which is in conflict as to time and date except as follows:

(a) A subsequently scheduled case involving trial by jury in a Superior, or Federal District Court, or argument before the Supreme Court.

(b) Unusual circumstances causing the respective courts to agree that an order of precedence other than the above shall take place.

(d) *Motions to Dismiss.* Upon request of a party, hearings on motions to dismiss shall be scheduled as soon as practicable, but no later than 30 days prior to the date set for trial on the merits, unless the court shall otherwise order in the exercise of discretion. All parties shall be prepared, at any such hearing, to present all necessary arguments.

(e) *Motions to Reconsider.* A Motion for Reconsideration or other post-decision relief shall be filed within 10 days of the date on the written Notice of the order or decision, which shall be mailed by the clerk on the date of the Notice. The Motion shall state, with particular clarity, points of law or fact that the court has overlooked or misapprehended and shall contain such argument in support of the Motion as the movant desires to present; but the motion shall not exceed 10 pages. To preserve issues for an appeal to the Supreme Court, an appellant must have given the court the opportunity to consider such issues; thus, to the extent that the court, in its decision, addresses matters not previously raised in the case, a party must identify any alleged errors concerning those matters in a motion under this rule to preserve such issues for appeal. A hearing on the motion shall not be permitted except by order of the court.

(1) No Answer or Objection to a Motion for Reconsideration or other post-decision relief shall be required unless ordered by the court.

(2) If a Motion for Reconsideration or other post-decision relief is granted, the court may revise its order or take other appropriate action without rehearing or may schedule a further hearing.

(3) The filing of a motion for reconsideration or other post-decision relief shall not stay any order of the court unless, upon specific written request, the court has ordered such a stay.

Commentary:

The third sentence of the first paragraph derives from *N.H. Dep't of Corrections v. Butland*, 147 N.H. 676, 679 (2002), and is not intended to preclude a party from raising an issue on appeal under the plain error rule set forth in Supreme Court Rule 16-A.

(f) *Motions to Recuse.* All grounds for recusal that are known or should reasonably be known prior to trial or hearing shall be incorporated in a written motion for recusal and filed promptly with the court. Grounds for recusal that first become apparent at the time of or during the hearing shall be immediately brought to the attention of the court. Failure to raise a ground for recusal shall constitute a waiver as specified herein of the right to request recusal on such ground. If a record of the proceedings is not available, the court shall make a record of the request, the court's findings, and its order. The court's ruling on the motion shall issue promptly. If the motion is denied, the court's ruling shall be supported by findings of fact with respect to the allegations contained in the motion.

(g) *Motions for Summary Judgment.*

(1) Motions for summary judgment shall be filed, defended and disposed of in accordance with the provisions of RSA 491:8-a as amended. Such motions and responses thereto shall provide specific page, paragraph, and line references to any pleadings, exhibits, answers to interrogatories, depositions, admissions, and affidavits filed with the court in support of or in opposition to the Motion for Summary Judgment. Only such materials as are essential and specifically cited and referenced in the Motion for Summary Judgment, responses, and supporting memoranda shall be filed with the court. In addition, except by permission of the court received in advance, no such motion, response, or supporting memorandum of law shall exceed 20 double-spaced pages. The purpose of this rule is to avoid unnecessary and duplicative filing of materials with the court. Excerpts of documents and discovery materials shall be used whenever possible.

(2) The non-moving party shall have 30 days to respond to a motion for summary judgment, unless another deadline is established by agreement of the parties or order of the court.

(3) Where a plaintiff successfully moves for summary judgment on the issue of liability or a defendant concedes liability and the case proceeds to trial by jury, the parties must provide the trial judge with a statement of agreed facts sufficient to explain the case to the jury and place it in a proper context so that the jurors might more readily understand what they will be hearing in the remaining portion of the trial. The court shall present the jury with the agreed statement of facts. Absent such an agreement on facts, the court shall provide such a statement.

[(h) *Motions to Seal.*

The following procedure shall be followed when a party or other person with standing seeks to have the case record or a portion of the case record determined to be confidential by the superior court:

(1) Any party or other person with standing who seeks a determination that a case record or a portion of a case record is confidential shall file a motion to seal the case record or the portion of the case record in question. The motion shall state the authority for confidentiality, i.e., the statute, administrative or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. Upon filing of the motion to seal, the case record or the portion of the case record which is the subject of the motion shall be kept confidential pending a ruling on the motion.

(2) Within 30 days of filing, the court shall review the motion to seal and determine whether the case record or the portion of the case record that is the subject of the motion shall be confidential.

(3) An order will be issued setting forth the ruling on the motion to seal.

(4) If the court denies the motion to seal in whole or in part,

(a) Within 7 days after entry of the order denying the motion, the moving party may withdraw the temporarily sealed document by filing a notice of withdrawal.

(i) if the document is withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must make the document inaccessible to the parties and the public.

(ii) if the document is not withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must unseal the document.

(b) A document that is withdrawn is not part of the record and will not be considered by the court unless the document is refiled as a public document.]

APPENDIX D

Adopt Rule 59-B of the Rules Superior Court of the State of New Hampshire Applicable in Criminal Cases as follows:

The following procedure shall be followed when a party or other person with standing seeks to have the case record or a portion of the case record determined to be confidential by the superior court:

(1) Any party or other person with standing who seeks a determination that a case record or a portion of a case record is confidential shall file a motion to seal the case record or the portion of the case record in question. The motion shall state the authority for confidentiality, i.e., the statute, administrative or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. Upon filing of the motion to seal, the case record or the portion of the case record which is the subject of the motion shall be kept confidential pending a ruling on the motion.

(2) Within 30 days of filing, the court shall review the motion to seal and determine whether the case record or the portion of the case record that is the subject of the motion shall be confidential.

(3) An order will be issued setting forth the ruling on the motion to seal.

(4) If the court denies the motion to seal in whole or in part,

(a) Within 7 days after entry of the order denying the motion, the moving party may withdraw the temporarily sealed document by filing a notice of withdrawal.

(i) if the document is withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must make the document inaccessible to the parties and the public.

(ii) if the document is not withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must unseal the document.

(b) A document that is withdrawn is not part of the record and will not be considered by the court unless the document is refiled as a public document.

APPENDIX E

Amend Rule 1.8 of the Rules of the Circuit Court of the State of New Hampshire-District Division as follows (additions are in **[bold and in brackets]**):

Rule 1.8. Motions.

A. Any request for action by the Court shall be by motion. All motions, other than those made during trial or hearing, shall be made in writing unless otherwise provided by these rules. They shall state with particularity the grounds upon which they are made and shall set forth the relief or order sought.

B. In any case, other than small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, *see* http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, the Court will not hear any motion grounded upon facts unless they are verified by affidavit, or are apparent from the record or from the papers on file in the case, or are agreed to and stated in writing signed by the parties or their attorneys; and the same rule will be applied as to all facts relied on in opposing any motion.

In small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, *see* http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, the Court will not hear any motion grounded upon facts, unless the moving party indicates in writing an understanding that making a false statement in the pleading may subject that party to criminal penalties, or the facts are apparent from the record or from the papers on file in the case, or are agreed to and stated in writing signed by the parties or their attorneys; and the same rule will be applied as to all facts relied on in opposing any motion.

C. Any party filing a motion shall certify to the Court that a good faith attempt to obtain concurrence in the relief sought has been made, except in the case of dispositive motions, motions for contempt or sanctions, or comparable motions where it can be reasonably assumed that the party or counsel will be unable to obtain concurrence.

D. In any case, other than small claims cases filed in district division locations in which the electronic filing pilot program has been implemented,

see http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, unless the opposing party requests a hearing upon any motion and sets forth the grounds of the objection by a pleading and, if required, an affidavit within ten days after the filing of the motion, that party shall be deemed to have waived a hearing and the court may act thereon.

In small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, unless the opposing party requests a hearing upon any motion and sets forth the grounds of the objection by a pleading and, if required, a written statement indicating an understanding that making a false statement in the pleading may subject that party to criminal penalties, within ten days after the filing of the motion, that party shall be deemed to have waived a hearing and the court may act thereon.

E. Any motion which is capable of determination without the trial of the general issue shall be raised before trial, but may, in the discretion of the Court, be heard during trial.

F. The Court may assess reasonable costs, including reasonable counsel fees, against any party whose frivolous or unreasonable conduct makes necessary the filing of or hearing on any motion.

G. Motions to dismiss will not be heard prior to the trial on the merits, unless counsel shall request a prior hearing, stating the grounds therefor; all counsel shall be prepared, at any such hearing, to present all necessary evidence.

[(H) Motions to Seal. The following procedure shall be followed when a party or other person with standing seeks to have the case record or a portion of the case record determined to be confidential by the circuit court-district division:

(1) Any party or other person with standing who seeks a determination that a case record or a portion of a case record is confidential shall file a motion to seal the case record or the portion of the case record in question. The motion shall state the authority for confidentiality, i.e., the statute, administrative or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. Upon filing of the motion to seal, the case record or the portion of the case record which is the subject of the motion shall be kept confidential pending a ruling on the motion.

(2) Within 30 days of filing, the court shall review the motion to seal and determine whether the case record or the portion of the case record that is the subject of the motion shall be confidential.

(3) An order will be issued setting forth the ruling on the motion to seal.

(4) If the court denies the motion to seal in whole or in part,

(a) Within 7 days after entry of the order denying the motion the moving party may withdraw the temporarily sealed document by filing a notice of withdrawal.

(i) if the document is withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must make the document inaccessible to the parties and the public.

(ii) if the document is not withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must unseal the document.

(b) A document that is withdrawn is not part of the record and will not be considered by the court unless the document is refiled as a public document.]

APPENDIX F

Adopt Rule 58-B of the Rules of the Circuit Court of the State of New Hampshire-Probate Division as follows:

58-B. MOTIONS TO SEAL

The following procedure shall be followed when a party or other person with standing seeks to have the case record or a portion of the case record determined to be confidential by the circuit court-probate division:

(1) Any party or other person with standing who seeks a determination that a case record or a portion of a case record is confidential shall file a motion to seal the case record or the portion of the case record in question. The motion shall state the authority for confidentiality, i.e., the statute, administrative or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. Upon filing of the motion to seal, the case record or the portion of the case record which is the subject of the motion shall be kept confidential pending a ruling on the motion.

(2) Within 30 days of filing, the court shall review the motion to seal and determine whether the case record or the portion of the case record that is the subject of the motion shall be confidential.

(3) An order will be issued setting forth the ruling on the motion to seal.

(4) If the court denies the motion to seal in whole or in part,

(a) Within 7 days after entry of the order denying the motion, the moving party may withdraw the temporarily sealed document by filing a notice of withdrawal.

(i) if the document is withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must make the document inaccessible to the parties and the public.

(ii) if the document is not withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must unseal the document.

(b) A document that is withdrawn is not part of the record and will not be considered by the court unless the document is refiled as a public document.]

APPENDIX G

Amend Rule 1.26 of the Rules of the Circuit Court of the State of New Hampshire-Family Division as follows:

1.26 Motions:

A. Parties may not address written communications directly to the judge. All requests shall be by properly filed motion with certification of delivery of a copy of the motion to the other party, unless jointly filed. No exhibits shall be attached to motions unless necessary to support an affidavit.

B. The court will not hear any motion based upon facts unless the facts are verified by affidavit, or are already contained in the court record. No exhibits shall be attached to motions unless necessary to support an affidavit. The same rule will be applied as to all facts relied upon in objections to any motions.

C. Any party filing a motion shall certify to the court that a good faith attempt has been made to obtain concurrence in the relief sought, except in the case of dispositive motions, motions for contempt or sanctions, or comparable motions where it can be reasonably assumed that the party or counsel will be unable to obtain concurrence.

D. Motions to which all parties assent or concur will be ruled upon as court time permits.

E. Motions that are not assented to will be held for 10 days from the filing date of the motion to allow other parties time to respond, unless justice requires an earlier Court ruling.

F. *Motions to Reconsider:* A motion for reconsideration or other post-decision relief shall be filed within ten (10) days of the date on the Clerk's written notice of the order or decision, which shall be mailed by the Clerk on the date of the notice. The motion shall state, with particular clarity, points of law or fact that the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present; but the motion shall not exceed ten (10) pages. To preserve issues for an appeal to the Supreme Court, an appellant must have given the Court the opportunity to consider such issues; thus, to the extent that the Court, in its decision, addresses matters not previously raised in the case, a party must identify any alleged errors concerning those matters in a motion under this rule to preserve

such issues for appeal. A hearing on the motion shall not be permitted except by order of the Court.

No answer to a motion for reconsideration or other post-decision relief shall be required unless ordered by the Court, but any answer or objection must be filed within ten (10) days of notification of the motion.

If a motion for reconsideration or other post-decision relief is granted, the court may schedule a further hearing.

The filing of a motion for reconsideration or other post-decision relief shall not stay any order of the Court unless, upon specific written request, the Court has ordered such a stay.

Commentary:

The third sentence of paragraph [1] derives from *N.H. Dep't of Corrections v. Butland*, 147 N.H. 676, 679 (2002), and is not intended to preclude a party from raising an issue on appeal under the plain error rule set forth in Supreme Court Rule 16-A.

[G. *Motions to Seal.* The following procedure shall be followed when a party or other person with standing seeks to have the case record or a portion of the case record determined to be confidential by the circuit court-family division:

(1) Any party or other person with standing who seeks a determination that a case record or a portion of a case record is confidential shall file a motion to seal the case record or the portion of the case record in question. The motion shall state the authority for confidentiality, i.e., the statute, administrative or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. Upon filing of the motion to seal, the case record or the portion of the case record which is the subject of the motion shall be kept confidential pending a ruling on the motion.

(2) Within 30 days of filing, the court shall review the motion to seal and determine whether the case record or the portion of the case record that is the subject of the motion shall be confidential.

(3) An order will be issued setting forth the ruling on the motion to seal.

(4) If the court denies the motion to seal in whole or in part,

(a) Within 7 days after entry of the order denying the motion, the moving party may withdraw the temporarily sealed document by filing a notice of withdrawal.

(i) if the document is withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must make the document inaccessible to the parties and the public.

(ii) if the document is not withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must unseal the document.

(b) A document that is withdrawn is not part of the record and will not be considered by the court unless the document is refiled as a public document.]

APPENDIX H

Amend Supreme Court Rule 12(2) as follows (additions are in **[bold and in brackets]**:

(2) **Procedure For Requesting Confidentiality of a Case Record or a Portion of a Case Record in a Supreme Court Case.**

(a) Case Record or Portion of Case Record That Has Already Been Determined to be Confidential. The appealing party shall indicate on the notice of appeal form or in the appeal document, e.g., appeal from administrative agency, that the case record or a portion of the case record was determined to be confidential by the trial court, administrative agency, or other tribunal, and shall cite the authority for confidentiality, e.g., the statute, administrative or court rule, or court order providing for confidentiality. Upon filing, the portion of the case record determined to be confidential by the trial court, administrative agency, or other tribunal shall remain confidential. Whenever a party files a pleading or other document that is confidential in part or in its entirety, the party shall identify, by cover letter or otherwise, in a conspicuous manner, the portion of the materials filed that is confidential.

(b) Cases in Which There Has Been No Prior Determination of Confidentiality. The following procedure shall be followed when a party or other person with standing seeks to have the case record or a portion of the case record determined to be confidential by the supreme court:

(1) Any party or other person with standing who seeks a determination that a case record or a portion of a case record is confidential shall file a motion to seal the case record or the portion of the case record in question. The motion shall state the authority for confidentiality, i.e., the statute, administrative or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. Upon filing of the motion to seal, the case record or the portion of the case record which is the subject of the motion shall be kept confidential pending a ruling on the motion.

(2) Within 30 days of filing, a motion to seal will be reviewed by a single justice of the court who shall determine whether the case record or the portion of the case record that is the subject of the

motion shall be confidential or who may refer the motion to the full court for a ruling.

(3) An order will be issued setting forth the ruling on the motion to seal.

[(4) If the court denies the motion to seal in whole or in part,

(a) Within 7 days after entry of the order denying the motion, the moving party may withdraw the temporarily sealed document by filing a notice of withdrawal.

(i) if the document is withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must make the document inaccessible to the parties and the public.

(ii) if the document is not withdrawn within 7 days after entry of the order denying the motion to seal, the clerk must unseal the document.

(b) A document that is withdrawn is not part of the record and will not be considered by the court unless the document is refiled as a public document.]

(c) Court Action When Confidentiality is Required.

(1) The failure of a party or other person with standing to request that a case record or a portion of a case record be confidential shall not preclude the court from determining on its own motion that a statute, administrative or court rule, or other compelling interest requires that a case record or a portion of a case record proceeding be kept confidential.

(2) Before sealing a case record or a portion of a case record other than a case record or a portion of a case record that was determined to be confidential by the trial court, administrative agency, or other tribunal, a single justice or the court shall determine that there is a basis for keeping the case record confidential.

(3) If a single justice or the court determines that a case record or a portion of a case record should be confidential, an order will be issued setting forth the ruling.

(d) Access to Supreme Court Orders On Confidentiality. Every order of the supreme court that a case record or a portion of a case record is confidential shall be available for public inspection. Information which would compromise the court's determination of confidentiality, e.g., the name of a juvenile, shall be redacted.

APPENDIX I

Amend Rule 14 of the Superior Court of the State of New Hampshire Applicable in Criminal Cases Filed in Superior Court and in Domestic Relations Cases Filed in the Cheshire County Superior Court as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

14. (a) The names of the attorneys or parties, who conduct each cause, shall be entered upon the docket; and if the defendant shall neglect to enter an appearance within seven days after the return day of the writ, he shall be defaulted, and judgment shall be rendered accordingly; and no such default shall be stricken off, except by agreement, or by order of the Court upon such terms as justice may require, upon motion and affidavit of defense, specifically setting forth the defense and the facts on which the defense is based.

(b) Special appearances shall be deemed general thirty days after the return day of the action, unless a special plea or motion to dismiss is filed within that time.

(c) No person who is not a lawyer will be permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, unless of good character and until there is on file with the Clerk: (1) a power of attorney signed by the party for whom he or she seeks to appear and witnessed and acknowledged before a Justice of the Peace or Notary Public, constituting said person his or her attorney to appear in the particular action; and (2) an affidavit under oath in which said person discloses (a) all of said person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (b) all instances in which said person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, (c) all prior proceedings in which said person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court, (d) all prior proceedings in which said person has not been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court, and (e) all prior proceedings in which said person's permission to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court has been revoked. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional

Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

(d) *Limited Appearance of Attorneys.* To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney providing limited representation to an otherwise unrepresented litigant may file a limited appearance in a non-criminal case on behalf of such unrepresented party. The limited appearance shall state precisely the scope of the limited representation, and the attorney's involvement in the matter shall be limited only to what is specifically stated. The requirements of Superior Court Rule 15(a), (b) and (c) shall apply to every pleading and motion signed by the limited representation attorney. An attorney who has filed a limited appearance, and who later files a pleading or motion outside the scope of the limited representation, shall be deemed to have amended the limited appearance to extend to such filing. An attorney who signs a writ, petition, counterclaim, cross-claim or any amendment thereto which is filed with the court, will be considered to have filed a general appearance and, for the remainder of that attorney's involvement in the case, shall not be considered as a limited representation attorney under these rules; provided, however, if such attorney properly withdraws from the case and the withdrawal is allowed by the Court, the attorney could later file a limited appearance in the same matter.

(e) *Automatic Withdrawal of Court-Appointed Counsel in Criminal Cases.* In all criminal cases, the appearance of counsel for the defendant shall be deemed to be withdrawn thirty (30) days after sentence is imposed unless the sentence imposed was a deferred sentence or unless a post-sentencing motion is filed within said thirty (30) day period. Where a deferred sentence is imposed, the appearance of counsel for the defendant shall be deemed to be withdrawn thirty (30) days after the deferred sentence is brought forward or suspended. Where a post-sentencing motion is filed within thirty (30) days after imposition of sentence, the appearance of counsel for the defendant shall be deemed to be withdrawn thirty (30) days after the court rules on said motion. Provided, however, that in any criminal case in which an appeal to the supreme court is filed, trial counsel shall remain responsible for representing the defendant in the supreme court pursuant to Supreme Court Rule 32.

[(f) *Continuity of Counsel in Circuit and Superior Courts.* Where a defendant in a criminal case has filed a financial affidavit and has been determined to be eligible for court-appointed counsel in the circuit court, the defendant shall not be required to file a new financial affidavit upon the appeal or transfer of the same case to the superior court unless facts are brought to the court's attention indicating that there has been a substantial change in the defendant's financial circumstances.

Notwithstanding subsection (e) of this rule, when counsel appears for a defendant in a criminal case in the circuit court, said appearance shall be deemed to continue upon any appeal or transfer of the same case to the superior court and until the case is finally disposed of in the trial courts.]

APPENDIX J

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.

APPENDIX K

Amend Supreme Court Rule 47 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 47. Counsel Fees And Expenses-Indigent Criminal Cases.

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which assigned counsel is appointed to represent indigent criminal defendants.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: $60 per hour. The paralegal hourly rate shall not exceed $35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time to and from meetings with an incarcerated defendant shall be compensable; otherwise, travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee for misdemeanors: $1,400.

(c) Maximum fee for felonies: $4,100.

(d) Maximum fee (per co-counsel) for homicides under RSA 630:1-2: $20,000.

(e) Maximum fee for Supreme Court appeal: $2,000.

Only upon an express, written finding of good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

When assigned counsel is appointed in district court, that counsel shall continue as counsel of record for all purposes (such as motions to reduce bail, waiver of indictments, etc.) until and unless new counsel is appointed by superior court. The appointment of counsel shall occur in accordance with RSA 604-A:2, II. The public defender shall be appointed if that office is available. In the event that the public defender program is not available, the appointment of a contract attorney shall occur, if such an attorney is available. Lastly, in the event that neither the public defender nor a contract attorney is available, the appointment of a qualified attorney under RSA 604-A:2, I, shall occur.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* **[In addition to the fees and fee caps listed in Section (2), above,]** ~~I~~**[i]**nvestigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court in accordance with RSA 604-A:6, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(g) The expense of telephone calls shall not be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

NOTE: Appointed counsel for witnesses is covered under Rule 48 of the Supreme Court Rules.

APPENDIX L

Amend Supreme Court Rule 48 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 48. Counsel Fees and Expenses -- Other Indigent Cases and Parental Notification Cases

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which counsel is appointed to represent indigent persons, other than criminal defendants, and indigent witnesses in appropriate circumstances, and minors (whether or not indigent) in parental notification cases under RSA 132:34. This rule refers to, but is not limited to, juvenile cases in the district court, guardianships under RSA chapter 464-A, termination of parental rights (TPR) under RSA chapter 170-C, and involuntary admissions under RSA chapter 135-C in the probate court and district court.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: $60 per hour. The paralegal hourly rate shall not exceed $35.00 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee for all juvenile cases pursuant to RSA chapters 169-B, C, and D: $1,700.

(c) De novo appeal of juvenile cases pursuant to RSA chapter 169-C: $1,400.

(d) Maximum fee for guardianships under RSA chapters 463 or 464-A:

(i) RSA chapter 463: $1,200;

(ii) RSA chapter 464-A: $900.

(e) Maximum fee for annual review hearings for guardianships: $300.

(f) Maximum fee for TPR cases pursuant to RSA chapter 170-C: $1,700.

(g) Maximum fee for involuntary admissions under RSA chapter 135-C: $600.

(h) Appeals to the supreme court, other than parental notification cases, in all juvenile cases and any matters within the subject matter jurisdiction of the probate court: $2,000.

(i) Maximum fee for court review hearings of juvenile cases pursuant to RSA 169-B**[, C]** and D: $300.

(j) Maximum fee for parental notification cases pursuant to RSA 132:34, excluding any appeal to the supreme court: $1,000.

(k) Maximum fee for appeals to the supreme court in parental notification cases pursuant to RSA 132:34: $500.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized.

In any case filed before July 12, 2011, any petition to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

In any case filed on or after July 12, 2011, any petition to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded. In any such case, fees in excess of the maximum compensation in this rule will be paid only if the administrative judge of the circuit court or the chief justice of the superior court, as the case may be, certifies the good cause and exceptional circumstances justifying the excess fees.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* **[In addition to the fees and fee caps listed in Section (2) above,]** ~~I~~**[i]**nvestigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(g) The expense of telephone calls shall not be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

APPENDIX M

Amend Supreme Court Rule 48-A as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 48-A. Guardians Ad Litem Fees -- Indigent Cases and Parental Notification Cases

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* The provisions of this rule shall only apply to proceedings within the original jurisdiction of the district and probate courts, in which guardians ad litem are appointed, and the party responsible for payment is indigent, and parental notification cases under RSA 132:34.

Maximum guardian ad litem compensation as authorized by the administrative justice shall be limited as follows:

(a) Time properly chargeable to case: $60 per hour. Travel time is not a compensable event unless expressly authorized by the court in advance for exceptional circumstances.

(b) Maximum fee for abuse and neglect cases through conclusion of dispositional hearing pursuant to RSA 169-C:19: $1,400.

(c) Maximum fee for CHINS cases (169-D) or delinquency cases (169-B) through conclusion: $900.

(d) Maximum fee for court review hearings in guardianship of minor or adult cases or abuse and neglect case: $300.

(e) Maximum fee for TPR case (170-C): $1,400.

(f) Maximum fee for appeals to the superior court: $900.

(g) Maximum fee for guardianship cases pursuant to RSA chapters 463 or 464-A: $1,400.

(h) Maximum fee for parental notification cases pursuant to RSA 132:34, excluding any appeal to the supreme court: $1,000.

(i) Maximum fee for appeals to the supreme court in parental notification cases pursuant to RSA 132:34: $500.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized.

In any case filed before July 12, 2011, any petition to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

In any case filed on or after July 12, 2011, any petition to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded. In any such case, fees in excess of the maximum compensation in this rule will be paid only if the administrative judge of the circuit court or the chief justice of the superior court, as the case may be, certifies the good cause and exceptional circumstances justifying the excess fees.

When a guardian ad litem represents more than one client on any particular day, the hours spent shall be allocated accordingly. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses - Reimbursable.* **[In addition to the fees and fee caps listed in Section (2), above,]** ~~I~~**[i]**nvestigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(c) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(d) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(e) Guardians ad litem shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(f) The expense of telephone calls shall not be reimbursed.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

APPENDIX N

Amend Circuit Court – District Division Rule 1.3(H) and (I) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

H. In a criminal case, whenever the Court approves the withdrawal of appointed defense counsel, the Court shall appoint substitute counsel forthwith and notify the defendant of said appointment by mail. **[Notwithstanding I(1) (below), if appointed counsel in a criminal matter must withdraw due to a conflict of interest as defined by Rules 1.7(a), 1.9(a) & (b) and/or 1.10(a), (b) & (c) of the New Hampshire Rules of Professional Conduct, counsel shall forward a Notice of Withdrawal to the court and substitute counsel shall be appointed forthwith. Court approval of a withdrawal shall not be required in this circumstance unless the Notice of Withdrawal is filed less than 20 days from the date of a trial in which case Court approval shall be required. Automatic withdrawal shall not be allowed an court approval shall be required if the basis for the withdrawal is a breakdown in the relationship with the client, the failure of the client to pay legal fees, or any other conflict not specifically set forth in Rules 1.7(a), 1.9(a) & (b) and/or 1.10(a), (b), & (c) of the New Hampshire Rules of Professional Conduct.]**

I. (1) Other than limited representation by attorneys as allowed by Rule 1.3.D.(2), and Professional Conduct Rule 1.2(f) **[and except as provided in Rule 1.3(H)]**, no attorney shall be permitted to withdraw that attorney's appearance in a case after the case has been scheduled for trial or hearing, except upon motion to permit such withdrawal granted by the Court for good cause shown, and on such terms as the Court may order. Any motion to withdraw filed by counsel shall clearly set forth the reason therefor and contain a certification that copies have been sent to all other counsel or opposing parties, if appearing pro se, and to counsel's client at the client's last known address, which shall be fully set forth within the body of the motion. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the attorney's services.

Upon receipt of a motion to withdraw, the Clerk shall schedule a hearing before the Court. Notice by mail shall be sent to all counsel of record, or parties if unrepresented by counsel, and to the client of withdrawing counsel, at the client's last known address as set forth in the motion.

If withdrawing counsel's client fails to appear at said hearing, the Court may, in its discretion, and without further notice to said client, order the trial date continued or make such other order as justice may require.

APPENDIX O

Amend Circuit Court – Family Division Rule 1.20 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

1.20 Withdrawal and New Representation:

A. Subject to limited representation under Family Division Rule 1.19**[, Rule 3.12 relating to the withdrawal of appointed counsel in Juvenile Delinquency matters]** and subject to Professional Conduct Rule 1.2(f), an attorney may withdraw at any time unless a hearing or trial is scheduled within 60 days. If a hearing or trial is scheduled within 60 days, an attorney must file a motion to withdraw.

B. Any motion to withdraw filed by counsel shall clearly set forth the reason for the request and contain a certification that copies have been sent to all other counsel or opposing parties, if appearing pro se, and to counsel's client at the client's last known address, which shall be fully set forth within the body of the motion. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet the financial obligations to pay for the attorney's services. Notice by mail shall be sent to all counsel of record, or parties if unrepresented by counsel, and to the client of withdrawing counsel, at the client's last known address.

C. Upon receipt of a motion to withdraw and any related objections, the court will give the motion and any objections expedited consideration, rule upon the motion to withdraw, or schedule a hearing as promptly as the docket allows. If withdrawing counsel's client fails to appear at said hearing, the Court may, in its discretion, and without further notice to said client, grant the withdrawal, order the hearing date continued, or make such other orders as justice may require.

APPENDIX P

Adopt Circuit Court – Family Division Rule 3.12 as follows:

3.12. **Withdrawal of Appointed Counsel:** In Juvenile Delinquency matters brought pursuant to RSA 169-B, if appointed counsel must withdraw due to a conflict of interest as defined by Rules 1.7(a), 1.9(a) & (b) and/or 1.10(a), (b) & (c) of the New Hampshire Rules of Professional Conduct, counsel shall forward a Notice of Withdrawal to the court and substitute counsel shall be appointed forthwith. Court approval of a withdrawal shall not be required in this circumstance unless the Notice of Withdrawal is filed less than 20 days from the date of a trial in which case court approval shall be required. Automatic withdrawal shall not be allowed and court approval shall be required if the basis for the withdrawal is a breakdown in the relationship with the client, the failure of the client to pay legal fees, or any other conflict not specifically set forth in Rules 1.7(a), 1.9(a) & (b) and/or 1.10(a), (b) & (c) of the New Hampshire Rules of Professional Conduct.

APPENDIX Q

Amend Rule 15 of the Rules of the Superior Court of the State of New Hampshire Applicable in Criminal Cases Filed in Superior Court as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

15. (a) All pleadings and the appearance and withdrawal of counsel shall be signed by the attorney of record or his associate or by a pro se party. Names, addresses, New Hampshire Bar identification numbers and telephone numbers shall be typed or stamped beneath all signatures on papers to be filed or served. No attorney or pro se party will be heard until his appearance is so entered.

(b) The signature of an attorney to a pleading constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief there is a good ground to support it; and that it is not interposed for delay.

(c) If a pleading is not signed, or is signed with an intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading had not been filed.

(d) Other than limited representation by attorneys as allowed by Rule 14(d) and Professional Conduct Rule 1.2(f)) **[and subject to (g) below]**, no attorney shall be permitted to withdraw that attorney's appearance in a case after the case has been assigned for trial or hearing, except upon motion to permit such withdrawal granted by the Court for good cause shown, and on such terms as the Court may order. Any motion to withdraw filed by counsel shall set forth the reason therefor but shall be effective only upon approval by the Court. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the attorney's services.

(e) *Automatic Termination of Limited Representation.* Any limited representation appearance filed by an attorney, as authorized under Professional Conduct Rule 1.2(f)) and Rule 14(d) of this Court, shall automatically terminate upon completion of the agreed representation, without the necessity of leave of Court, provided that the attorney shall provide the Court a "withdrawal of limited appearance" form giving notice to the Court and

all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a limited appearance who seeks to withdraw prior to the completion of the limited representation stated in the limited appearance, however, must comply with Rule 15(d).

(f) *Pleading Prepared for Unrepresented Party*. When an attorney provides limited representation to an otherwise unrepresented party, by drafting a document to be filed by such party with the Court in a proceeding in which (1) the attorney is not entering any appearance, or (2) the attorney has entered a limited appearance which does not include representation regarding such document, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement **"This pleading was prepared with the assistance of a New Hampshire attorney."** The unrepresented party must comply with this required disclosure. Notwithstanding that the identity of the drafting attorney need not be required to be disclosed under this rule, by drafting a pleading to be used in court by an otherwise unrepresented party, the limited representation attorney shall be deemed to have made those same certifications as set forth in Rule 15(b) despite the fact the pleading need not be signed by the attorney.

[(g) Withdrawal of Appointed Counsel: If appointed counsel in a criminal matter must withdraw due to a conflict of interest as defined by Rules 1.7(a), 1.9(a) & (b) and/or 1.10(a), (b) & (c) of the New Hampshire Rules of Professional Conduct, counsel shall forward a Notice of Withdrawal to the court and substitute counsel shall be appointed forthwith. Court approval of a withdrawal shall not be required in this circumstance unless the Notice of Withdrawal is filed less than 20 days from the date of a trial in which case Court approval shall be required. Automatic withdrawal shall not be allowed and court approval shall be required if the basis for the withdrawal is a breakdown in the relationship with the client, the failure of the client to pay legal fees, or any other conflict not specifically set forth in Rules 1.7(a), 1.9(a) & (b) and/or 1.10(a), (b) & (c) of the New Hampshire Rules of Professional Conduct.]

APPENDIX R

Amend Rule 26 of the Rules of the Superior Court of the State of New Hampshire Applicable in Civil Actions as follows (new material is in **[bold and in brackets]**:

Rule 26. Depositions.

(a) A party may take as many depositions as necessary to adequately prepare a case for trial so long as the combined total of deposition hours does not exceed 20 unless otherwise stipulated by counsel or ordered by the court for good cause shown.

(b) No notice to the adverse party of the taking of depositions shall be deemed reasonable unless served at least 3 days, exclusive of the day of service and the day of caption, before the day on which they are to be taken. Provided, however, that 20 days' notice shall be deemed reasonable in all cases, unless otherwise ordered by the court. No deposition shall be taken within 30 days after service of the Complaint, except by agreement or by leave of court for good cause shown.

(c) Every notice of a deposition to be taken within the State shall contain the name of the stenographer proposed to record the testimony.

(d) When a statute requires notice of the taking of depositions to be given to the adverse party, it may be given to such party or the party's representative of record. In cases where the action is in the name of a nominal party and the Complaint or docket discloses the real party in interest, notice shall be given either to the party in interest or that party's attorney of record. Notices given pursuant to this rule may be given by mail or by service in hand. If a subpoena duces tecum is to be served on the deponent, the notice to the adverse party must be served before service of the subpoena, and the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment.

(e) The interrogatories shall be put by the attorneys or non-attorney representatives and the interrogatories and answers shall be taken in shorthand or other form of verbatim reporting approved by the court and transcribed by a competent stenographer agreed upon by the parties or their attorneys present at the deposition. In the absence of such agreements, the stenographer shall be designated by the court. Failure to object in writing to a

stenographer in advance of the taking of a deposition shall be deemed agreement to the stenographer recording the testimony.

(f) No deposition, as transcribed, shall be changed or altered, but any alleged errors may be set forth in a separate document attached to the original and copies.

(g) The stenographer shall cause to be noted any objection to any interrogatory or answer without deciding its competency. If complaint is made of interference with any witness, the stenographer shall cause such complaint to be noted and shall certify the correctness or incorrectness thereof in the caption.

(h) Upon motion, the court may order the filing of depositions, and, upon failure to comply with such order, the court may take such action as justice may require.

(i) The signature of a person outside the State, acting as an officer legally empowered to take depositions or affidavits, with his or her seal affixed, where one is required, to the certificate of an oath administered by him or her in the taking of affidavits or depositions, will be prima facie evidence of his or her authority so to act.

(j) The deponent, on deposition or on written interrogatory, shall ordinarily be required to answer all questions not subject to privilege or excused by the statute relating to depositions, and it is not grounds for refusal to answer a particular question that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence and does not violate any privilege.

(k) If any deponent refuses to answer any question propounded on deposition, or any party fails or refuses to answer any written interrogatory authorized by these rules, or fails to comply within 30 days after written request to comply, the party propounding the question may, upon notice to all persons affected thereby, apply by motion to the court for an order compelling an answer. If the motion is granted, and if the court finds that the refusal was without substantial justification or was frivolous or unreasonable, the court may, and ordinarily will, require the deponent or the party, attorney, or non-attorney representative advising the refusal, or both of them, to pay the examining or requesting party the reasonable expenses incurred in obtaining the order, including reasonable counsel fees.

If the motion is denied and if the court finds that the motion was made without substantial justification or was frivolous or unreasonable, the court may, and ordinarily will, require the examining party or the attorney advising the motion, or both of them, to pay to the witness the reasonable expenses incurred in opposing the motion, including reasonable counsel fees.

(l) *Videotape Depositions.*

(1) A party may, at such party's expense, record a videotape deposition, provided the party indicates the intent to record the videotape deposition in the notice of deposition. At the commencement of the videotape deposition, counsel representing the deponent should state whose deposition it is, what case it is being taken for, where it is being taken, who the lawyers are that will be asking the questions, and the date and the time of the deposition. Care should be taken to have the witnesses speak slowly and distinctly and that papers be readily available for reference without undue delay and unnecessary noise. Counsel and witnesses shall comport themselves at all times as if they were actually in the courtroom.

(2) If any problem arises as to the admissibility or inadmissibility of evidence, this should be handled in the same manner as written depositions.

(3) A party objecting to a question asked of, or an answer given by, a witness whose testimony is being taken by videotape shall provide the court at the Trial Management Conference with a transcript of the videotape proceedings that is sufficient to enable the court to act upon the objection before the trial of the case, or the objection shall be deemed waived.

[(m) *Notice or Subpoena Directed to An Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (m) does not preclude a deposition by any other procedure allowed by these rules.]

Comment

Rule 26(a) is a major change from current New Hampshire deposition practice. This new limitation is warranted by the adoption of the Automatic Disclosure requirements of Rule 22, which itself tracks in part the provision of Fed. R. Civ. P. 26(a)(1). While the typical case ordinarily does not consume 20 hours of depositions, the rule recognizes that there are others for which 20 hours may not be adequate.

APPENDIX S

Amend Supreme Court Rule 37 as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 37. Attorney Discipline System

(1) ***Attorney Discipline in General:***

(a) *Components:* The attorney discipline system consists of the following component parts:

(1) professional conduct committee;

(2) hearings committee;

(3) complaint screening committee;

(4) attorney discipline office.

(b) *Jurisdiction:* Any attorney admitted to practice law in this State, and any attorney specially admitted by a court of this State for a particular proceeding, and any attorney not admitted in this State who practices law or renders or offers to render any legal services in this State, and any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1, is subject to the disciplinary jurisdiction of this court and the attorney discipline system.

Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt. Suspension or disbarment of an individual subject to the attorney discipline system shall not terminate jurisdiction of this court.

(c) *Grounds for Discipline:* The right to practice law in this State is predicated upon the assumption that the holder is fit to be entrusted with professional matters and to aid in the administration of justice as an attorney and as an officer of the court. The conduct of every recipient of that right shall be at all times in conformity with the standards imposed upon members of the bar as conditions for the right to practice law.

Acts or omissions by an attorney individually or in concert with any other person or persons which violate the standards of professional responsibility that have been and any that may be from time to time hereafter approved or adopted by this court, shall constitute misconduct and shall be grounds for discipline whether or not the act or omission occurred in the course of an attorney-client relationship.

(d) *Priority of Discipline Matters*: Matters relating to discipline of an attorney shall take precedence over all other civil cases in this court.

(e) *Professional Continuity Committee and New Hampshire Lawyers Assistance Program Exemption:* For the purposes of Rule 8.3 of the rules of professional conduct, information received by members of the New Hampshire Bar Association during the course of their work on behalf of the professional continuity committee or the New Hampshire Lawyers Assistance Program which is indicative of a violation of the rules of professional conduct shall be deemed privileged to the same extent allowed by the attorney-client privilege.

(2) ***Definitions:***

(a) *Appeal:* "Appeal" means an appeal to this court by a respondent or disciplinary counsel of a decision of the professional conduct committee. An appeal shall not be a mandatory appeal. *See* Rule 3. An appeal shall be based on the record before the professional conduct committee and shall be limited to issues of errors of law and unsustainable exercises of discretion.

(b) *Attorney:* Unless otherwise indicated, "Attorney," for purposes of this rule, means any attorney admitted to practice in this State, any attorney specially admitted to practice by a court of this State, any attorney not admitted or specially admitted in this State who provides or offers to provide legal services in this State or any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1.

(c) *Complaint:* "Complaint" means a grievance that, after initial review, has been determined by the attorney discipline office to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint as set forth in Supreme Court Rule 37A, and that is docketed by the attorney discipline office, or a complaint that is drafted and docketed by the attorney discipline office after an inquiry by that office. If after docketing, the attorney discipline office or the complaint screening committee determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall

be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

(d) *Disbarment:* "Disbarment" means the termination of a New Hampshire licensed attorney's right to practice law in this State and automatic expulsion from membership in the bar of this State. A disbarred attorney may only apply for readmission to the bar of this State upon petition to this court, after having complied with the terms and conditions set forth in the disbarment order promulgated by the court which shall include all requirements applicable to applications for admission to the bar, including passing the bar examination and a favorable report by the professional conduct committee and the character and fitness committee.

(e) *Disciplinary Counsel:* "Disciplinary Counsel" means the attorney or attorneys responsible for the prosecution of disciplinary proceedings before the court, the professional conduct committee and any hearings committee panel. Disciplinary counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, such part-time attorney or attorneys as may from time to time be deemed necessary, and such other attorneys of the attorney discipline office as may from time to time be designated to assist disciplinary counsel.

(f) *Grievance:* "Grievance" means a written submission filed with the attorney discipline office to call to its attention conduct that the grievant believes may constitute misconduct by an attorney. A grievance that is determined, after initial screening, not to be within the jurisdiction of the attorney discipline system and/or not to meet the requirements for docketing as a complaint shall not be docketed and shall continue to be referred to as a grievance. A grievance that is determined, after initial screening, to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint shall be docketed as a complaint and shall be referred to thereafter as a complaint; provided, however, that if the attorney discipline office or the complaint screening committee later determines that the docketed complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

(g) *Public Censure:* "Public Censure" means the publication by the court or the professional conduct committee, in appropriate New Hampshire publications including a newspaper of general statewide circulation, and one with general circulation in the area of respondent's primary office, as well as

the New Hampshire Bar News, of a summary of its findings and conclusions relating to the discipline of an attorney, as defined in section (2)(b) of this rule.

(h) *Referral:* "Referral" means a grievance received by the attorney discipline office from any judge or from any member of the bar of New Hampshire, in which the judge or attorney indicates that he or she does not wish to be treated as a grievant.

(i) *Reprimand:* Reprimand" means discipline administered by the professional conduct committee after notice of charges and after a hearing before a hearings committee panel and the right to request oral argument to the professional conduct committee, in those cases in which misconduct in violation of the rules of professional conduct is found. A reprimand is administered by letter issued by the chair of the professional conduct committee, subject to an attorney's right to appeal such discipline to the court.

(j) *Suspension:* "Suspension" means the suspension of an attorney's right to practice law in this State, for a period of time specified by the court or by the professional conduct committee. Suspension by the professional conduct committee may not exceed six (6) months. The suspended attorney shall have the right to resume the practice of law, after the expiration of the suspension period, upon compliance with the terms and conditions set forth in the suspension order promulgated by the court or the professional conduct committee and pursuant to the procedure set forth in section 14 regarding reinstatement.

(k) *Warning:* "Warning" means non-disciplinary action taken by the general counsel, the complaint screening committee or the professional conduct committee when it is determined that an attorney acted in a manner which involved behavior requiring attention although not constituting clear violations of the rules of professional conduct warranting disciplinary action.

(3) ***Professional Conduct Committee:***

(a) The court shall appoint a committee to be known as the professional conduct committee which shall consist of twelve members, one of whom shall be designated by the court as the chair. Two members of the professional conduct committee shall be designated by the court as vice chairs, to act in the absence or disability of the chair. One of the vice chairs must be an attorney, and the other must be a non-attorney. At least four of the members of the professional conduct committee shall be non-attorneys. The court shall attempt to appoint members of the professional conduct committee from as many counties in the State as is practicable; and one of the members shall be

designated pursuant to section (3)(d), and shall have both the special term of office and the additional special responsibilities set forth therein.

In the event that any member of the professional conduct committee has a conflict of interest or is otherwise disqualified from acting with respect to any proceeding before the professional conduct committee, the court may, upon request or upon its own motion, appoint another person to sit on such proceeding and such temporary replacement, rather than the disqualified member, shall be considered a professional conduct committee member for quorum and voting purposes in connection with such investigation or proceeding.

(b) Initial appointments shall be for staggered terms: four members for three years; four members for two years; and four members, including the member designated pursuant to section (3)(d), for one year. Thereafter the regular term of each member, except the member designated pursuant to section (3)(d), shall be three years. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor. A member shall not serve for more than three consecutive full terms but may be reappointed after a lapse of one year. The committee shall act only with the concurrence of a majority of its members present and voting, provided however, that six members shall constitute a quorum. The chair of the committee, or any member performing the duties of the chair, shall only vote on matters relating to specific complaints in the event of a tie among the members present and voting. No professional conduct committee member shall serve concurrently as a member of the hearings committee or the complaint screening committee.

(c) The professional conduct committee shall have the power and duty:

(1) To appoint a disciplinary counsel and a general counsel and such deputy and assistant disciplinary counsel and general counsel as may from time to time be required to properly perform the functions hereinafter prescribed. To appoint other professional staff, including auditors, and clerical staff whether full-time or part-time. To appoint independent bar counsel if needed.

(2) To consider hearing panel reports and written memoranda of disciplinary counsel and respondents. To conduct oral arguments in which disciplinary counsel and each respondent are given ten (10) minutes to address the findings and rulings contained in the hearing panel reports. After consideration of oral arguments, hearing panel reports, transcripts of hearings before hearing panels and memoranda, to determine whether there is clear and convincing evidence of violations of

the rules of professional conduct. To remand complaints to hearing panels for further evidentiary proceedings. To dismiss grievances or complaints, with or without a warning, administer a reprimand, public censure or a suspension not to exceed six (6) months.

(3) To attach such conditions as may be appropriate to any discipline it imposes.

(4) To divert attorneys out of the attorney discipline system as appropriate and on such terms and conditions as is warranted.

(5) To institute proceedings in this court in all matters which the professional conduct committee has determined warrant the imposition of disbarment or of suspension for a period in excess of six (6) months.

(6) To consider and act upon requests by disciplinary counsel or respondents to review a decision by the complaint screening committee to refer a complaint to disciplinary counsel for the scheduling of a hearing.

(7) To consider and act upon requests from disciplinary counsel to dismiss a matter prior to a hearing if disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing.

(8) To consider and act upon requests for reconsideration of its own decisions.

(9) To consider and act upon requests for protective orders.

(10) To propose rules of procedure not inconsistent with the rules promulgated by this court.

(11) To be responsible for overseeing all administrative matters of the attorney discipline system.

(12) To require a person who has been subject to discipline imposed by the professional conduct committee to produce evidence of satisfactory completion of the multistate professional responsibility examination, in appropriate cases.

(13) To educate the public on the general functions and procedures of the attorney discipline system.

(14) Upon its approval of the annual report prepared by the attorney discipline office, to file a copy of the report with the chief justice of the supreme court and to make copies of the report available to the public.

(15) To issue discretionary monetary sanctions against a disciplined attorney in the form of the assessment of costs and expenses pursuant to Rule 37(19).

Any attorney aggrieved by a finding of professional misconduct or by a sanction imposed by the professional conduct committee shall have the right to appeal such finding and sanction to this court; disciplinary counsel shall have the right to appeal a sanction. Such appeals shall not be mandatory appeals. Such rights must be exercised within thirty (30) days from the date on the notice of the finding and sanction. In the event that a timely request for reconsideration pursuant to Supreme Court Rule 37A(VI) is filed, the right to appeal the finding of professional misconduct and/or the sanction shall be exercised within thirty (30) days from the date of the letter notifying the attorney of the professional conduct committee's decision on the request for reconsideration. Successive requests for reconsideration shall not stay the running of the appeal period. The manner of the appeal shall be based on the record before the professional conduct committee. The findings of the professional conduct committee may be affirmed, modified or reversed.

(d) *Board of Governor's Representative:* The vice president of the New Hampshire Bar Association, upon appointment by the court, shall represent the board of governors of the association as a member of the professional conduct committee for a one-year term commencing on August 1st following the election as such vice president and he or she shall have the following additional responsibilities:

(1) To render such assistance as the professional conduct committee directs in the preparation and review of the attorney discipline system budget.

(2) To assist in monitoring the financial affairs and budgetary process of the attorney discipline system during the fiscal year.

(3) To coordinate the assessment and collection of expenses to be reimbursed by disciplined attorneys.

(4) Consistent with the rule of confidentiality applicable to the work

of the attorney discipline system, to serve as liaison between the professional conduct committee and the board of governors of the New Hampshire Bar Association.

(5) To assist in the communication to members of the New Hampshire Bar Association of a general understanding of the work of the professional conduct committee, consistent with the rule of confidentiality applicable to attorney discipline system proceedings.

If the vice president of the New Hampshire Bar Association has a conflict preventing his or her appointment to the professional conduct committee, the court shall appoint another member of the board of governors in his or her stead.

(4) ***Hearings Committee:***

(a) The court shall appoint an appropriate number of attorneys and non-attorneys to a committee known as the hearings committee of the attorney discipline system. One member of the committee shall be designated by the court as the chair and one member shall be designated as vice chair to act in the absence or disability of the chair.

(b) Initial appointments shall be for staggered terms: one third of the members for three years; one third of the members for two years and one third of the members for one year. Thereafter, the regular term of each member shall be three years. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor. A member shall not serve more than three consecutive full terms but may be reappointed after a lapse of one year. No hearings committee member shall serve concurrently as a member of the professional conduct committee or the complaint screening committee.

(c) The hearings committee shall have the power and duty:

(1) To be appointed as necessary by the hearings committee chair to individual hearing panels to rule on pre-hearing motions, conduct hearings on formal charges and make findings of fact, conclusions and recommendations in written reports to the professional conduct committee for findings of misconduct and sanctions or for dismissal of the complaint with findings of no misconduct with or without a warning. The individual hearing panels shall consist of a maximum of five (5) persons and a minimum of three (3) persons. There shall be no less than one public non-attorney member on each hearing panel.

(2) To conduct hearings in conformance with standards set forth in Rule 37A.

(3) To make all findings by clear and convincing evidence.

(4) To submit all written reports to the professional conduct committee no more than sixty (60) days after the close of each hearing.

(d) Appointment to each individual hearing panel shall be made by the chair of the hearings committee. Each panel shall consist of a maximum of five (5) hearings committee members and a minimum of three (3) members. Each hearing panel shall have at least one (1) non-attorney member. The chair of the hearings committee shall designate one member of each panel as the chair and a separate member of the panel as the reporter responsible for preparation of the report to the professional conduct committee.

(5) ***Complaint Screening Committee:***

(a) The court shall appoint a committee to be known as the complaint screening committee which shall consist of nine members, one of whom shall be designated by the court as chair and one of whom shall be designated by the court as vice chair to act in the absence or disability of the chair. Five of the members shall be attorneys and four of them shall be non-attorneys. The complaint screening committee shall act only with the consensus of a majority of its members present and voting provided, however, that three attorney members and two non-attorney members shall constitute a quorum. The chair of the committee, or any member performing the duties of the chair, shall only vote on matters relating to specific complaints in the event of a tie among the members present and voting. Initial appointments shall be for staggered terms: three members for three years; three members for two years; and three members for one year. Thereafter, the regular term of each member shall be three years. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor. A member shall not serve more than three consecutive full terms but may be reappointed after a lapse of one year. No member of the complaint screening committee shall serve concurrently as a member of the professional conduct committee or the hearings committee.

(b) The complaint screening committee shall have the power and duty:

(1) To consider and act on requests for reconsideration filed by grievants following a decision by general counsel not to docket a matter, to divert attorneys out of the system, or to dismiss a complaint after investigation.

(2) To consider and act on reports by staff members of the attorney discipline office with respect to docketed complaints.

(3) To remove complaints from the docket if it determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing.

(4) To dismiss complaints with a finding of no professional misconduct, with or without a warning.

(5) To dismiss complaints for any other reason, with or without a warning. If the committee determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.

(6) To divert attorneys out of the attorney discipline system when appropriate and subject to the attorney complying with the terms of diversion. All diversion would be public unless the complaint screening committee determined that a given matter should remain non-public based on one or more of the following issues: health, finances, family considerations or highly personal matters. If a respondent declines to accept diversion or violates the terms of a written diversion agreement, the complaint in such cases shall be acted upon as if diversion did not exist.

(7) To refer complaints to disciplinary counsel for the scheduling of a hearing only where there is a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence.

(8) To consider and act upon requests for reconsideration of its own decisions, subject to the further right of disciplinary counsel or respondents to request that the professional conduct committee review a decision to refer a complaint to disciplinary counsel for the scheduling of a hearing.

(c) Meetings of the complaint screening committee shall be in the nature of deliberations and shall not be open to the public, respondents, respondents' counsel, disciplinary counsel or the complainant. Records and reports of recommendations made shall in all respects be treated as work product and shall not be made public or be discoverable. However, the decision of the committee shall be public.

(6) ***Attorney Discipline Office:***

(a) The professional conduct committee shall appoint:

(1) a disciplinary counsel and such deputy and assistants as may be deemed necessary whether full-time or part-time;

(2) a general counsel and such deputy and assistants as may be deemed necessary whether full-time or part-time; and

(3) other professional staff, including auditors, and clerical staff as may be necessary whether full-time or part-time.

(b) Disciplinary counsel shall perform prosecutorial functions and shall have the power and duty:

(1) To review complaints referred by the complaint screening committee for hearings.

(2) To contact witnesses, conduct discovery and prepare the complaints for hearings before a panel of the hearings committee.

(3) To try cases before panels of the hearings committee.

(4) To present memoranda to and appear before the professional conduct committee for oral argument.

(5) To represent the attorney discipline office and, in appropriate cases, the professional conduct committee in matters filed with the supreme court.

(c) General counsel shall perform a variety of legal services and functions and shall have the power and duty:

(1) To receive, evaluate, docket and investigate professional conduct complaints.

(2) To remove complaints from the docket if it determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing.

(3) To dismiss complaints with a finding of no professional misconduct, with or without a warning.

(4) To dismiss complaints for other good cause, with or without a warning. If the general counsel determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.

(5) To divert attorneys out of the attorney discipline system when appropriate and subject to the attorney complying with the terms of diversion. All diversion would be public unless the general counsel determined that a given matter should remain non-public based on one or more of the following issues: health, finances, family considerations or highly personal matters. If a respondent declines to accept diversion or violates the terms of a written diversion agreement, the complaint in such cases shall be acted upon as if diversion did not exist.

(6) To present complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason (with or without a warning) or referral to disciplinary counsel for a hearing.

(7) To assist disciplinary counsel in performing the duties of disciplinary counsel as needed.

(8) To perform legal services as required for the committees of the attorney discipline system.

(9) To oversee and/or perform administrative functions for the attorney discipline system including but not limited to maintaining permanent records of the operation of the system, preparation of the annual budget, and preparation of an annual report summarizing the activities of the attorney discipline system during the preceding year.

(7) ***Immunity:***

Each person shall be immune from civil liability for all statements made in good faith to any committee of the attorney discipline system, the attorney discipline office, the attorney general's office, or to this court given in connection with any investigation or proceedings under this rule pertaining to alleged misconduct of an attorney. The protection of this immunity does not exist as to: (a) any statements not made in good faith; or (b) any statements made to others. *See* sections (20)(j) and (21)(g). The committees' members, staff, counsel and all others carrying out the tasks and duties of the attorney discipline system shall be immune from civil liability for any conduct arising out of the performance of their duties.

(8) ***Discovery and Subpoena Power:*** [1]

[(a)] At any stage **[prior to the filing of a notice of charges]** ~~of proceedings before a panel of the hearings committee or in preparation for a hearing before a panel of the hearings committee,~~ attorneys from the attorney discipline office~~, counsel for respondent attorneys and respondent attorneys representing themselves may conduct discovery, including interrogatories and depositions, and~~ may issue subpoenas and subpoenas *duces tecum* to summon witnesses with or without documents.

[(b) At any stage after the filing of a notice of charges, attorneys from the attorney discipline office, counsel for respondent attorneys and respondent attorneys representing themselves may issue subpoenas and subpoenas *duces tecum* to summon witnesses with or without documents, and may conduct additional discovery, including, but not limited to, interrogatories and depositions. Notice of the issuance of any such subpoena shall be served on the opposing party.]

(9) ***Attorneys Convicted of Serious Crime:***

(a) Upon the filing with the court of a certified copy of any court record establishing that an attorney has been convicted of a serious crime as hereinafter defined, the court may enter an order suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. **[Any order of suspension entered pursuant to this provision shall be effective immediately.]**[2]

(b) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(c) A certified copy of any court record establishing the conviction of an attorney for any "serious crime" shall be conclusive evidence of the commission

---

[1] Public Hearing Notice dated April 23, 2014 ("PHN"), Appendix E; Subcommittee Report, p. 4, March 14, 2014 meeting minutes, June 6, 2014 meeting minutes.
[2] PHN, Appendix M; Subcommittee Report, p. 21.

of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction. **[The certified copy shall constitute evidence sufficient to issue an order of immediate suspension under subparagraph (a) without further hearing.][3]**

(d) Upon the receipt of a certificate of conviction of an attorney for a "serious crime," the court may, and shall if suspension has been ordered pursuant to subsection (a) above, institute a formal disciplinary proceeding by issuing an order to the attorney to show cause why the attorney should not be disbarred as a result of the conviction. If the court determines that no such good cause has been shown, the court shall issue an order of disbarment, or such other discipline as the court shall deem appropriate. If the court determines that the attorney has shown cause why disbarment may not be appropriate, the court shall refer the matter to the professional conduct committee, in which the sole issue to be determined shall be the extent of the final discipline to be imposed. Provided, however, that final discipline will not be imposed until all appeals from the conviction are concluded.

(e) Upon receipt of a certificate of conviction of an attorney for a crime not constituting a "serious crime," the court shall refer the matter to the attorney discipline office for such action as it deems appropriate. Referral to the attorney discipline office hereunder does not preclude the court from taking whatever further action it deems appropriate.

(f) An attorney suspended under the provisions of subsection (a) above may be reinstated upon the filing of a certificate demonstrating that the underlying conviction for a serious crime has been reversed but the reinstatement will not terminate any proceeding then pending against the attorney.

(g) **[Any attorney who has been convicted of a crime in this state or in any other state shall notify the court, in writing, within ten (10) days of sentencing on said conviction. The notice shall inform the court of the crime, the criminal statute violated, the court of conviction, the date of conviction, and the sentence imposed.][4]** The clerk of any court within the State in which an attorney is convicted of any crime shall, within ten (10) days of said conviction, transmit a certificate thereof to this court.

(h) Upon being advised that an attorney has been convicted of a crime within this State, the attorney discipline office shall determine whether the

[3] PHN, Appendix B; Subcommittee Report, p. 21.
[4] PHN, Appendix U; Subcommittee Report at p. 33; March 14, 2014 meeting minutes.

clerk of the court where the conviction occurred has forwarded a certificate to this court in accordance with the provisions of subsection (g) above. If the certificate has not been forwarded by the clerk or if the conviction occurred in another jurisdiction, it shall be the responsibility of the attorney discipline office to obtain a certificate of conviction and to transmit it to this court.

(i) Whenever an attorney is indicted or bound over for any felony, the court shall take such actions as it deems necessary, including but not limited to the suspension of the attorney.

[(9-A) Proceedings Where an Attorney is Alleged to have Engaged in Conduct that Poses a Substantial Threat of Serious Harm.[5]

(a) The attorney discipline office may file a petition for interim suspension in this court alleging that an attorney has engaged in conduct that poses a substantial threat of serious harm to the public.

(b) The term "substantial threat of serious harm" encompasses any non-serious crime, conduct, or course of conduct that substantially impairs the attorney's ability to continue to practice in conformity with the Rules of Professional Conduct and Rule 50, or creates a substantial risk of harm to the public if the attorney is not suspended on an interim basis.

(c) The petition must state with particularity the conduct alleged as well as why the interim suspension is necessary to prevent a threat of serious harm to the public. The attorney discipline office shall serve the petition on the attorney, who shall have ten (10) days to respond. If the attorney contests the interim suspension, the court will convene a hearing before a judicial referee or a hearing panel of the professional conduct committee. If the attorney consents to the interim suspension, the court will issue an order of interim suspension which will be effective immediately.

(d) The hearing on the petition shall be recorded. The parties shall have thirty (30) days to prepare for the hearing, but no continuance of the hearing shall be granted absent extraordinary circumstances. The attorney discipline office shall have the burden to prove the need for interim suspension by clear and convincing evidence. The referee or panel may consider whether measures short of interim suspension adequately safeguard the public against the threat of substantial harm.

---

[5] PHN, Appendix O; Subcommittee Report at pp. 22-23.

(e) After the hearing, the referee or panel shall issue a recommendation with regard to the need for interim suspension within ten (10) days, and shall forward that recommendation, with the record of the hearing, to the court. The court shall review the recommendation and the record. It may enter an order of interim suspension, dismiss the petition for interim suspension, issue an order directing the attorney to abide by specific conditions in lieu of interim suspension, or remand the matter for further proceedings. Any order issued by the court shall be effective immediately, and shall remain in effect unless it is modified by the court, or it is superseded by an order stemming from disciplinary proceedings arising out of the same or related conduct.][6]

(10) ***Proceedings Where An Attorney Is Declared To Be Incompetent Or Is Alleged To Be Incapacitated:***

(a) Whenever an attorney has been judicially declared incompetent or voluntarily or involuntarily committed to a mental health facility, the court, upon proper proof of the fact, may enter an order suspending such attorney from the practice of law until the further order of the court. A copy of such order shall be served upon such attorney, the attorney's guardian and such other persons and in such manner as the court may direct.

(b) Whenever any committee of the attorney discipline system or the attorney discipline office shall petition the court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental or physical infirmity or illness or because of addiction to drugs or intoxicants, the court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the court shall designate. If, upon due consideration of the matter, the court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending the attorney on the ground of such disability for an indefinite period and until the further order of the court, and any pending disciplinary proceeding against the attorney may be held in abeyance.

The court shall provide for such notice to the respondent attorney of proceedings in the matter as it deems proper and advisable and shall appoint an attorney to represent the respondent if he or she is without adequate representation.

---

[6] PHN, Appendix O; Subcommittee Report, pp. 22-23.

(c) If, during the course of a disciplinary proceeding, the respondent attorney contends that he or she is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent attorney to adequately defend himself or herself, the court thereupon shall enter an order immediately suspending the respondent attorney from continuing to practice law until a determination is made of the respondent attorney's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of subsection (b) of this section.

If, in the course of a proceeding under this section or in a disciplinary proceeding, the court shall determine that the respondent attorney is not so incapacitated, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent attorney.

(d) Any attorney suspended under the provisions of this section may apply for reinstatement following the expiration of one year from the date of suspension or at such other time as the court may direct in the order of suspension or any modification thereof. Such application shall be granted by the court upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fit to resume the practice of law. Upon such application, the court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the court shall designate. At its discretion, the court may direct that the expense of such an examination shall be paid by the attorney.

Whenever an attorney has been suspended by an order in accordance with the provisions of subsection (a) of this section and, thereafter, in proceedings duly taken, the attorney has been judicially declared to be competent, the court may dispense with further evidence that the disability has been removed and may direct reinstatement upon such terms as it deems proper and advisable.

(e) In a proceeding seeking an order of suspension under this section, the burden of proof shall rest with the moving party. In a proceeding seeking an order terminating a suspension under this section, the burden of proof shall rest with the suspended attorney.

(f) The filing of an application for reinstatement by an attorney suspended for disability shall be deemed to constitute a waiver of any doctor-

patient privilege with respect to any treatment of the attorney during the period of disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which the attorney has been examined or treated since the suspension and shall furnish to the court written consent to each to divulge such information and records as requested by the attorney discipline system or the court appointed medical experts.

(11) ***Resignation By Attorney Under Disciplinary Investigation:***

(a) An attorney who is the subject of an investigation into allegations of misconduct may file a request to resign by delivering to the professional conduct committee an affidavit stating that he or she desires to resign and that:

(1) the resignation is freely and voluntarily rendered; he or she is not being subjected to coercion or duress; he or she is fully aware of the implications of submitting the resignation;

(2) he or she is aware that there is presently pending an investigation into allegations that he or she has been guilty of misconduct the nature of which shall be specifically set forth;

(3) he or she acknowledges that the material facts upon which the complaint is predicated are true; and

(4) he or she submits the resignation because he or she knows that if charges were predicated upon the misconduct under investigation they could not be successfully defended.

(b) Upon receipt of the required affidavit, the professional conduct committee shall file it with the court, along with its recommendation, and the court may take such action as it deems necessary.

(c) The contents of affidavit of an attorney filed in support of his or her resignation from the bar shall not be disclosed publicly or made available for use in any other proceeding except on order of the court.

(12) ***Reciprocal Discipline:***

(a) Upon being disciplined in another jurisdiction, an attorney admitted to practice in this State shall immediately notify the attorney discipline office of the discipline. Upon notification from any source that an attorney admitted to

practice in this State has been disciplined in another jurisdiction, the attorney discipline office shall obtain a certified copy of the disciplinary order and shall file it with the court.

(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this State has been disciplined in another jurisdiction, the court may enter a temporary order imposing the identical or substantially similar discipline or, in its discretion, suspending the attorney pending the imposition of final discipline. The court shall forthwith issue a notice directed to the attorney and to the professional conduct committee containing:

(1) A copy of the order from the other jurisdiction; and

(2) An order directing that the attorney or professional conduct committee inform the court within thirty (30) days from service of the notice, of any claim by the lawyer or professional conduct committee predicated upon the grounds set forth in subparagraph (d), that the imposition of the identical or substantially similar discipline in this State would be unwarranted and the reasons for that claim.

(c) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this State shall be deferred until the stay expires.

(d) Upon the expiration of thirty (30) days from service of the notice pursuant to subparagraph (b), the court shall issue an order of final discipline imposing the identical or substantially similar discipline unless the attorney or professional conduct committee demonstrates, or the court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) The imposition of the same or substantially similar discipline by the court would result in grave injustice; or

(3) The misconduct established warrants substantially different discipline in this State.

(13) ***Disbarred or Suspended Attorney:***

(a) A disbarred or suspended attorney may be ordered by the court, or by the professional conduct committee when an attorney is suspended by it for a period not to exceed six (6) months, to notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of the disbarment or suspension and consequent inability to act as an attorney after the effective date of the disbarment or suspension and shall advise said clients to seek other legal counsel.

(b) A disbarred or suspended attorney may be ordered by the court, or by the professional conduct committee when an attorney is suspended by it for a period not to exceed six (6) months, to notify, by registered or certified mail, return receipt requested, each client who is involved in litigated matters or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment or suspension and consequent inability to act as an attorney after the effective date of the disbarment or suspension. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move pro se in the court or agency in which the proceeding is pending, for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

(c) The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period between the entry date of the order and its effective date, the disbarred or suspended attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(d) In addition, the court, or the professional conduct committee in cases where it issued a suspension order, may order that within thirty (30) days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with the court an affidavit showing: (1) that he or she has fully complied with the provision of the order and with this section; and (2) that he or she has served a copy of such affidavit upon the professional

conduct committee. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed, as well as a list of all other jurisdictions in which the disbarred or suspended attorney is a member of the bar.

(e) A disbarred or suspended attorney shall keep and maintain records of the various steps taken under this section so that, upon any subsequent proceeding instituted by or against him or her, proof of compliance with this rule and with the disbarment or suspension order will be available.

(14) ***Reinstatement and Readmission:***

(a) An attorney who has been suspended for a specific period may not move for reinstatement until the expiration of the period of suspension, and upon the completion of all terms and conditions set forth in the order of suspension.

(b) *General Rule:* A motion for reinstatement by an attorney suspended for misconduct by the court, rather than for disability, or an application for readmission by a New Hampshire licensed attorney who has been disbarred by the court or has resigned while under disciplinary investigation shall be referred to the professional conduct committee by the supreme court. An application for readmission shall also be referred to the character and fitness committee pursuant to Supreme Court Rule 42. A motion for reinstatement by an attorney suspended by the professional conduct committee shall be filed directly with that committee. Upon receipt of a motion for reinstatement or an application for readmission, the professional conduct committee shall refer the motion or application to a panel of the hearings committee. The attorney discipline office shall then cause a notice to be published in a newspaper with statewide circulation, and one with circulation in the area of the respondent's former primary office, as well as the New Hampshire Bar News that the respondent attorney has moved for reinstatement or applied for readmission. The notice shall invite anyone to comment on the motion or application by submitting said comments in writing to the attorney discipline office within twenty (20) days. All comments shall be made available to the respondent attorney. Where feasible, the attorney discipline office shall give notice to the original complainant. The hearing panel shall promptly schedule a hearing at which the respondent shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency and learning in law required for admission to practice law in this State and that the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive to the public interest. At the conclusion of the hearing, the hearing panel shall

promptly file a report containing its findings and recommendations and transmit same, together with the record, to the professional conduct committee. The professional conduct committee shall review the report of the hearing panel and the record, allow the filing of written memoranda by disciplinary counsel and the respondent, review the hearing transcript and hold oral argument. Thereafter, the professional conduct committee shall file its own recommendations and findings with the court, together with the record. Following the submission of briefs and oral argument to the court, if any, the court shall enter a final order.

(c) In all proceedings upon a motion for reinstatement or application for readmission, cross-examination of the respondent attorney's witnesses and the submission of evidence, if any, in opposition to the motion for reinstatement or application for readmission shall be conducted by disciplinary counsel.

(d) The court in its discretion may direct that expenses incurred by the attorney discipline system in the investigation and processing of a motion for reinstatement or application for readmission be paid by the respondent attorney.

(e) Motions for reinstatement by New Hampshire licensed attorneys suspended for misconduct shall be accompanied by evidence of the movant's satisfactory completion of the multistate professional responsibility examination. Applicants for readmission shall produce evidence of satisfactory completion of the multistate professional responsibility examination pursuant to the provisions of Supreme Court Rule 42.

(f) *Special Rule for Suspensions of Six Months or Less:* Notwithstanding the provisions of Rule 37(14)(b), a lawyer who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated by the court following the end of the period of suspension by filing with the court and serving upon disciplinary counsel a motion for reinstatement accompanied by: (1) an affidavit stating that he or she has fully complied with the requirements of the suspension order and has paid any required fees and costs; and (2) evidence that he or she has satisfactorily completed the Multistate Professional Responsibility Examination since his or her suspension.

(15) ***Readmission after Resignation:***

(a) A New Hampshire licensed attorney who has resigned, and who was not the subject of an investigation into allegations of misconduct at or subsequent to the time of resignation, may file a motion for readmission with the supreme court accompanied by evidence of continuing competence and

learning in the law, and evidence of continuing moral character and fitness. If the evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness, are satisfactory to the court, the court may order readmission effective upon payment by the applicant of all bar dues and other fees, including public protection fund fees, that the applicant would have been responsible for paying had the applicant remained an active member of the bar from the date of resignation until the date of readmission. In addition, the court may condition readmission upon completion of such continuing legal education as the court may order.

(b) If the evidence of continuing competence and learning in the law is not satisfactory to the court, the court shall refer the motion for readmission to the professional conduct committee for referral to a panel of the hearings committee. The hearing panel shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competency and learning in law required for readmission. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the professional conduct committee. The professional conduct committee shall review the report of the hearings committee panel, the record and the hearing transcript and shall file its own recommendations and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument, if any, the court shall enter a final order. No order of the court granting readmission shall be effective prior to payment by the applicant of all bar dues and other fees, including public protection fund fees, that the applicant would have been responsible for paying had the applicant remained an active member of the bar from the date of resignation until the date of readmission. In addition, the court may condition readmission upon completion of such continuing legal education as the court may order.

(c) If the evidence of continuing moral character and fitness is not satisfactory to the court, the court shall order the applicant to file with the committee on character and fitness and with the clerk of the supreme court the petition and questionnaire referred to in Supreme Court Rule 42(5)(e). Further proceedings shall be governed by Rule 42. No order of the court granting readmission shall be effective prior to payment by the applicant of all bar dues and other fees, including public protection fund fees, that the applicant would have been responsible for paying had the applicant remained an active member of the bar from the date of resignation until the date of readmission. In addition, the court may condition readmission upon completion of such continuing legal education as the court may order.

(16) ***Procedure:***[7]

[(a) Either a respondent attorney or disciplinary counsel may appeal findings of the professional conduct committee and the imposition of a reprimand, public censure or a suspension of six (6) months or less by filing a notice of appeal with the supreme court. The appeal shall not be a mandatory appeal. If the appeal is accepted by the court, the court may affirm, reverse or modify the findings of the professional conduct committee.

The filing of an appeal by the respondent or disciplinary counsel shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.]

~~(a)~~ **[(b) The professional conduct committee shall initiate** ~~D~~**[d]**isciplinary proceedings requesting a discipline of greater than six (6) months **[in this court by filing the recommendation and the record of the proceedings.]** ~~shall be initiated in this court by the professional conduct committee by petition setting forth allegations of facts giving rise to the complaint and alleging the specific provisions of the rules of professional conduct which have been violated. The record of proceedings before the professional conduct committee shall be filed with the petition~~. **[Following receipt of the recommendation and the record of the proceedings, this court shall issue a scheduling order setting forth the dates on or before which the opening brief, the opposing brief, and the appendices in the briefs or a separate appendix shall be filed and setting forth such other matters as shall be deemed desireable or necessary.]** There shall not be a de novo evidentiary hearing.

[(c) In the event that the professional conduct committee recommends discipline of greater than six months, and disciplinary counsel believes that the professional conduct committee's decision is based on a clearly erroneous factual finding, or is erroneous as a matter of law, disciplinary counsel may participate separately in the appellate

---

[7] PHN, Appendix B; Subcommittee Report, pp. 1-2 (for proposal to adopt the language that has been added at subsection (c); June 6, 2014 meeting minutes. The language in new (a) was taken verbatim from (g) in the existing rule. The language in (b) was added by the Committee at the June meeting to make it clear that in cases requesting a discipline of greater than 6 months, no petition need be filed.

proceedings. Special counsel may be designated by the committee, and may represent the committee in all proceedings before the court.][8]

~~(b)~~ **[(d)]** Service shall be made to the respondent attorney in such manner as the court may direct. In all cases, however, service upon the respondent attorney at the latest address provided to the New Hampshire Bar Association shall be deemed to be sufficient.

~~(c) Respondent attorney shall answer each allegation specifically and shall file an answer within thirty (30) days after service of the petition. Should the respondent attorney fail to answer the petition, the allegations set forth therein shall be deemed to be admitted and no further hearing shall be required.~~

~~(d)~~ **[(e)]** The court may make such temporary orders as justice may require either with or without a hearing. Respondent attorney shall be entitled to be heard after any ex parte order.

~~(e)~~ **[(f)]** The court shall, after filing of briefs and oral arguments, make such order as justice may require.

~~(f)~~ **[(g)]** The court may suspend attorneys or disbar New Hampshire licensed attorneys or publicly censure attorneys upon such terms and conditions as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession. The court may remand the matter to the professional conduct committee for such other discipline as the court may deem appropriate.

~~(g) Either a respondent attorney or disciplinary counsel may appeal findings of the professional conduct committee and the imposition of a reprimand, public censure or a suspension of six (6) months or less by filing a notice of appeal with the supreme court. The appeal shall not be a mandatory appeal. If the appeal is accepted by the court, the court may affirm, reverse or modify the findings of the professional conduct committee.~~

~~The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.~~

---

[8] PHN, Appendix B; Subcommittee Report, p. 1-2.

(h) In the event of suspension or disbarment, a copy of the court's order or the professional conduct committee's order, shall be sent to the clerk of every court in the State and to each State in which the respondent attorney is admitted to practice. The professional conduct committee shall continue to be responsible to insure respondent attorney's compliance with the order of suspension or disbarment, in the case of a New Hampshire licensed attorney, and to notify the court as to any violations for such action as the court deems necessary.

(i) In addition to the procedure described herein, the court may take such action on its own motion as it deems necessary.

(j) Appeals to the court shall be in the form prescribed by Rule 10, unless otherwise ordered by the court. Such appeals shall be based on the record and there shall not be a de novo evidentiary hearing.

(17) ***Appointment of Counsel to Protect Clients' Interests:***

(a) Whenever an attorney is suspended, disbarred, dies or whose whereabouts are unknown, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the court, upon proper proof of the fact, may appoint an attorney or attorneys to make an inventory of the files of said attorney and to take such action as seems indicated to protect the interests of clients of said attorney as well as the interest of said attorney.

(b) Any attorney so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order appointing the attorney to make such inventory.

(c) Any attorney so appointed shall be entitled to reasonable compensation and reimbursement for expenses incurred.

(18) ***Refusal of Grievant or Complainant to Proceed, Compromise, Etc.:***

Neither unwillingness nor neglect of the grievant or complainant to sign a grievance or complaint or to prosecute a charge, nor settlement, compromise or restitution shall by itself justify abatement of an investigation into the conduct of an attorney.

(19) ***Monetary Sanctions: Expenses Relating to Discipline Enforcement:***

(a) All expenses incurred by the attorney discipline system in the investigation and enforcement of discipline may, in whole or in part, be assessed to a disciplined attorney to the extent appropriate.

(b) Following any assessment, the professional conduct committee shall send a written statement of the nature and amount of each such expense to the disciplined attorney, together with a formal demand for payment. The assessment shall become final after 30 days unless the disciplined attorney responds in writing, listing each disputed expense and explaining the reasons for disagreement. If the parties are unable to agree on an amount, the professional conduct committee may resolve and enforce the assessment by petition to the superior court in any county in the state.

(c) A final assessment shall have the force and effect of a civil judgment against the disciplined attorney. The professional conduct committee may file a copy of the final assessment with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures.

(d) The superior court may increase the assessment to include any taxable costs or other expenses incurred in the resolution or enforcement of any assessment. Such expenses may include reasonable attorney's fees payable to counsel retained by the committee to resolve or recover the assessment.

(e) Any monetary assessment made against a disciplined attorney shall be deemed to be monetary sanctions asserted by the professional conduct committee or the applicable court against such attorney.

(20) ***Confidentiality [and Public Access][9]:***

~~Applicability Note: Section 20 shall apply to records and proceedings in all matters initiated on or after April 1, 2000.~~

(a) *Grievance outside the Jurisdiction of the Attorney Discipline System or Not Meeting the Requirements for Docketing as a Complaint:*

(1) A grievance against a person who is not subject to the rules of

[9] PHN Appendix K; Subcommittee Report, pp. 8-9.

professional conduct shall be returned to the grievant. No file on the grievance will be maintained**[.]**~~; however, the attorney discipline office shall retain a copy of the letter to the grievant returning the grievance, which shall be available for public inspection in accordance with Supreme Court Rule 37A.~~[10]

(2) All records and materials relating to a grievance determined by the attorney discipline office or the complaint screening committee not to meet the requirements for docketing as a complaint shall be available for public inspection (other than work product, internal memoranda, and deliberations) ~~in accordance with Supreme Court Rule 37A~~[11] after correspondence is sent to the respondent attorney who is the subject of the grievance and the respondent attorney has the opportunity to provide a reply to be filed in the public record.

(b) *Grievance Docketed as Complaint:* All records and proceedings relating to a complaint docketed by the attorney discipline system shall be available for public inspection (other than work product, internal memoranda, and deliberations) ~~in accordance with Supreme Court Rule 37A~~[12] upon the earliest of the following:

(1) When the Attorney Discipline Office general counsel, the complaint screening committee or the professional conduct committee finally disposes of a complaint;

(2) When disciplinary counsel issues a notice of charges;

(3) When the professional conduct committee files a petition with the supreme court, except as provided by section (11) regarding resignations; or

(4) When the respondent attorney, prior to dismissal of a complaint or the issuance of a notice of charges, requests that the matter be public.

[(c) Records may be destroyed after:

(1) three years of the date of notice of dismissal with or without a warning; or

[10] PHN Appendix I; Subcommittee Report, pp. 8-9.
[11] PHN Appendix K; Subcommittee Report, pp. 10-11.
[12] PHN Appendix K; Subcommittee Report, pp. 10-11.

(2) three years of the date of an annulment in accordance with Rule 37A; or

(3) five years after the death of the attorney-respondent.][13]

~~(c)~~**[(d)]** *Proceedings for Reinstatement or Readmission:* When an attorney seeks reinstatement or readmission pursuant to section (14), the records, with the exception of the bar application, and the proceedings before the hearing panel and the professional conduct committee shall be public (other than work product, internal memoranda, and deliberations).

~~(d)~~ **[(e)]** *Proceedings Based upon Conviction or Public Discipline:* If the investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the respondent in another jurisdiction, the entire file pertaining to the crime or the public discipline, other than the work product, internal memoranda, and deliberations of the attorney discipline system, shall be available for public inspection.

~~(e)~~ **[(f)]***Proceedings Alleging Disability:* All proceedings involving allegations of disability on the part of a New Hampshire licensed attorney shall be kept confidential until and unless the supreme court enters an order suspending said attorney from the practice of law pursuant to section (10), in which case said order shall be public.

~~(f)~~ **[(g)]***Protective Orders:*[14] Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant, a witness, ~~or~~ the attorney**[, or other persons]**. In order to protect the **[legitimate privacy]** interests of **[such persons,]** ~~the complainant, witness, or attorney,~~ the professional conduct committee, may, upon request, or on its own initiative, issue a protective order prohibiting the disclosure of confidential, malicious, personal, privileged information or material submitted in bad faith. **[Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time.]** Any person aggrieved by a decision on a protective order may, within thirty (30) days of the decision, request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for

[13] PHN Appendix K; Subcommittee Report, pp. 10-11.
[14] PHN Appendix K; Subcommittee Report, pp. 10-13.

protective order until such time as the court has acted or the period for requesting court review has expired.

~~(g)~~ **[(h)]***Disclosure to Authorized Agency:* The attorney discipline office may disclose relevant information that is otherwise confidential to agencies authorized to investigate the qualifications of judicial candidates, to authorized agencies investigating qualifications for admission to practice or fitness to continue practice, to law enforcement agencies investigating qualifications for government employment, and to law enforcement agencies authorized to investigate and prosecute violations of the criminal law. If the attorney discipline office decides to answer a request for relevant information, and if the attorney who is the subject of the request has not signed a waiver permitting the requesting agency to obtain confidential information, the attorney discipline office shall send to the attorney at his or her last known address, by certified mail, a notice that information had been requested and by whom, together with a copy of the information that the attorney discipline office proposes to release to the requesting agency. The attorney discipline office shall inform the subject attorney that the information shall be released at the end of ten (10) days from the date of mailing the notice unless the attorney obtains a supreme court order restraining such disclosure. Notice to the attorney, as provided in this section, shall not be required prior to disclosure of relevant information that is otherwise confidential to law enforcement agencies authorized to investigate and prosecute violations of the criminal law.

~~(h)~~ **[(i)]** *Disclosure to Supreme Court for Rule 36 Review:* The attorney discipline office shall disclose relevant information that is otherwise confidential to the supreme court, upon its request, in connection with the court's review of applications under Supreme Court Rule 36.

~~(i)~~ **[(j)]***Disclosure to National Discipline Data Bank:* The clerk of the supreme court shall transmit notice of all public discipline imposed on an attorney by the supreme court or the professional conduct committee (upon notice from said committee), or the suspension from law practice due to disability of an attorney, to the National Discipline Data Bank maintained by the American Bar Association.

~~(j)~~ **[(k)]***Disclosure to Lawyers Assistance Program:* The Attorney Discipline Office shall have the power to disclose otherwise confidential information to the New Hampshire Lawyers Assistance Program whenever the Attorney Discipline Office determines that such disclosure would be in the public interest.

~~(k)~~ **[(l)]***Duty of Participants:* All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule.

Nothing in this section prevents a grievant from disclosing publicly the **[underlying]**[15] conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. The immunity from civil liability provided by section (7) does not apply to such disclosures. This section does prohibit a grievant, however, from disclosing publicly the fact that a grievance or complaint against the attorney about the conduct had been filed with the attorney discipline system pending the grievance or complaint becoming public in accordance with the provisions of this section.

~~(l)~~ **[(m)]***Violation of Duty of Confidentiality:* Any violation of the duty of confidentiality imposed by section (20) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the proceedings earlier than would have been the case under section (20), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.

~~(21)~~ **~~Confidentiality:~~**

~~*Applicability Note:* Section 21 shall not apply to records and proceedings in matter initiated on or after April 1, 2000.~~

~~(a) *Proceedings Alleging Misconduct:* All records and proceedings involving allegations of misconduct by an attorney shall be confidential and shall not be disclosed except:~~

~~(1) When disciplinary counsel issues a notice of charges, in which case the notice, the file (other than work product and internal memoranda), the proceedings before the committees (other than deliberations), and the decision shall be public; or~~

~~(2) When the professional conduct committee files a petition with the supreme court in which case, except as provided in section (11) regarding resignations, the pleadings, all information admitted at the proceedings, the proceedings themselves (other than deliberations of the supreme court), and the decision, shall be public; or~~

[15] PHN Appendix K; Subcommittee Report, pp. 10-13.

(3) When an attorney seeks reinstatement or readmission pursuant to section (14), in which case the proceedings before the hearings committee panel and the professional conduct committee and the court shall be conducted the same as prescribed in subsections (1) and (2); or

(4) When the respondent attorney, prior to the issuance of a notice of charges as prescribed in subsection (1), requests that the matter be public, in which case the entire file, other than the work product and internal memoranda, of the attorney discipline system, shall be public; or

(5) If the investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the respondent in another jurisdiction, in which case the entire file pertaining to the crime or the public discipline, other than the work product and internal memoranda, of the attorney discipline system shall be public.

(b) *Proceedings Alleging Disability:* All proceedings involving allegations of disability on the part of an attorney shall be kept confidential until and unless the supreme court enters an order suspending said attorney from the practice of law pursuant to section (10), in which case said order shall be public.

(c) *Protective Orders:* Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant, a witness, or the attorney. In order to protect the interests of the complainant, witness, or attorney, the professional conduct committee, may, upon request, or on its own initiative, issue a protective order prohibiting the disclosure of confidential, malicious, personal, privileged information or material submitted in bad faith. Any person aggrieved by a decision on a protective order may, within thirty (30) days of the decision, request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the court has acted or the period for requesting court review has expired.

(d) *Disclosure to Authorized Agency:* The attorney discipline office may disclose relevant information that is otherwise confidential to agencies authorized to investigate the qualifications of judicial candidates, to authorized agencies investigating qualifications for admission to practice or fitness to continue practice, to law enforcement agencies investigating qualifications of government employment, and to law enforcement agencies authorized to investigate and prosecute violations of the criminal law. If the attorney discipline office decides to answer a request for relevant information, and if the

attorney who is the subject of the request has not signed a waiver permitting the requesting agency to obtain confidential information, the attorney discipline office shall send to the attorney at his or her last known address, by certified mail, a notice that information has been requested and by whom, together with a copy of the information that the attorney discipline office proposes to release to the requesting agency. The attorney discipline office shall inform the subject attorney that the information shall be released at the end of ten (10) days from the date of mailing the notice unless the attorney obtains a supreme court order restraining such disclosure. Notice to the attorney, as provided in this section, shall not be required prior to disclosure of relevant information that is otherwise confidential to law enforcement agencies authorized to investigate and prosecute violations of the criminal law.

(e) *Disclosure to Supreme Court for Rule 36 Review*: The attorney discipline office shall disclose relevant information that is otherwise confidential to the supreme court, upon its request, in connection with the court's review of applications under Supreme Court Rule 36.

(f) *Disclosure to National Discipline Data Bank:* The clerk of the supreme court shall transmit notice of all public discipline imposed on an attorney by the supreme court or the professional conduct committee (upon notice from said committee), or the suspension from law practice due to disability of an attorney, to the National Discipline Data Bank maintained by the American Bar Association.

(g) *Duty of Participants:* All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule.

Nothing in the rule of confidentiality prevents a complainant from disclosing publicly the conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. The immunity from civil liability provided by section (7) does not apply to such disclosures. This rule does prohibit a complainant, however, from disclosing publicly the fact that a complaint against the attorney about the conduct has been filed with the attorney discipline system pending action on the complaint or pending the complaint becoming public in accordance with the provisions of this section.

If a complaint has been dismissed or otherwise disposed of by the attorney discipline system without discipline having been imposed, a complainant may make a public disclosure concerning the filing of the complaint, including the conduct complained of and the action of the attorney

~~discipline system. The immunity from civil liability provided in section (7) does not apply to such disclosures.~~

~~(h) *Violation of Duty of Confidentiality:* Any violation of the duty of confidentiality imposed by section (21) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the proceedings earlier than would have been the case under section (21)(a), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.~~[16]

~~(22)~~**[(21)]**[17] ***Copy of Rule:***

A copy of Supreme Court Rules 37 and 37A shall be provided to all grievants, complainants, and respondent attorneys.

~~(23) ***Applicability to Pending Disciplinary Matters:***[18]~~

~~The provisions of this rule, as amended effective January 1, 2004, shall not apply to any disciplinary matter pending before the supreme court on January 1, 2004. The provisions of this rule, as amended effective January 1, 2004, shall not apply to any disciplinary matter pending before the committee on January 1, 2004, in which prior to that date the committee has determined that formal proceedings shall be held and the hearing panel has concluded its evidentiary hearing. All such proceedings shall be governed by the provisions of Supreme Court Rule 37 that were in effect prior to January 1, 2004.~~

[16] PHN Appendix K, Subcommittee Report, pp. 9-16.
[17] PHN Appendix K, Subcommittee Report, pp. 9-16.
[18] PHN Appendix K, Subcommittee Report, p. 17-18.

APPENDIX T

Amend Supreme Court Rule 37A as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 37A. Rules and Procedures of the Attorney Discipline System.

(I) ***General Provisions***

(a) *Jurisdiction*: The jurisdiction of the attorney discipline system shall be as set forth in Supreme Court Rule 37(1)(b).

(b) *Construction:* This rule is promulgated for the purpose of assisting the grievant, complainant, respondent, counsel and the committees of the attorney discipline system to develop the facts relating to, and to reach a just and proper determination of matters brought to the attention of the attorney discipline system.

(c) *Definitions*: Subject to additional definitions contained in subsequent provisions of this rule which are applicable to specific questions, or other provisions of this rule, the following words and phrases, when used in this rule, shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:

Answer: The response filed by, or on behalf of, the respondent to a complaint or a notice of charges.

Attorney: Unless otherwise indicated, "Attorney," for purposes of this rule, means any attorney admitted to practice in this State, any attorney specially admitted to practice by a court of this State, any attorney not admitted or specially admitted in this State who provides or offers to provide legal services in this State or any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1.

Complaint: A grievance that, after initial review, has been determined by the attorney discipline office to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint as set forth in section (II)(a)(3)(B) of this rule, and that is docketed by the attorney discipline office, or a complaint that is drafted and docketed by the attorney discipline office after an inquiry by that office. If after docketing, the attorney discipline office general counsel or the complaint screening committee

determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

Court: The New Hampshire Supreme Court.

Disbarment: The termination of a New Hampshire licensed attorney's right to practice law in this State and automatic expulsion from membership in the bar of this State. A disbarred attorney may only apply for readmission to the bar of this State upon petition to the court, after having complied with the terms and conditions set forth in the disbarment order promulgated by the court which shall include all requirements applicable to applications for admission to the bar, including passing the bar examination and a favorable report by the professional conduct committee and the character and fitness committee.

Disciplinary Counsel: The attorney responsible for the prosecution of disciplinary proceedings before any hearings committee panel, the professional conduct committee and the supreme court. Disciplinary counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, such part-time attorney or attorneys as may from time to time be deemed necessary, and such other attorneys of the attorney discipline office as may from time to time be designated to assist disciplinary counsel.

Disciplinary Rule: Any provision of the rules of the court governing the conduct of attorneys or any rule of professional conduct.

Discipline: Any disciplinary action authorized by Rule 37(3)(c), in those cases in which misconduct in violation of a disciplinary rule is found warranting disciplinary action.

Diversion: Either a condition attached to discipline imposed by the professional conduct committee; or a referral, voluntary in nature, when conduct does not violate the rules of professional conduct; or non-disciplinary treatment by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee as an alternative to discipline for minor misconduct.

Formal Proceedings: Proceedings subject to section (III) of this rule.

General Counsel: The attorney responsible for (a) receiving, evaluating, docketing and investigating grievances filed with the attorney discipline office; (b) dismissing or diverting complaints on the grounds set forth in Rule 37(6)(c) or presenting complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason with or without a warning or referral to disciplinary counsel for a hearing; (c) assisting disciplinary counsel in the performance of the duties of disciplinary counsel as needed; (d) performing general legal services as required for the committees of the attorney discipline system; and (e) overseeing and performing administrative functions for the attorney discipline system. General counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, and such part-time attorney or attorneys as may from time to time be deemed necessary.

Grievance: "Grievance" means a written submission filed with the attorney discipline office to call to its attention conduct that the grievant believes may constitute misconduct by an attorney. A grievance that is determined, after initial screening, not to be within the jurisdiction of the attorney discipline system and/or not to meet the requirements for docketing as a complaint shall not be docketed and shall continue to be referred to as a grievance. A grievance that is determined, after initial screening, to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint shall be docketed as a complaint and shall be referred to thereafter as a complaint; provided, however, that if the attorney discipline office general counsel or complaint screening committee later determines that the docketed complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

Hearing Panel: A hearing panel comprised of members of the hearings committee.

Inquiry: A preliminary investigation of a matter begun by the attorney discipline office on its own initiative to determine whether a complaint should be docketed.

Investigation: Fact gathering by the attorney discipline office with respect to alleged misconduct.

Minor Misconduct: Conduct, which if proved, violates the rules of professional conduct but would not warrant discipline greater than a

reprimand. Minor misconduct (1) does not involve the misappropriation of client funds or property; (2) does not, nor is likely to, result in actual loss to a client or other person of money, legal rights or valuable property rights; (3) is not committed within five (5) years of a diversion, reprimand, censure, suspension or disbarment of the attorney for prior misconduct of the same nature; (4) does not involve fraud, dishonesty, deceit or misrepresentation; (5) does not constitute the commission of a serious crime as defined in Rule 37(9)(b); and (6) is not part of a pattern of similar misconduct.

Notice of Charges: A formal pleading served under section (III)(b)(2) of this rule by disciplinary counsel.

Public Censure: The publication by the court or the professional conduct committee, in appropriate New Hampshire publications, including a newspaper of general statewide circulation, and one with general circulation in the area of respondent's primary office, as well as the New Hampshire Bar News, of a summary of its findings and conclusions relating to the discipline of an attorney, as defined in this section.

Referral: A grievance received by the attorney discipline office from any New Hampshire state court judge or from any member of the bar of New Hampshire, in which the judge or attorney indicates that he or she does not wish to be treated as a grievant.

Reprimand: Discipline administered by the professional conduct committee after notice of charges and after a hearing before a hearings committee panel and the right to request oral argument to the professional conduct committee in those cases in which misconduct in violation of the rules of professional conduct is found. A reprimand is administered by letter issued by the chair of the professional conduct committee, subject to an attorney's right to appeal such discipline to the court.

Suspension: The suspension of an attorney's right to practice law in this State, for a period of time specified by the court or by the professional conduct committee. Suspension by the professional conduct committee may not exceed six (6) months. The suspended attorney shall have the right to resume the practice of law, after the expiration of the suspension period, upon compliance with the terms and conditions set forth in the suspension order promulgated by the court or the professional conduct committee and pursuant to the procedure set forth in section (II)(d)(2) regarding reinstatement.

Warning: Non-disciplinary action taken by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee when it is believed that an attorney acted in a manner which involved behavior requiring attention although not constituting clear violations of the rules of professional conduct warranting disciplinary action.

(d) *Grounds for Discipline:* The various matters specified in Supreme Court Rule 37(1)(c), the disciplinary rules or decisional law shall be grounds for discipline.

(e) *Types of Discipline and Other Possible Action*

(1) Misconduct under Supreme Court Rule 37(1)(c), the disciplinary rules or decisional law shall be grounds for any of the following:

(A) Disbarment - by the court.

(B) Suspension for more than six months - by the court.

(C) Suspension for six months or less - by the professional conduct committee or the court.

(D) Public Censure - by the professional conduct committee or the court.

(E) Reprimand - by the professional conduct committee.

(F) Monetary Sanctions Pursuant to Rule 37(19) – by the professional conduct committee or the court.

(2) The attorney discipline office general counsel, the complaint screening committee or the professional conduct committee may issue a warning to an attorney when it is deemed to be appropriate. The issuance of a warning does not constitute discipline.

(3) The attorney discipline office general counsel, the complaint screening committee or the professional conduct committee may divert a matter involving minor discipline, in lieu of discipline, subject to compliance with the terms of a written agreement. The professional conduct committee may require an attorney to participate in a diversion program as a condition of discipline. Any component of the attorney discipline system may refer to a diversion program, on a voluntary basis, an attorney who engages in conduct that does not violate the rules of

professional conduct but which should be addressed as a corrective matter.

(f) *Subsequent Consideration of Disciplinary Action or of a Warning*

The fact that an attorney has been issued a warning or has been the subject of disciplinary action by the professional conduct committee, may (together with the basis thereof) be considered in determining the extent of discipline to be imposed, in the event additional charges of misconduct are subsequently brought and proven by clear and convincing evidence against the attorney.

(g) *Diversion*

Diversion may be either mandatory, a voluntary referral or a discretionary referral for minor misconduct.

(1) Mandatory diversion involving required participation in a diversion program may occur in some cases as part of discipline imposed by the professional conduct committee.

(2) Voluntary referral to a diversion program may occur when the conduct of an attorney may come to the attention of any of the committees or personnel involved in the attorney discipline system but the conduct does not violate the rules of professional conduct. The referral would be voluntary and may occur in situations where there is reason to believe that the attorney's conduct may lead to violations of the rules of professional conduct if corrective action is not taken by the attorney.

(3) Discretionary diversion as an alternative to a formal sanction for minor misconduct may occur if:

(A) The misconduct appears to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee to be the result of poor office management, chemical dependency, behavioral or health-related conditions, negligence or lack of training or education; and

(B) There appears to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee to be a reasonable likelihood that the successful completion of a remedial program will prevent the

recurrence of conduct by the attorney similar to that which gave rise to the diversion.

(C) If the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee offers a written diversion agreement to an attorney, the attorney shall have thirty (30) days to accept and execute the diversion agreement.

(D) An attorney may decline to accept and execute a diversion agreement in which case the pending complaint shall be processed by the attorney discipline system in the same manner as any other matter.

(4) Diversion agreements shall be in writing and shall require the attorney to participate, at his or her own expense, in a remedial program acceptable to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee which will address the apparent cause of the misconduct. Remedial programs may include but are not limited to: law office assistance; chemical dependency treatment; counseling; voluntary limitation of areas of practice for the period of the diversion agreement; or a prescribed course of legal education including attendance at legal education seminars. A diversion agreement shall require the attorney to admit the facts of the complaint being diverted and to agree that, in the event the attorney fails to comply with the terms of the diversion agreement, the facts shall be deemed true in any subsequent disciplinary proceedings.

(5) The fact that a diversion has occurred shall be public in all matters. Written diversion agreements shall also be public unless the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee votes to make it non-public based on one or more of the following: health, personal finances, family considerations or other highly personal matters.

(6) If an attorney fails to comply with the terms of a written diversion agreement, the agreement shall be terminated and the complaint shall be processed by the attorney discipline system in the same manner as any other matter.

(7) If an attorney fulfills the terms of a written diversion agreement, the complaint shall be dismissed and written notice shall be sent to both the attorney and the complainant.

(8) The attorney discipline office shall a) prepare diversion agreements setting forth the terms determined by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee; b) monitor the progress of the attorney participating in the diversion program to insure compliance; and c) notify the complaint screening committee or the professional conduct committee whenever there is a voluntary or involuntary termination of the written diversion agreement or upon successful completion of the diversion program.

(h) *Public Announcements*

The attorney discipline office may, from time to time, publicly announce the nature, frequency and substance of diversion (unless made non-public), warnings and sanctions imposed by the attorney discipline system. Unless a grievance or complaint has already been made available for public inspection in accordance with Supreme Court Rule 37, such announcements shall not disclose or indicate the identity of any respondent attorney without the prior approval of the supreme court and prior notice to the respondent (giving said attorney an opportunity to be heard thereon) or without a written waiver from the attorney.

(i) *Period of Limitation.*[19]

(1) Except as provided in subsection (3), no formal disciplinary proceedings shall be commenced unless a grievance is filed with the attorney discipline office in accordance with section (II)(a) or a complaint is generated and docketed by the attorney discipline office under section (II)(a)(5)(B) of this rule~~:~~

~~(A) within six (6) years after the commission of the alleged misconduct when the alleged misconduct was committed before April 1, 2000;~~

~~(B)~~ within two (2) years after the commission of the alleged misconduct ~~when the alleged misconduct was committed on or after April 1, 2000~~; except when the acts or omissions that are the basis of the grievance were not discovered and could not reasonably have been discovered at the time of the acts or omissions, in which case, the grievance must be filed within two (2)

[19] Subcommittee Report at 30-31; March 14, 2014 meeting minutes.

years of the time the grievant discovers, or in the exercise of reasonable diligence should have discovered, the acts and omissions complained of.

(2) Misconduct will be deemed to have been committed when every element of the alleged misconduct has occurred, except, however, that where there is a continuing course of conduct, misconduct will be deemed to have been committed beginning at the termination of that course of conduct.

~~If the continuing course of conduct began before but terminated after April 1, 2000, continuing misconduct through March 31, 2000, will be subject to the six (6) year period of limitation while continuing misconduct for the period beginning April 1, 2000, will be subject to the two (2) year period of limitation.~~

(3) If a grievance is filed after the period prescribed in subsection (1) has expired, the attorney discipline office may elect to commence formal proceedings in the following cases:

(A) if based on charges which include commission of a "serious crime," as defined in Supreme Court Rule 37(9)(b), or conduct which would be a material element of a "serious crime," or

(B) if based on charges which do not include conduct described in (A) but which include as a material element fraud or fraudulent misrepresentation, dishonesty, deceit, or breach of a fiduciary duty, but only if commenced within one (1) year after actual discovery of the misconduct by the aggrieved party.

(4) The period of limitation does not run:

(A) during any time the attorney is outside this jurisdiction with a purpose to avoid commencement of proceedings, or wherein the attorney refuses to cooperate with an investigation into alleged misconduct, or

(B) during any period in which the attorney has engaged in active concealment of the alleged misconduct, provided that the period begins to run when the concealment is discovered by the aggrieved party or the attorney discipline office.

(5) If, while proceedings of any kind are pending against the attorney in any court or tribunal and arising out of the same acts or transactions that provide the basis for the allegations of misconduct, the limitations period prescribed in subsection (1) expires, **[a grievance or referral may nonetheless be filed with the attorney discipline office so long as it is filed]** ~~formal disciplinary proceedings may be commenced~~[20] within one year after final conclusion of those proceedings notwithstanding the expiration of the period of limitation.

[(j) *Status of Complainants.* Complainants are not parties to informal or formal disciplinary proceedings. Complainants lack standing to file pleadings or object to motions or recommendations of disposition of disciplinary matters.][21]

(II) **Investigations and Informal Proceedings**

(a) *Preliminary Provisions*

(1) *Responsibility of Attorney Discipline Office.*

The attorney discipline office, through general counsel, shall investigate all matters involving alleged misconduct of attorneys which fall within the jurisdiction of the attorney discipline system and which satisfy the requirements of this rule.

(2) *Initiation of Investigation Process*

(A) *Grievance.* Any person may file a grievance with the attorney discipline office to call to its attention the conduct of an attorney that he or she believes constitutes misconduct which should be investigated by the attorney discipline office. If necessary, the general counsel or his or her deputy or assistant will assist the grievant in reducing the grievance to writing.

In accordance with a judge's obligation under canon 3 of the code of judicial conduct to report unprofessional conduct of any attorney of which the judge is aware, a judge of the supreme, superior, district or probate courts of New Hampshire, may refer any matter to the attorney discipline office which he or she believes may constitute misconduct by an attorney that should be

[20] PHN, Appendix T; Subcommittee Report, pp. 32-33.
[21] PHN, Appendix R; Subcommittee Report, p. 30.

investigated by the attorney discipline office. In accordance with an attorney's obligation under Rule 8.3 of the rules of professional conduct to report unprofessional conduct of an attorney of which he or she has knowledge, a member of the bar of New Hampshire, may refer any matter to the attorney discipline office which he or she believes may constitute misconduct by an attorney that should be investigated by the attorney discipline office. Except as otherwise provided, a referral from a court or attorney shall be treated as a grievance. Upon receipt of a referral, if the attorney discipline office shall determine that the referring judge or attorney does not wish to be treated as a grievant, and, if it is determined after initial screening that the grievance is within the jurisdiction of the attorney discipline office and meets the requirements for docketing as a complaint as set forth in section (II)(a)(3)(B), the attorney discipline office shall process the grievance as an attorney discipline office generated complaint.

(B) *Attorney Discipline Office-Initiated Inquiry*. The attorney discipline office may, upon any reasonable factual basis, undertake and complete an inquiry, on its own initiative, of any other matter within its jurisdiction coming to its attention by any lawful means. Unless the attorney discipline office later dockets a complaint against an attorney in accordance with section (II)(a)(5)(B), all records of such an inquiry shall be confidential.

(C) *Filing.* A grievance shall be deemed filed when received by the attorney discipline office.

(3) *Procedure after Receipt of Grievance*

(A) *Initial Screening of Grievance.* General counsel shall review each grievance upon receipt to determine whether the grievance is within the jurisdiction of the attorney discipline system and whether the grievance meets the requirements for docketing as a complaint.

When necessary, general counsel may request additional information or documents from the grievant. Except for good cause shown, failure of a grievant to provide such additional information and/or documents within twenty (20) days may result in general counsel processing the grievance based on the then existing file, or dismissing the complaint without prejudice.

Upon receipt of the above information, general counsel may allow a respondent thirty (30) days to file a voluntary response if it is deemed necessary to assist in the evaluation process.

Extensions of time are not favored.

(B) *Requirements for Docketing Grievance as a Complaint.* A grievance shall be docketed as a complaint if it is within the jurisdiction of the attorney discipline system and it meets the following requirements:

(i) *Violation Alleged.* It contains: (a) a brief description of the legal matter that gave rise to the grievance; (b) a detailed factual description of the respondent's conduct; (c) the relevant documents that illustrate the conduct of the respondent, or, if the grievant is unable to provide such documents, an explanation as to why the grievant is unable to do so; and (d) whatever proof is to be provided, including the name and addresses of witnesses to establish a violation of a disciplinary rule.

(ii) *Standing.* With the exception of an attorney discipline office-initiated inquiry or a referral by a judge or attorney, it must be filed by a person who is directly affected by the conduct complained of or who was present when the conduct complained of occurred, and contain a statement establishing these facts.

(iii) *Oath or Affirmation.* It is typed or in legible handwriting and, with the exception of an attorney discipline office-initiated inquiry or a referral by a judge or attorney, signed by the grievant under oath or affirmation, administered by a notary public or a justice of the peace. The following language, or language that is substantially equivalent, must appear above the grievant's signature: "I hereby swear or affirm under the pains and penalties of perjury that the information contained in this grievance is true to the best of my knowledge."

(iv) *Limitation Period.* It was filed with the attorney discipline office within the period of limitation set forth in section (I)(i).

(C) *Treatment of Grievance Not Within Jurisdiction of Attorney Discipline System or Failing to Meet Complaint Requirements.* A grievance that is not within the jurisdiction of the attorney discipline system or that does not meet the requirements for docketing as a complaint as set forth in section (II)(a)(3)(B) shall not be docketed and shall be dismissed in accordance with section (II)(a)(4).

(4) *Disposition of Grievance after Initial Screening.*

(A) *Lack of Jurisdiction.* If the attorney discipline office determines that the person who is the subject of the grievance is not a person subject to the rules of professional conduct, general counsel shall return the grievance to the grievant with a cover letter explaining the reason for the return and advising the grievant that the attorney discipline office will take no action on the grievance. The person who is the subject of the grievance shall not be notified of it. No file on the grievance will be maintained**[.]**~~, however, the attorney discipline office shall retain a copy of the cover letter to the grievant, which shall be available for public inspection in accordance with section (IV)(a)(2)(A).~~ The attorney discipline office may bring the matter to the attention of the authorities of the appropriate jurisdiction, or to any other duly constituted body which may provide a forum for the consideration of the grievance and shall advise the grievant of such referral.

(B) *Failure to Meet Complaint Requirements.* If the attorney discipline office determines that a grievance fails to meet the requirements for docketing as a complaint, it shall so advise the grievant in writing. The attorney who is the subject of the grievance shall be provided with a copy of the grievance and the response by general counsel, and shall be given an opportunity to submit a reply to the grievance within thirty (30) days from the date of the notification or such further time as may be permitted by general counsel. The attorney's reply shall be filed in the record, which shall be available for public inspection in accordance with section (IV)(a)(2)(B).

(C) *Reconsideration of Attorney Discipline Office's Decision.* A grievant may file a written request for reconsideration of the attorney discipline office's decision that the grievance is not within

the jurisdiction of the attorney discipline system or does not meet the requirements for docketing as a complaint, but said request must be filed within ten (10) days of the date of the written notification. A request for reconsideration of the attorney discipline office's decision shall automatically stay the period in which the attorney may file a reply as provided for by section (II)(a)(4)(B). Any such request for reconsideration that is timely filed shall be presented by general counsel to the complaint screening committee which shall affirm the decision of the attorney discipline office or direct that the grievance be docketed as a complaint and processed in accordance with the following paragraph. If the decision of the attorney discipline office is affirmed, the attorney who is the subject of the grievance shall be given the opportunity to submit a reply to the grievance within thirty (30) days from the date of the complaint screening committee's action on the request for reconsideration or such further time as may be ordered by that committee.

(5) *Docketing of Grievance as Complaint; Procedure Following Docketing of Complaint.*

(A) *Docketing of Grievance as Complaint.* If general counsel determines that a grievance is within the jurisdiction of the attorney discipline office and meets the requirements for docketing as a complaint as set forth in section (II)(a)(3)(B), he or she shall docket it as a complaint.

(B) *Drafting and Docketing of Attorney Discipline Office-generated Complaint.* If, after undertaking and completing an inquiry on its own initiative, the attorney discipline office determines that there is a reasonable basis to docket a complaint against a respondent, a written complaint shall promptly be drafted and docketed.

(C) *Request for Answer to Complaint.* After a complaint is docketed, general counsel shall promptly forward to the respondent a copy of the complaint and a request for an answer thereto or to any portion thereof specified by the general counsel. Unless a shorter time is fixed by the general counsel and specified in such notice, the respondent shall have thirty (30) days from the date of such notice within which to file his or her answer with the attorney discipline office. The respondent shall serve a copy of his

or her answer in accordance with section (VII) of this rule. If an answer is not received within the specified period, or any granted extension, absent good cause demonstrated by the respondent, general counsel may recommend to the complaint screening committee that the issue of failing to cooperate be referred to disciplinary counsel who shall prepare a notice of charges requiring the respondent to appear before a panel for the hearings committee and to show cause why he or she should not be determined to be in violation of Rules 8.1(b) and 8.4(a) of the rules of professional conduct for failing to respond to general counsel's request for an answer to the complaint.

(6) *Investigation.*

Either prior to or following receipt of the respondent's answer, general counsel and his or her deputies and assistants shall conduct such investigation as may be appropriate.

Upon completion of the investigation, general counsel may (1) dismiss or divert a complaint on the grounds set forth in Rule 37(6)(c); or (2) present the complaint to the complaint screening committee with recommendations for diversion as provided in section (I)(g), dismissal for any reason (with or without a warning) or referral to disciplinary counsel for a hearing.

At any time while general counsel is investigating a docketed complaint, the respondent may notify general counsel that the respondent waives the right to have the matter considered by the complaint screening committee and consents to the matter being referred to disciplinary counsel for a hearing. Agreement by the respondent to referral for a hearing shall not be considered an admission of misconduct or a waiver of any defenses to the complaint.

Meetings of the complaint screening committee shall be in the nature of deliberations and shall not be open to the public, respondents, respondents' counsel, disciplinary counsel or the complainant. Records and reports of recommendations made shall in all respects be treated as work product and shall not be made public or be discoverable. However, the decision of the complaint screening committee shall be public.

(7) *Action By the Attorney Discipline Office General Counsel or the Complaint Screening Committee.*

(A) *Diversion.* In any matter in which the attorney discipline

office general counsel or the complaint screening committee determines that diversion is appropriate, it shall be structured consistent with the provisions of section (I)(g).

(B) *Dismissal For Any Reason.* In any matter in which the Attorney Discipline Office General Counsel or the complaint screening committee determines that a complaint should be dismissed, either on grounds of no professional misconduct or any other reason, general counsel or the committee shall dismiss the complaint and it shall notify the complainant and the respondent in writing and the attorney discipline office shall close its file on the matter.

(C) *Dismissal With A Warning.* If the Attorney Discipline Office General Counsel or the complaint screening committee determines that the complaint should be dismissed and that a warning should issue, general counsel or the committee shall notify the complainant and the respondent of such disposition in writing and shall notify the respondent of his or her rights, if any, pursuant to section (II)(b)(1)(B) of this rule.

(D) *Formal Proceedings.* If the respondent agrees with the recommendation of the Attorney Discipline Office General Counsel to refer a complaint to disciplinary counsel, or the complaint screening committee determines that formal proceedings should be held, the complaint shall be referred to disciplinary counsel for the issuance of notice of charges and the scheduling of a hearing on the merits before a panel of the hearings committee**[, or, alternatively, for waiver of formal proceedings by respondent and the filing of stipulations as to facts, rule violations and/or sanction]**.[22]

(b) *Final Disposition With A Warning.*

(1) *Warning.*

(A) A written record shall be made of the fact of and basis for a dismissal with a warning.

(B) In the case of a warning, the respondent shall be advised of:

[22] PHN, Appendix P; Subcommittee Report, pp. 24.

(i) the respondent's right to submit a written response, which shall be maintained with the file relating to the complaint.

(ii) the fact that the issuance of the warning does not constitute discipline; and

(iii) the fact that the record of such warning may be considered (a) by the Attorney Discipline Office General Counsel or the complaint screening committee to determine whether diversion may be appropriate in the event charges of minor misconduct are subsequently brought against the respondent; or (b) by the professional conduct committee in the event findings of misconduct are subsequently found against the respondent.

(c) *Abatement of Investigation.*

(1) *Refusal of Grievant/Complainant or Respondent to Proceed, Etc.*

Neither unwillingness nor neglect of the grievant or complainant to prosecute a charge, nor settlement, compromise, or restitution, nor failure of the respondent to cooperate, shall, by itself, justify abatement of an investigation into the conduct of an attorney or the deferral or termination of proceedings under this rule.

(2) *Complaint Related to Pending Civil Litigation or Criminal Matter.*

(A) *General Rule.* The processing of a complaint involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation need not but may be deferred at any stage pending determination of such litigation.

(B) *Effect of Determination.* The acquittal of a respondent on criminal charges or a verdict or judgment in the respondent's favor in civil litigation involving substantially similar material allegations shall not, by itself, justify termination of a disciplinary investigation predicated upon the same material allegations.

(d) *Resignation, Reinstatement~~, Conviction of Crime.~~*[23]

[23] PHN, Appendix N; Subcommittee Report, p. 21.

(1) *Resignation by a New Hampshire Licensed Attorney under Disciplinary Investigation.*

(A) *Recommendation to the Court.* Upon receipt by any component part of the attorney discipline system of an affidavit from a New Hampshire licensed attorney who intends to resign pursuant to the rules of the court, it shall refer the matter to the professional conduct committee, to review the affidavit and such other matters as it deems appropriate to determine either (i) to recommend to the court that the resignation be accepted and to recommend any terms and conditions of acceptance it deems appropriate, or (ii) to recommend to the court that the resignation not be accepted with the reasons therefore. The professional conduct committee shall submit the affidavit and its recommendation to the court, and the proceedings, if any, before the court shall be conducted by disciplinary counsel.

(B) *Notification of Grievant.* In the event the court accepts the resignation of a respondent and removes the respondent on consent, the professional conduct committee by means of written notice shall notify the grievant of such action.

(2) *Application for Reinstatement or Readmission.*

(A) *Timeliness after Suspension.* An attorney who has been suspended for a specific period, whether by the court or the professional conduct committee, may not move for reinstatement until the expiration of the period of suspension, and upon the completion of all the terms and conditions set forth in the order of suspension.

(B) *Procedure.* A motion for reinstatement by an attorney suspended by the court for misconduct rather than disability or an application for readmission by a New Hampshire licensed attorney who has been disbarred or has resigned while under disciplinary investigation shall be referred to the professional conduct committee by the supreme court. A motion for reinstatement by an attorney suspended by the professional conduct committee shall be filed directly with the professional conduct committee.

Upon receipt of a motion for reinstatement or an application for readmission, the professional conduct committee shall refer the motion or application to the hearings committee for appointment of a hearing panel. The attorney discipline office shall then cause a notice to be published in a newspaper with statewide circulation, and one with circulation in the area of respondent's former primary office, as well as the New Hampshire Bar News that the respondent has moved for reinstatement or applied for readmission. The notice shall invite anyone to comment in writing to the attorney discipline office within twenty (20) days. All comments shall be made available to the respondent and shall be part of the public file. Where feasible, the attorney discipline office shall give notice to the original complainant. The hearing panel shall promptly schedule a hearing at which the respondent shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency and learning in law required for admission to practice law in this state and that the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration for justice nor subversive to the public interest. The attorney discipline system shall be represented at the hearing by disciplinary counsel. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings of fact, conclusions and recommendations in written reports, along with the record, to the professional conduct committee. Following receipt of written memoranda by disciplinary counsel and respondent, the hearing transcript and oral argument, the professional conduct committee shall review the record in its entirety and shall file its own recommendations and findings with the court, together with the record. After the submission of briefs and oral arguments to the court, if any, the court shall enter a formal order.

(C) *Readmission after Resignation.* Upon receipt of a referral from the supreme court, pursuant to Rule 37(15), of a motion for readmission after resignation, the professional conduct committee shall further refer the motion to the hearings committee for the appointment of a hearing panel. The hearing panel shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competency and learning in law required for readmission. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the professional

conduct committee. Following receipt of written memoranda of disciplinary counsel and the attorney, review of the hearing transcript, and oral argument, the professional conduct committee shall review the record in its entity, and shall file its own recommendations and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument to the supreme court, if any, the court shall enter a final order.

(D) *Special Rule for Suspensions of Six Months or Less.* Notwithstanding the provisions of Rule 37A(II)(d)(2)(B), a lawyer who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated by the court following the end of the period of suspension by filing with the court and serving upon disciplinary counsel a motion for reinstatement accompanied by: (1) an affidavit stating that he or she has fully complied with the requirements of the suspension order and has paid any required fees and costs; and (2) evidence that he or she has satisfactorily completed the Multistate Professional Responsibility Examination since his or her suspension.

~~(3) Conviction of Crime; Determination of Serious Crime.~~

~~Upon receipt by any component part of the attorney discipline system of a certificate by the clerk of any court demonstrating that an attorney has been convicted of a crime in the State of New Hampshire or in any other state, territory or district, it shall determine whether the crime is a "serious crime" as defined in Supreme Court Rule 37(7)(b). Upon a determination that the crime is a serious crime, it shall file the certificate of conviction with the Court.~~[24]

(III) ***Formal Proceedings***

Preface

As good cause appears and as justice may require, the professional conduct committee may waive the application of any rule under this section.

(a) *Preliminary Provisions.*

(1) *Representation of Respondent.*

[24] PHN, Appendix N; Subcommittee Report, p. 21.

When a respondent is represented by counsel in a formal proceeding, counsel shall file with the hearings committee and disciplinary counsel a written notice of such appearance, which shall state such counsel's name, address, and telephone number, the name and address of the respondent on whose behalf counsel appears, and the caption of the subject proceedings. If the appearance is filed after a hearing panel has submitted its reports and recommendations to the professional conduct committee, the notice of the appearance shall be filed with the professional conduct committee rather than the hearings committee. In any proceeding where counsel has filed a notice of appearance pursuant to this section, any notice or other written communication required to be served on or furnished to the respondent shall also be served on or furnished to the respondent's counsel (or one of such counsel if the respondent is represented by more than one counsel) in the same manner as prescribed for the respondent, notwithstanding the fact that such communication may be furnished directly to the respondent.

(2) *Format of Pleadings and Documents.*

Pleadings or other documents filed in formal proceedings shall comply with and conform to the rules from time to time in effect for comparable documents in the court.

(3) *Avoidance of Delay.*

All formal proceedings under this rule shall be as expeditious as possible. In any matter pending before the hearings committee, only the chair of the panel assigned to hear the matter may grant an extension of time, and only upon good cause shown. In any matter pending before the professional conduct committee, only the chair of the committee may grant an extension of time, and only upon good cause shown. Application for such an extension shall be made, in advance, and in writing where practicable, to the appropriate chair.

(4) *Additional Evidence.*

Whenever, in the course of any hearing under this rule, evidence shall be presented upon which another charge or charges against the respondent might be made, it shall not be necessary to prepare or serve an additional notice of charges with respect thereto, but the hearing panel may, after reasonable notice to the respondent and disciplinary counsel and an opportunity to answer and be heard, proceed to the consideration of such additional charge or charges as if they had been made and served at the time for service of the

notice of charges, and may render its decision upon all such charges as may be justified by the evidence in the case.

[(aa) *Stipulations*[25]

(1) *Dispositive Stipulations as to Facts, Rule Violations and Sanction*

(A) The respondent and the attorney discipline office may enter into a stipulation to facts, rule violations, and sanction disposing of all issues at any time after a file has been referred to disciplinary counsel by the complaint screening committee.

(B) If a dispositive stipulation is reached before a hearing panel has been appointed, the stipulation shall be filed with and reviewed by the professional conduct committee. If a dispositive stipulation is reached after a hearing panel has been appointed, it shall be filed with and reviewed by the hearing panel.

(2) *Partial Stipulations*

(A) A partial stipulation to resolve some but not all issues of fact, rule violation and sanction may be entered into by the parties at any time after a file has been referred to disciplinary counsel by the complaint screening committee.

(B) A partial stipulation shall be filed with a hearing panel. If a hearing panel has not been appointed, one shall be appointed prior to the filing of the partial stipulation.

(C) The hearing panel shall review the partial stipulation and approve, conditionally approve or reject the partial stipulation in accordance with Rule 37A(III)(aa)(3). A partial stipulation approved by the hearing panel shall be deemed binding on all matters stipulated therein.

(D) Upon the hearing panel's review of a partial

[25] PHN, Appendix Q; Subcommittee Report, pp. 23-26.

stipulation, any remaining contested issues of facts, rule violations and sanction shall be heard by the hearing panel pursuant to Rule 37A(III)(b) and (c).

(3) ***Review of Stipulation to Facts, Rule Violations and/or Sanction***

(A) The professional conduct committee or the hearing panel (the "reviewing body") shall review a stipulation based solely on the record agreed to by the respondent and disciplinary counsel. Either party may request to appear before the reviewing body to address the stipulation, or the reviewing body may, in its discretion, direct the parties to appear before it to address the stipulation. The oral proceedings on stipulations shall not be recorded or transcribed and shall not become part of the record.

(B) The reviewing body may accept, reject, or conditionally accept the stipulation and shall issue a written order or report, as appropriate, with supporting grounds.

(C) If the reviewing body accepts the stipulation in its entirety, the reviewing body shall adopt all findings of fact and conclusions of law in the stipulation.

(D) If the reviewing body rejects the stipulation in its entirety, the rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible into evidence in any disciplinary, civil or criminal proceeding.

(E) The reviewing body may conditionally approve a stipulation upon agreement by the Respondent and disciplinary counsel to a different sanction, probation, or other term the reviewing body deems necessary to accomplish the purposes of lawyer discipline.

(i) The conditionally approved stipulation is deemed approved by the reviewing body, if, within 21 days of service of the reviewing body's order or report, or within additional time granted by the reviewing body, both parties consent in writing to the conditional terms in the order.

(ii) Absent such consent, the parties may amend and resubmit the stipulation to the reviewing body or, alternatively, disciplinary counsel may file a notice of charges or otherwise proceed.

(iii) Absent consent or amendment and resubmission of the stipulation, the stipulation has no force or effect and neither it nor the fact of its execution is admissible into evidence in any disciplinary, civil or criminal proceeding.]

(b) *Institution of Proceedings.*[26]

(1) *General.*

Upon receipt of a file referred by the attorney discipline office general counsel or the complaint screening committee, disciplinary counsel may engage in such additional preparation to allow counsel to formalize allegations into a notice of charges. The notice of charges shall be served on the respondent by certified mail, return receipt requested, unless some other type of service is authorized upon application to the chair of the professional conduct committee. Throughout the proceedings, disciplinary counsel shall exercise independent professional judgment. Nevertheless, disciplinary counsel shall keep the complainant apprised of developments in the matter and consider input from the complainant.

(2) *Notice of Charges**[; Initial Disclosure]**.*

The notice of charges shall set forth the allegations of misconduct against the respondent and the disciplinary rules alleged to have been violated. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel and to present evidence in respondent's own behalf. **[At the time of filing the notice of charges or as soon thereafter as is practicable, disciplinary counsel shall provide respondent with bates-stamped copies of all relevant documents (excluding work product and internal memoranda of the ADO).]**

(3) *Answer.*

(A) *General Rule.* The respondent shall answer the notice of

[26] PHN Appendix S; Subcommittee Report at p. 32.

charges by serving and filing an answer with disciplinary counsel within thirty (30) days after service of the notice of charges. Should the respondent fail to file an answer, the allegations set forth in the notice of charges shall be deemed to be admitted.

(B) *Contents of Answer.* The answer shall be in writing, and shall respond specifically to each allegation of the notice of charges and shall assert all affirmative defenses.

(4) *Assignment for Hearing.*

Upon receiving an answer from the respondent, or the expiration for the thirty (30) day period for a respondent to file an answer, it shall be the duty of disciplinary counsel to request that the chair of the hearings committee appoint a hearing panel.

~~Once a hearing panel has been appointed, disciplinary counsel shall forward the panel a copy of the file, other than work product, deliberations and internal correspondence and memoranda of the component parts of the attorney discipline system. To the extent not already provided, disciplinary counsel shall also provide the respondent with the same documents provided to the hearing panel.~~[27]

(5) *Discovery.*

(A) Discovery shall be available to the disciplinary counsel. Discovery shall also be available to the respondent, provided that an answer has been filed. All such requests shall be in writing.

(B) On written request the following information, if relevant or reasonably calculated to lead to the discovery of admissible evidence in the matter, and if within the possession, custody or control of the disciplinary counsel, the respondent or respondent's counsel, is subject to discovery and shall be made available for inspection and copying as set forth in this rule:

(i) A writing or any other tangible object, including those obtained from or belonging to the respondent;

(ii) Signed written statements, or taped statements, if any, by any witness, including the respondent;

[27] PHN Appendix S; Subcommittee Report at p. 31.

(iii) Results or reports of mental or physical examinations and of scientific tests or experiments made in connection with the matter;

(iv) Names, addresses and telephone numbers of all persons known to have relevant information based on personal knowledge about the matter, including a designation by the disciplinary counsel and respondent as to which of those persons will be called as witnesses;

(v) Police reports and any investigation reports generated by any agency other than the attorney discipline office;

(vi) Names and address of each person expected to be called as an expert witness, the expert's qualifications, the subject matter on which the expert will testify, a copy of all written reports submitted by the expert or, if none, a statement of facts and opinions to which the expert will testify and a summary of the grounds for each opinion; and

(vii) If disciplinary counsel or the respondent are unable to agree on discovery issues, a request must be made for a pre-hearing conference.

(C) This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or that party's attorney or agents in connection with a disciplinary proceeding. Nor does it require discovery of statements, signed or unsigned, made by respondent to respondent's attorney or that attorney's agents. This rule does not authorize discovery of any internal materials or documents prepared by the attorney discipline office.

(D) Depositions shall be permitted in any matter to preserve the testimony of a witness likely to be unavailable for hearing due to death, incapacity or if otherwise agreed to by the parties. If disciplinary counsel or the respondent deem it necessary to take any other depositions, a request must be made for a pre-hearing conference.

(E) Discovery shall be made available within thirty (30) days

after receipt of a written request therefor. A party's obligation to provide discovery is a continuing one. If, subsequent to compliance with a request for discovery, a party discovers additional names or statements of witnesses or other information reasonably encompassed by the initial request for discovery, the original discovery response shall be promptly supplemented accordingly. In any case in which a pre-hearing conference has been held, the case management order shall set forth the time period within which all discovery shall be completed.

(F) Any discoverable information which is not timely furnished either by original or supplemental response to a discovery request may, on application of the aggrieved party, be excluded from evidence at hearing. The failure of the disciplinary counsel or respondent to disclose the name and provide the report or summary of any expert who will be called to testify in accordance with prior agreement of the parties or as provided in the case management order at least twenty (20) days prior to the hearing date shall result in the exclusion of the witness, except on good cause shown.

(6) *Pre-Hearing Conference.*

(A) A pre-hearing conference shall be held **[in all matters]** ~~at the request of any party or the trier of fact.~~ The pre-hearing conference shall be held by the hearing panel chair **[no earlier than sixty (60) days after an Answer has been filed]**. ~~Unless for good cause shown, the request for a pre-hearing conference must be made within thirty (30) days of the date of the hearing panel appointment.~~[28] At least fourteen (14) days written notice of the date of the conference shall be given. Attendance is mandatory by all parties at the conference. A pre-hearing conference may be held by telephone call where appropriate. No transcript shall be made of the pre-hearing conference.

(B) At the pre-hearing conference, the hearing panel chair shall address the following matters:

(i) The formulation and simplification of issues;

[28] PHN, Appendix F; Subcommittee Report, pp. 5-6.

(ii) Admissions and stipulations of the parties with respect to allegations, defenses and any aggravation or mitigation;

(iii) The factual and legal contentions of the parties;

(iv) The identification and limitation of witnesses, including character and expert witnesses;

(v) Rulings on discovery disputes, deadlines for the completion of discovery, including the timely exchange of expert reports, and a ruling on any requests to take depositions;

(vi) The hearing date and its estimated length;

(vii) Deadline for **[exchanging of proposed exhibits; deadline for objections to exhibits; exhibits not objected to shall be deemed stipulated exhibits** ~~the pre-marking of all exhibits to which the parties consent~~;[29] and

(viii) Any other preliminary issues or matters which may aid in the disposition of the case.

(C) Within fourteen (14) days following the pre-hearing conference, the hearing panel chair shall issue a case management order, designated as such in the caption, memorializing any agreements by the parties and any determinations made respecting any matters considered at the conference. The case management order, which constitutes part of the record, shall be sent to the disciplinary counsel and the respondent.

(D) At the pre-hearing conference the hearing panel chair shall schedule a date for the hearing of the case within **[ninety (90)]** ~~sixty (60)~~ days after the date of the conference, except for good cause shown.

~~(7) Matters in Which a Pre-hearing Conference Has Not Been Held.~~

~~(A) In any matter in which a pre-hearing conference is~~

[29] PHN, Appendix F; Subcommittee Report, pp. 5-6.

~~not requested, both disciplinary counsel and respondent shall be responsible for compiling and pre-marking all documentary evidence, to which the parties consent, to be considered by the hearing panel;~~

~~(B) In such matters, both disciplinary counsel and respondent shall also be responsible for preparing lists of names, addresses and telephone numbers of persons who will be called as witnesses, and, in the case of expert witnesses, the experts' qualifications, the subject matter upon which each will testify, a copy of the written reports submitted by such experts, or if none, a statement of the facts and opinions to which each expert will testify and a summary of the grounds for each such opinion.~~

~~(C) Also, in such matters, both disciplinary counsel and respondent shall be responsible for preparing requests for findings of fact and rulings of law.~~

~~(D) Copies of pre-marked exhibits, witnesses lists and expert witness disclosures, shall be filed by disciplinary counsel and respondent with the attorney discipline office at least ten (10) days prior to the date of the hearing. Five (5) copies shall be provided. Copies shall be also provided to the opposing party concurrent with the submission to the attorney discipline office. Requests for findings of fact and rulings of law shall be filed at the beginning of the hearing.~~[30]

~~(8)~~**[(7)]** *Further Review.*

If at any point prior to the hearing on the merits, disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing, he or she shall submit a written report to the professional conduct committee requesting that the matter be dismissed either with a finding of no professional misconduct or on some other basis.

(c) *Conduct of Hearings.*

(1) *General Rule.*

The hearing panel chair shall conduct the hearing. A record shall be required and a transcript provided to the respondent, disciplinary counsel and the professional conduct committee. A transcript may be provided to the complainant if requested. A copy of the transcript may be obtained from the stenographer by anyone else at the expense of the person requesting it, and it

[30] PHN, Appendix F; Subcommittee Report, pp. 5-6

shall thereafter be provided within a reasonable time. The respondent may have the right to be represented by counsel, and respondent and disciplinary counsel shall present their evidence. The hearing shall be public.

(2) *Limiting Number of Witnesses.*

The hearing panel may limit the number of witnesses who may be heard upon any issue before it to eliminate unduly repetitious or cumulative evidence.

(3) *Additional Evidence.*

At the hearing the hearing panel may, if it deems it advisable, authorize either the respondent or disciplinary counsel to file specific post-hearing documentary evidence as part of the record within such time as shall be fixed by the hearing panel chair.

(4) *Oral Examination.*

Witnesses shall be examined orally by disciplinary counsel or the respondent calling the witnesses as well as by the members of the hearing panel. Witnesses whose testimony is to be taken, including the complainant and the respondent, shall be sworn, or shall affirm, before their testimony shall be deemed evidence in any proceeding or any questions are put to them. Cross-examination of witnesses, including the complainant and respondent, shall be allowed but may be limited by the hearing panel chair if such cross-examination is not assisting the hearing panel in developing facts relating to, or reaching a just and proper determination of, the matters before the hearing panel.

~~(5) *Presentation and Effect of Stipulations.*~~

~~Disciplinary counsel and the respondent may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding with respect to matters therein stipulated.~~[31]

~~(6)~~**[(5)]** *Admissibility of Evidence.*

(A) *General Rule.* All evidence which is deemed by the

[31] PHN, Appendix Q; Subcommitee Report, p. 26.

hearing panel chair to be relevant, competent and not privileged shall be admissible in accordance with the principles set out in section (I)(b) of this rule. Except as provided above, the formal rules of evidence shall not apply.

(B) *Pleadings*. The notice of charges and answer thereto shall, without further action, be considered part of the record.

~~(7)~~ **[(6)]** *Reception and Ruling on Evidence.*

When objections to the admission or exclusion of evidence are made the grounds shall be stated concisely. Formal exceptions are unnecessary. The hearing panel chair shall rule on the admissibility of all evidence.

~~(8)~~ **[(7)]** *Copies of Exhibits.*

When exhibits of a documentary character are received in evidence, copies shall, unless impracticable, be furnished to each member of the hearing panel present at the hearing, as well as to opposing counsel or the other party. Legible copies shall be admissible, unless otherwise required by the hearing panel chair.

~~(9)~~ **[(8)]** *Photographing, Recording and Broadcasting.*

(A) The hearing panel should permit the media to photograph, record and broadcast all proceedings that are open to the public. The hearing panel may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence. Except as specifically provided in this rule, or by order of the hearing panel, no person shall within the hearing room take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of any proceeding.

(B) Reporters hired by the hearings committee to record hearings pursuant to this rule and authorized recorders are not prohibited by this rule from making voice recordings for the sole purpose of discharging their official duties.

(C) *Proposed Limitations on Coverage by the Electronic Media.* Any party to a formal proceeding – or any other interested person – shall notify the hearings committee at the inception of a

matter, or as soon as practicable, if that person intends to ask the hearing panel to limit electronic media coverage of any proceeding that is open to the public. Failure to notify the hearings committee in a timely fashion may be sufficient grounds for the denial of such a request. In the event of such a request, the hearings committee or hearing panel shall either deny the request or issue an order notifying the parties to the proceeding and all other interested persons that such a limitation has been requested, establish deadlines for the filing of written objections by parties and interested persons, and order an evidentiary hearing during which all interested persons will be heard. The same procedure for notice and hearing shall be utilized in the event that the hearing panel sua sponte proposes a limitation on coverage by the electronic media. A copy of the order shall, in addition to being incorporated in the case docket, be sent to the Associated Press, which will disseminate the order to its members and inform them of upcoming deadlines/hearing.

(D) *Advance Notice of Requests for Coverage.* Any requests to bring cameras, broadcasting equipment and recording devices into a hearing room for coverage of any proceedings shall be made as far in advance as practicable. If no objection to the requested electronic coverage is received by the hearings committee or hearing panel, coverage shall be permitted in compliance with this rule. If an objection is made, the media will be so advised and the panel will conduct an evidentiary hearing during which all interested parties will be heard to determine whether, and to what extent, coverage by the electronic media or still photography will be limited.

(E) *Pool Coverage.* The hearing panel retains discretion to limit the number of still cameras and the amount of video equipment in the hearing room at one time and may require the media to arrange for pool coverage. The panel will allow reasonable time prior to a proceeding for the media to set up pool coverage for television, radio and still photographers providing broadcast quality sound and video.

(1) It is the responsibility of the news media to contact the attorney discipline office in advance of a proceeding to determine if pool coverage will be required. If the hearing panel has determined that pool coverage will be required, it is the sole responsibility of the media, with assistance as

needed from the attorney discipline office, to determine which news outlet will serve as the "pool." Disputes about pool coverage will not be resolved by the hearing panel. Access may be curtailed if pool agreements cannot be reached.

(2) In the event of multiple requests for media coverage, because scheduling renders a pool agreement impractical, the attorney discipline office retains the discretion to rotate media representatives into and out of the courtroom.

(F) *Live Feed*. Except for good cause shown, requests for live coverage should be made at least five (5) days in advance of a proceeding.

(G) *Exhibits.* For purposes of this rule, access to exhibits will be at the discretion of the hearing panel. The panel retains the discretion to make one "media" copy of each exhibit available in the attorney discipline office.

(H) *Equipment.* Exact locations for all video and still cameras, and audio equipment within the hearing room will be determined by the hearing panel. Movement in the hearing room is prohibited, unless specifically approved by the panel.

(1) Placement of microphones in the hearing room will be determined by the hearing panel. An effort should be made to facilitate broadcast quality sound. All microphones placed in the hearing room will be wireless.

(2) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash equipment and other supplemental lighting or sound equipment is prohibited unless otherwise approved by the hearing panel.

(I) *Restrictions.* Unless otherwise ordered by the hearing panel, the following standing orders shall govern.

(1) No flash or other lighting devices will be used.

(2) Set up and dismantling of equipment is prohibited when the proceedings are in session.

(3) No camera movement during the proceedings.

(4) No cameras permitted behind the respondent's table.

(5) Broadcast equipment will be positioned so that there will be no audio recording of conferences between attorney and client or among counsel and the hearing panel at the bench. Any such recording is prohibited.

(6) Photographers and videographers must remain a reasonable distance from parties, counsel tables, alleged victims, witnesses and families unless the hearing participant voluntarily approaches the camera position.

(7) All reporters and photographers will abide by the directions of the hearing room officers at all times.

(8) Broadcast or print interviews will not be permitted inside the hearing room before or after a proceeding.

(9) Photographers, videographers and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings.

(10) Appropriate dress is required.

(d) *Concluding Procedures*

(1) *Report of Hearing Panel.* After hearing the evidence, the hearing panel shall make a written report of its findings of fact which shall be signed by the hearing panel chair. The hearing panel shall include its recommendations whether its factual findings support a conclusion that the rules of professional conduct were violated by clear and convincing evidence and, if so, an appropriate sanction. The report shall be submitted to the professional conduct committee no more than sixty (60) days after the close of each hearing. If the hearing panel is not unanimous in any recommendations it may make, a minority report may also be submitted to the professional conduct committee. Copies of all

hearing panel reports shall be sent to disciplinary counsel, the complainant and the respondent at the same time they are sent to the professional conduct committee. **[At any time during the hearing panel proceedings, respondent and disciplinary counsel may request approval of a partial or dispositive stipulation. The hearing panel shall forward to the committee any stipulations approved by the hearing panel. Such approved stipulations shall accompany the hearing panel's written report on contested issues of fact, rule violation and sanction.][32]**

(2) *Professional Conduct Committee.* [33]Within fifteen (15) days of the date of the hearing panel report or reports, disciplinary counsel and respondent may file stipulations with proposed resolutions for the committee's review and approval and may submit memoranda addressing any issues in the hearing panel reports**[, stipulations,]** or raised during the hearings.

(A) Whether memoranda are filed or not, either disciplinary counsel or respondent may during the same fifteen (15) day period request oral argument before the professional conduct committee **[to address any issues in the hearing panel reports, stipulations or record agreed to by the parties. The committee may, in its discretion, direct the parties to appear before it to address any issues raised in dispositive or partial stipulations, as set forth in Rule 37A(III)(aa)(C)]**.

(B) Unless waived, oral arguments will be conducted to allow disciplinary counsel and each respondent ten (10) minutes to address the findings and rulings contained in the hearing panel reports.

(C) After consideration of **[dispositive or partial stipulations,]** oral arguments, hearing panel reports and memoranda, if any, and transcripts of hearings before the hearing panel, the professional conduct committee shall determine whether there is clear and convincing evidence of violations of the rules of professional conduct. **[In making such determination,** ~~The professional conduct~~ the committee ~~may:~~ **[shall**:

[32] PHN, Appendix Q, Subcommittee Report, p. 27.
[33] For subsection (2) changes *see* PHN, Appendix Q, Subcommittee Report, pp. 27-28.

(i) Review the hearing panel's report addressing any contested matters of fact and law. The committee shall uphold the hearing panel's findings of fact unless clearly erroneous or manifestly in error. The committee shall review the hearing panel's conclusions of law and recommendation of sanction de novo.

(ii) Review all stipulations in accordance with Rule 37A(III)(aa)(C) and issue orders thereon. The committee shall state in its order the basis for rejection of any stipulation and shall remand remaining contested issues.

(iii) After such determination, the professional conduct committee may:]

~~(i)~~ **[(a)]** dismiss complaints, with or without a warning, administer a reprimand, public censure or a suspension not to exceed six (6) months;

~~(ii)~~ **[(b)]** attach such conditions as may be appropriate to any discipline it imposes;

~~(iii)~~**[(c)]** divert attorneys out of the attorney discipline system as appropriate and on such terms and conditions as is warranted; and

~~(iv)~~ **[(d)]** initiate proceedings in the supreme court, through disciplinary counsel, on all matters in which the professional conduct committee has determined warrant the imposition of disbarment or of suspension for a period in excess for six (6) months;

~~(v)~~ **[(e)]** assess to a disciplined attorney to the extent appropriate, in whole or in part, expenses incurred by the attorney discipline system in the investigation and enforcement of discipline. An assessment made under this section shall have the same force, effect and characterization and shall be subject to the same procedures for finalization, resolution and enforcement as an assessment under Rule 37(19).

(D) If neither disciplinary counsel nor the respondent

requests oral argument, the professional conduct committee **[may direct the parties to appear before it on stipulations and]** shall make its decision **[in all matters]** based on the hearing panel report, the hearing transcript, and any memoranda that may be filed **[or, for stipulations, on the record agreed to by the parties and any oral statements presented by the parties]**.

(3) *Form of Sanctions.*

In the event that the professional conduct committee determines that the proceeding should be concluded by reprimand, public censure or a suspension of six (6) months or less, it shall give written notice thereof to the respondent, disciplinary counsel and the complainant.

The reprimand, public censure or suspension shall state the charges that were sustained, any charges that were dismissed and the respondent's right to appeal to the supreme court.

Any public censure or suspension issued by the professional conduct committee that becomes final and not subject to further appeal shall be sent to newspapers of general circulation, one with statewide circulation, and one with circulation in the area of respondent's primary office, as well as to the New Hampshire Bar News for publication.

In the event the professional conduct committee finds a violation of the rules of professional conduct but determines that a petition should be filed with the supreme court for a sanction of greater than a six (6) month suspension, it shall give notice of its findings and its intent to file a petition to the respondent, disciplinary counsel and the complainant.

(4) *Appeal of Sanction.*

(A) A respondent shall be entitled to appeal a finding of professional misconduct or a sanction, and disciplinary counsel shall be entitled to appeal a sanction, issued by the professional conduct committee by filing a written appeal in accordance with Rule 10, unless otherwise ordered by the court. The appeal shall not be a mandatory appeal. The appeal shall be public.

(B) The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing

so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.

(IV) ***Confidentiality and Public Access***

[The duties of confidentiality in and rights of public access to disciplinary proceedings are detailed in Supreme Court Rule 37(20).][34]

~~(a) *Confidentiality of and Public Access to Proceedings and Records.*~~

~~(1) *General Rule.* The confidentiality of and public access to records, files and proceedings shall be governed by Supreme Court Rule 37.~~

~~(2) *Public Access to Files.*~~

~~(A) *Grievance against Person Not Subject to Rules of Professional Conduct.* Correspondence to the grievant relating to a grievance against a person who is not subject to the rules of professional conduct shall **[not be maintained.]** be available for public inspection for a period of two years. After this two-year period, the correspondence shall be destroyed.[35]~~

~~(B) *Grievance Not Docketed as a Complaint.* All records (other than work product, internal memoranda and deliberations) relating to a grievance filed against a person who is subject to the rules of professional conduct but which is not docketed as a complaint, shall be maintained at the attorney discipline office for two (2) years from the date of original filing, and it shall be available for public inspection during this period. After this two-year period, the records shall be destroyed.~~

~~(C) *Complaints.* All records (other than work product, internal memoranda and deliberations) relating to a complaint that is docketed shall be maintained at the attorney discipline office and shall be available for public inspection in accordance with the provisions of Supreme Court Rule 37. Paper records may be destroyed after:~~

~~(i) three years of the date of notice of dismissal with or without a caution; or~~

~~(ii) three years of the date of an annulment in accordance with section (V) of this rule; or~~

[34] PHN, Appendix L; Subcommittee Report, pp.16-17.
[35] PHN, Appendix J; Subcommittee Report pp. 8-9.

~~(iii) five years after the death of the attorney-respondent.~~

~~(D) *Index of Complaints.* The attorney discipline office shall maintain an index of complaints docketed against each attorney, which shall contain pertinent information, including the outcome of the complaint. No index of grievances that are not docketed as complaints shall be maintained.~~

~~(E) *Protective Order.* Any person or entity, at any point in the processing of a complaint, may request a protective order from the professional conduct committee, or the committee may issue on its own initiative, a protective order prohibiting the disclosure of confidential, malicious, personal, or privileged information or material submitted in bad faith, and directing that the proceedings be so conducted as to implement the order. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time. Within thirty (30) days of the committee's decision on a request for protective order, or of the committee's issuance of one on its own initiative, an aggrieved person or entity may request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the supreme court has acted, or the period for seeking supreme court review has expired.~~

(V) ***Annulment***

(a) *When Annulment May Be Requested.*

A person who has been issued an admonition (under prior rules), or reprimand may at any time after five (5) years from the date of the admonition or reprimand apply to the professional conduct committee for an order to annul the admonition or reprimand. A person against whom a complaint has been filed which has resulted in a finding of no misconduct, with or without a warning, may also apply to the professional conduct committee for an order to annul the record at any time after five (5) years from the date of the finding of no misconduct.

(b) *Matters Which May Not Be Annulled.*

Notwithstanding the foregoing, an order of annulment will not be granted except upon order of the supreme court if respondent's misconduct included

conduct which constitutes an element of a felony or which included as a material element fraud, fraudulent misrepresentation, dishonesty, deceit, or breach of fiduciary duty.

(c) *Consideration of Other Complaints.*

When application has been made under subsection (a), the professional conduct committee may consider any other complaints filed against the respondent and any other relevant facts.

(d) *Effect of Annulment.*

Upon entry of the order, the respondent shall be treated in all respects as if any admonition, warning, or reprimand had not been rendered, except that, upon conviction of any other violation of the rules of professional conduct after the order of annulment has been entered, the previous admonition, warning, or reprimand may be considered by the professional conduct committee or the supreme court in determining the discipline to be imposed.

(e) *Sealing of Records of Annulment.*

Upon issuance of an order of annulment, all records or other evidence of the existence of the complaint shall be sealed, except that the attorney discipline office may keep the docket or card index showing the names of each respondent and complainant, the final disposition, and the date that the records relating to the matter were sealed.

(f) *Disclosure of Annulled Matter.*

Upon issuance of an order of annulment, the component parts of the attorney discipline systems shall not thereafter disclose the record of the complaint which resulted in a finding of no misconduct, admonition, warning, or reprimand, except as permitted by section (V)(d) of this rule, and the respondent shall be under no obligation thereafter to disclose the admonition, warning, or reprimand.

(g) *Denial of Request for Annulment.*

Upon denial of an order of annulment, the respondent may appeal to the supreme court within thirty (30) days of the date of receipt of the denial. The appeal shall not be a mandatory appeal. Upon such appeal, the burden shall

be upon the respondent to show that the professional conduct committee's exercise of its discretion in denying the order of annulment is unsustainable.

(VI) ***Request for Reconsideration***

(a) *Request.* A request for reconsideration shall be filed with the committee that issued the decision within ten (10) days of the date on that committee chair's written confirmation of any decision of the committee; provided, however, that a request for reconsideration of a decision of the attorney discipline office general counsel shall be filed with the complaint screening committee within ten (10) days of the date on the decision. The request shall state, with particular clarity, points of law or fact that have been overlooked or misapprehended and shall contain such argument in support of the request as the party making such request desires to present.

(b) *Answer.* No answer to a request for reconsideration shall be required unless specifically ordered by the committee considering the matter, but any answer or response must be filed within ten (10) days of the date on the notification of the request.

(c) *Committee Action.* If a request for reconsideration is granted, the committee considering the request, may reverse the decision or take other appropriate action, with or without a hearing.

(d) *Effect of Request.* The filing of an initial request for reconsideration of a sanction issued by the professional conduct committee shall stay the thirty (30) day period for filing an appeal pursuant to Supreme Court Rule 37(3)(c).

(VII) ***Service of Copies***

(a) Copies of all pleadings filed and communications addressed to the attorney discipline office or any committee of the attorney discipline system by the grievant or complainant shall be furnished forthwith to each respondent who is the subject of the grievance or complaint. All such pleadings and communications shall contain a statement of compliance herewith.

(b) Copies of all pleadings filed and communications addressed to the attorney discipline office or any committee of the attorney discipline system by the respondent who is the subject of the grievance or complaint shall be furnished forthwith to the grievant or complainant and to any other attorney who is the subject of the grievance or complaint. All such pleadings and communications shall contain a statement of compliance herewith.

(c) Copies of all pleadings filed and communications addressed to the hearings committee or any panel thereof or to the professional conduct committee by disciplinary counsel shall be furnished forthwith to the grievant or complainant and to the respondent who is the subject of the grievance or complaint. All such pleadings and communications shall contain a statement of compliance herewith. The requirements of this section shall not apply in any matter in which the disciplinary counsel is representing the professional conduct in the supreme court or elsewhere.

(d) Service on a person who is personally represented by counsel shall be made on counsel. This section does not prohibit that service also be made on the person represented by counsel. Service may be personal or by first class mail.

~~(VIII)~~ ***~~Applicability to Pending Disciplinary Matters~~***

~~The provisions of this rule, as amended effective January 1, 2004, shall not apply to any disciplinary matter pending before the supreme court on January 1, 2004. The provisions of this rule, as amended effective January 1, 2004, shall not apply to any disciplinary matter pending before the committee on January 1, 2004, in which prior to that date the committee has determined that formal proceedings shall be held and the hearing panel has concluded its evidentiary hearing. All such proceedings shall be governed by the provisions of Supreme Court Rule 37A that were in effect prior to January 1, 2004.~~[36]

[36] This was not included in the subcommittee's recommendation, but it would appear that this provision is no longer necessary.

APPENDIX U

Amend Supreme Court Rule 50(1)(C) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

C. Lawyers, law firms or others acting on their behalf when depositing clients' funds in a pooled, interest-bearing account shall direct the depository institution:

(i) to remit interest or dividends, as the case may be, at least quarterly, to the New Hampshire Bar Foundation; and

(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the account number(s), and rate of interest applied for the reporting period; and

(iii) to transmit to the depositing lawyer or law firm at the same time a report showing the accounts number(s), rate of interest applied for the reporting period, and amount paid to the Foundation.

[(iv) to provide the New Hampshire Attorney Discipline Office with a notice whenever a trust account contains insufficient funds or shows a negative balance. Such notice shall be a duplicate of the standard depository institution notice provided to the customer. The Attorney Discipline Office will determine what investigation and further action may be appropriate. The direction to a depository institution to provide a copy of the notice to the Attorney Discipline Office is between the depository institution and the lawyer, law firm or other acting on its behalf only. This requirement is for the sole purpose of alerting the Attorney Discipline Office that there has been an overdraft of the trust account. It is not the intention of this requirement to create any direct or third party beneficiary rights.[37]]

[37] PHN Appendix V; Subcommittee Report, p. 18. The Committee voted to adopt the additional language set forth in the last two sentences at its meeting on June 6, 2014. *See* June 6, 2014 meeting minutes.

APPENDIX V

Repeal Superior Court Administrative Rules 11-1 through 11-15 as follows (deleted material is in ~~strikethrough~~ format):

~~PROCEDURE FOR PAROLE, DISCHARGE AND OFF-GROUND PRIVILEGES FROM THE NEW HAMPSHIRE HOSPITAL UNDER RSA 135:28, 29 AND 30-A, AND FOR ALL RECOMMITTAL PETITIONS UNDER RSA 651:11-A~~

~~11-1.~~

~~Whenever the New Hampshire Hospital Superintendent or Director of Mental Health wishes to petition the Superior Court for any order relative to a patient committed there by said Court, other than an order for recommittal under RSA 651:11-a, the Hospital shall file a petition with the Attorney General. Upon receipt of such petition, the Attorney General shall decide within 30 days whether or not the State opposes the petition or whether it wishes to take a neutral position. In making its decision, the Attorney General in his discretion may consult with the County Attorney involved in the case or may refer the case to the County Attorney for decision within the 30-day limit.~~

~~11-2.~~

~~If the Attorney General, or the County Attorney to whom the matter has been referred, opposes the relief sought by the petition, the petition will be returned to the Hospital with a written notice of the State's position. If the Hospital or the patient wishes to pursue the matter further, the Hospital shall contact counsel for the patient and counsel may file the petition with the Court. If the patient is not presently represented by counsel, the Hospital shall contact the Merrimack County Clerk of Court, who will immediately arrange for the Clerk of Court of the county from which the patient was committed to appoint counsel.~~

~~11-3.~~

~~If the Attorney General or County Attorney wishes to take a neutral~~

position with regard to the petition, he shall file the petition with the Court and advise the Hospital and the Clerk of Court of his neutral position. The Hospital shall contact counsel for the patient or shall contact the Merrimack County Clerk of Court so that counsel may be appointed, as in Rule 11-2, and counsel will represent the patient at the hearing.

11-4.

If the Attorney General is in favor of the relief sought in the petition, the State shall file the petition with the Court, advising the Clerk of Court and the Hospital of its position.

11-5.

Whenever a person is ordered committed to the State Hospital under RSA 651:9, 9-a, 11 or 11-a, the Clerk of Court of the county where the order is entered (county of origin) shall notify the Attorney General, including in the notice the date of the order and the name of counsel who represented the defendant.

11-6.

Not less than 90 days prior to the expiration date of any committal or recommittal order under RSA 651:9, 9-a, 11 or 11-a, the Attorney General shall notify the State Hospital and the County Attorney of the county of origin. The Attorney General shall make arrangements in appropriate cases for the County Attorney to take responsibility for the procedures outlined herein. The Attorney General or the County Attorney shall consult with the State Hospital and shall decide whether or not to petition for recommittal of the patient. Petitions for recommittal shall be filed not less than 60 days prior to the expiration date.

11-7.

If the State files a petition for recommittal, it shall contact counsel for the patient. If the patient is not presently represented by counsel, the State shall contact the Merrimack County Clerk of Court, who will immediately arrange for the Clerk of Court of the county of origin to appoint counsel.

11-8.

~~The Attorney General or a member of his Staff shall represent the State at all hearings unless he has previously arranged to have the State represented by a County Attorney.~~

~~11-9.~~

~~All petitions for parole, discharge and off grounds privileges from the New Hampshire Hospital under RSA 135:28, 29 and 30-a and all recommittal petitions under RSA 651:11-a ("Gibbs" hearings) for all counties shall be held at the Merrimack County Courthouse, unless otherwise ordered by the Court. All petitions, and all objections or motions related thereto, shall specify in detail the grounds upon which they are founded and shall be filed with the Clerk of Court of the county from which the patient was committed. A copy of such petition, objection or motion shall be filed contemporaneously with counsel for the State or for the patient, as the case may be, and with the Merrimack County Clerk of Court.~~

~~11-10.~~

~~The Merrimack County Clerk of Court, when he receives any petition covered by this Rule, shall inquire of the Justice, who last committed, recommitted, or granted privileges to the patient, to determine if that Justice wishes to retain jurisdiction of the case. That Justice is not required to retain jurisdiction but may do so in his or her discretion. If jurisdiction is not so retained, the Justices of the Superior Court shall conduct all hearings covered by this rule on a rotating schedule to be established by the Chief Justice.~~

~~11-11.~~

~~Upon receipt of any petition covered by this Rule, the Merrimack County Clerk of Court shall schedule a hearing. Notice of the hearing shall be sent to~~

~~a. the patient's counsel;~~

~~b. the Attorney General;~~

~~c. the County Attorney for the county from which the patient was committed;~~

d. the Clerk of Court of that county;

e. the Director of the Forensic Unit of the New Hampshire Hospital;

f. the Committing Justice, if jurisdiction has been retained, and the Court Reporter assigned to that Justice.

11-12.

The Merrimack County Clerk of Court shall request the Clerk of Court of the forwarding county to mail, or otherwise have delivered, the patient's entire file to his office for use of the Trial Court. Following the hearing and order of the Court, the Merrimack County Clerk of Court shall return the file to the Clerk of the county of origin.

11-13.

Transportation of the patient shall be ordered by the Court wherein the petition is filed. The Clerk of Court shall prepare an order, leaving the date blank, ordering the Sheriff of Merrimack County to transfer the patient from the place of detention to the hearing and his return.

11-14.

Any expense of transportation of the patient, witness fees, or appointed counsel fees shall be paid by the county of origin of the petition at the rate established by the Legislature or the Supreme Court. The Sheriff shall bill the Clerk of the county ordering the transportation for its cost.

11-15.

The time limits established herein by Rule 11-6 are administrative rules designed for the convenience of the Court and are not intended to create rights personal to the patient. These time limits are not to be construed to prevent the State from petitioning for recommittal if, after the State has allowed the deadline to pass without petitioning for recommittal, the State becomes aware of grounds not previously known which would support such a petition. And nothing in these rules shall be construed to prevent the State from introducing at the hearing evidence of a patient's conduct in the period after the petition was filed and prior to the hearing;

~~however, if the State anticipates reliance on such evidence, it should afford timely notice of this to the patient's counsel whenever possible.~~

APPENDIX W

Repeal Superior Court Administrative Rules 12-1 through 12-19 as follows (deleted material is in ~~strikethrough~~ format):

~~THE MARITAL MASTER PROGRAM~~

~~12-1.~~

~~The Marital Master Program is in effect in all Superior Court and Family Division court locations. The number of Marital Masters to be assigned to each court location shall be determined by the Administrative Judge of the court in question, after consultation with the Clerk.~~

~~12-2.~~

~~The Marital Master Program shall be administered in the Superior Court by the Chief Justice of the Superior Court and in the Family Division by the Administrative Judge of the Family Division.~~

~~12-3.~~

~~All applicants for appointment as a Marital Master must meet the qualifications set forth in RSA 491:20-b, I, and have five or more years experience in the general practice of law or its equivalent.~~

~~12-4.~~

~~As a condition of appointment, Marital Masters are prohibited from the practice of law.~~

~~12-5~~

~~(a) Applications to serve as a Marital Master shall be on forms supplied by the Administrative Office of the Courts. A committee of judges and masters, to be known as the Masters Committee, shall evaluate each applicant in the manner it deems appropriate and shall make a recommendation to the Chief Justice of the Superior Court, who shall determine the candidate(s) to be submitted to the Governor and Council for appointment. In evaluating the qualifications of applicants, the Masters Committee shall seek input from~~

members of the New Hampshire Bar who have experience in the practice of family law.

(b) The Chief Justice of the Superior Court shall recommend the selected person(s) to the Governor and Council for initial appointment pursuant to the procedure specified in RSA 491:20-a.

(c) The Chief Justice of the Superior Court, in consultation with the Administrative Judge of the Family Division with respect to Marital Masters who serve in the Family Division, shall make recommendations for reappointment of Marital Masters to the full Superior Court.

12-6.

(a) All Marital Masters shall be appointed for an initial three-year period as provided by RSA 491:20-a, III.

(b) A Marital Master desiring to be reappointed at the expiration of his or her initial term must file a request with the Chief Justice of the Superior Court no later than 90 days prior to the expiration of his or her term. Reappointment shall be upon vote of the full Superior Court and shall be for a period of five years. There shall be no limitation on the number of times a Marital Master may be reappointed.

12-7.

The Chief Justice of the Superior Court or the Administrative Judge of the Family Division, as the case may be, may at any time consider and act on any grievance or complaint concerning a Marital Master and take whatever action is appropriate, including, during the Marital Master's initial term, a recommendation to the Governor and Council that the Marital Master's appointment be terminated, and during any subsequent term, a recommendation to the full Superior Court that the Marital Master's appointment be terminated. All Marital Masters shall be governed by all of the canons of the Code of Judicial Conduct. Subsequent to their initial term, Marital Masters serve at the pleasure of the Superior Court.

12-8.

[Repealed.]

~~12-9. Authority of Marital Masters.~~

~~(a) Marital Masters serving in the Superior Court are authorized to hear domestic relations cases, except matters involving incarceration, as follows: divorce, child custody and visitation between unwed parties, child support, legal separation, paternity, interstate custody and child support under UIFSA, domestic violence between wed and unwed parties, and grandparent visitation.~~

~~If possible, a Marital Master presiding at the first hearing in a case will thereafter be assigned to hear all matters pertaining to that case.~~

~~(b) Marital Masters serving in the Family Division are authorized to hear family cases, except matters involving incarceration, as follows: guardianship over minors, abuse and neglect of children, divorce, child custody and visitation between unwed parties, child support, legal separation, paternity, interstate custody and child support under UIFSA, domestic violence between wed and unwed parties, and grandparent visitation.~~

~~If possible, a Marital Master presiding at the first hearing in a case will thereafter be assigned to hear all matters pertaining to that case.~~

~~12-10.~~

~~The assignment of marital cases shall be made by the Clerk who shall designate a specific day, or days, each week for hearing of marital cases by a Marital Master. A limited number of cases shall be assigned for a particular day and shall be scheduled so as to prevent crowding.~~

~~12-11.~~

~~[Repealed.]~~

~~12-12.~~

~~[Repealed.]~~

~~12-13.~~

All marital cases shall be heard in dignified surroundings, either in chambers or in open court. All Marital Masters shall wear a robe except where an informal conference may be desirable (children, etc.).

12-14.

In addition to Administrative Rules 7-1 through 7-5, the Court has adopted the following policies and rules:

A. DECREES

1. All decrees, findings, rulings, etc., are to be typed before submission to Clerks for issuance except in exceptional circumstances.

2. Each decree should read: DIVORCE DECREED, not granted and where the divorce is decreed for the cause of irreconcilable differences, the entire cause is to be set forth (statutory language).

3. Property settlements are not subject to retroactive modification, absent claim of fraud, deceit, perjury, concealment, etc.

4. On all orders for support, a date certain should be made in the order for the beginning of support.

5. The captions on any decree should distinguish the character of the decree (temporary-permanent; rulings and/or orders of motions for discovery, visitation, custody, etc.), and should include, when possible, filing date or dates of pleadings resulting in the opinion, decree, or ruling, preferably in parentheses after the overriding caption.

Cross-referencing is to be utilized and pleadings being ruled upon should reflect, "See decree, ruling, etc., of even date", signed by the Presiding Justice.

B. RULE 197 AFFIDAVITS

1. Superior Court Rule No. 197 Affidavits are not to be accepted for filing by the Clerks of Court, the Presiding Justice, or Marital Master, unless the same are typewritten.

~~The foregoing provision of Rule 197 is to be strictly enforced and may be waived by the Presiding Justice, Clerk, or Marital Master only in cases where a party appears pro se and in cases where there is a showing of exceptional circumstances.~~

~~2. Rule 197 Affidavits are to be exchanged by counsel/parties prior to hearing.~~

~~3. The Court requires that the parties include current fair market value of any real estate in the affidavits as well as the lump sum value of any pension plans, whether or not they are vested, and any other relevant information regarding value of such plans.~~

~~C. AID FOR DEPENDENT CHILDREN~~

~~Rule 197 Affidavits are to reflect whether the party is currently receiving assistance and also whether such assistance has ever been received in the past (by period of time and amount). In addition, inquiries should be made as to the likelihood of a party being a recipient in the future. In all divorce cases where a party is awarded custody of the children and support, which is to be paid directly to the party, there is to be a provision in the decree that if the party procures AFDC or TANF in the future, then payments will automatically become payable through the division of human services.~~

~~D. DIVISION OF HUMAN SERVICES REFERRALS~~

~~No referrals for New Hampshire Division of Human Services investigations are to be automatically approved, even when the parties agree. A show cause hearing is to be required except in extraordinary circumstances, and when referrals are approved, inquiry is to be made to determine if the party or parties are to bear the costs of reference.~~

~~When an order is made for the Probation Department to investigate the question of custody, the parties, if financially able, are to be required to help defray the cost; ordinarily a payment of $200.00 will be sufficient.~~

~~If the Division of Human Services is ordered to investigate the question of support, the parties are to be ordered to report to the Division of Human Services and to file copies of their last income tax returns.~~

~~12~~ 15.

~~Marital Masters not on circuit shall not be entitled to reimbursement for any mileage or meals not associated with an overnight stay on court business. Under this policy meals are reimbursed only if connected with an overnight stay; Marital Masters who have to travel to various courthouses are entitled to have mileage expense reimbursed. The mileage allowance shall be at the rate set by the supreme court by administrative order.~~

~~12-16.~~

~~Marital Masters shall be paid salaries and expenses at such rate as the Judicial Branch shall determine from time to time.~~

~~12-17.~~

~~[Repealed.]~~

~~12-18.~~

~~[Repealed.]~~

~~12-19.~~

~~References to the judicial branch family division shall be deemed to include the circuit court – family division.~~

APPENDIX X

Adopt on a permanent basis Supreme Court Rule 49, which was amended on a temporary basis by Supreme Court order dated June 26, 2013, as follows (no changes are being proposed to the temporary rule now in effect):

Rule 49. Fees In Supreme Court.

(I) **Fees**

(A) Entry of Appeal or Cross-Appeal	$225.00
(B) Petition for Original Jurisdiction	
(1) Original petition for writ of habeas corpus	$ 0 (No fee)
(2) All other petitions for original jurisdiction	$225.00
(C) (1) Certification of Record to Federal Courts	$100.00
(2) Other Certifications and Certified Copies	$10.00 plus $.50/page
(D) Certificate of Admission	$10.00
(E) Application to Appear *Pro Hac Vice*	$250.00

(II) **Surcharge**

Pursuant to RSA 490:26-a, II, the sum of $25.00 shall be added to each civil filing fee set forth in paragraphs (I)(A) and (I)(B)(2) above, except for the following types of cases which pursuant to RSA 490:26-a, II(b) are exempt from the surcharge:

(A) Actions relating to children under RSA 169-B, RSA 169-C, and RSA 169-D.

(B) Domestic violence actions under RSA 173-B.

(C) Small claims actions under RSA 503.

(D) Landlord/tenant actions under RSA 540, RSA 540-A, RSA 540-B, and RSA 540-C.

(E) Stalking actions under RSA 633:3-a.

APPENDIX Y

Adopt on a permanent basis Rule 169 of the Superior Court of the State of New Hampshire Applicable in Criminal Cases Filed in Superior Court, which was amended on a temporary basis by Supreme Court order dated June 26, 2013, as follows (no changes are being proposed to the temporary rule now in effect):

169. Fees.

(I) The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.

(II) 18.22% of the entry fee paid in each petition and cross-petition in marital cases ($41.00) shall be deposited into the mediation and arbitration fund to be used to pay for mediation where both parties are indigent.

(III) Fees

(A) Original Entries:

(1) Original Entry of any Action at Law or Equity except a petition for writ of habeas corpus; Original Entry of all Marital Matters, including Order of Notice and Guardian ad Litem Fee; Transfer; the filing of a foreign judgment pursuant to RSA 524-A; or any Special Writ	$ 225.00
(2) Original Entry of a petition for writ of habeas corpus	$ 0 (no fee)
(3) Counterclaim on Civil or Equity Matter (including set-off, recoupment, cross-claims and third-party claims)	$ 225.00
(4) Cross-Petition for Divorce	$ 225.00

(5) Motion to Bring Forward Civil/Equity (post judgment)	$ 125.00
(6) Motion to Bring Forward a Domestic matter with stipulation	$ 100.00
(7) Motion to Bring Forward a Domestic matter without stipulation	$ 225.00
(8) Wage Claim Decision	$ 65.00
(9) Marriage Waiver	$ 75.00
(B) General and Miscellaneous	
(1) Motion for Periodic Payments	$ 25.00
(2) Petition to Annul Criminal Record	$ 125.00
(3) Original Writ (form)	$ 1.00
(4) Writ of Execution	$ 40.00
(5) Petition for Ex Parte Attachment, Ex Parte Petition for Writ of Trustee Process	$ 40.00
(6) Reissued Orders of Notice	$ 25.00
(7) Application to Appear *Pro Hac Vice*	$ 250.00
(C) Certificates and Copies	
(1) Certificates and Certified Copies	$ 10.00
(2) Divorce Certificate (VSR) only	$ 10.00
(3) Divorce Certificate, Certified Copy of Decree and if applicable, Stipulation, QDRO, USO, and other Decree-related Documents	$ 40.00
(4) All Copied Material	$ .50/page

(5) Certificate of Judgment	$ 10.00
(6) Exemplification of Judgment	$ 40.00

(IV) Surcharges and Additional Fees

(A) On the commencement of any proceeding involving the determination of parental rights and responsibilities for which a fee is required, including petitions and cross-petitions for divorce with minor children, an additional fee of $2.00 shall be paid by the petitioner or cross-petitioner.

(B) Pursuant to RSA 490:26-a, II, the sum of $25.00 shall be added to each civil filing fee set forth in paragraphs (III)(A)(1), (III)(A)(3),(III)(A)(4), (III)(A)(5), (III)(A)(6), (III)(A)(7), (III)(A)(8), and (III)(A)(9) above, except for the following types of cases which pursuant to RSA 490:26-a, II(b) are exempt from the surcharge:

(1) Actions relating to children under RSA 169-B, RSA 169-C, and RSA 169-D.

(2) Domestic violence actions under RSA 173-B.

(3) Small claims actions under RSA 503.

(4) Landlord/tenant actions under RSA 540, RSA 540-A, RSA 540-B, and RSA 540-C.

(5) Stalking actions under RSA 633:3-a.

(V) Records Research Fees:

(A) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of $20 per name will be assessed for up to 5 names. Additional names will be assessed $5 per name.

(B) The Clerk may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.

APPENDIX Z

Adopt on a permanent basis Circuit Court-District Division Rule 3.3, Court Fees, which was amended on a temporary basis by Supreme Court order dated June 26, 2013, as follows (no changes are being proposed to the temporary rule now in effect):

Rule 3.3. Court fees

(I) **Fees**

(A) **Original Entries:**

Civil Writ of Summons or Counterclaim (including set-off, recoupment, cross-claims and third-party claims)	$ 150.00
Replevin	$ 150.00
Landlord/Tenant entry	$ 125.00
Registration of Foreign Judgment	$ 175.00
Small Claims Entry and Counterclaim, $5000 or less (including set-off, recoupment, cross-claims and third-party claims)	$ 80.00
Small Claims Transfer Fee	$ 145.00
Small Claims Entry and Counterclaim, $5001 to $7500 (including set-off, recoupment, cross-claims and third-party claims)	$ 135.00

(B) **General and Miscellaneous**

Motion for Periodic Payments	$ 25.00
Petition to annul criminal record	$ 125.00
Original writ	$ 1.00
Writ of Execution	$ 40.00
Petition for Ex Parte Attachment, or Writ of Trustee Process	$ 40.00
Reissued Orders of Notice	$ 25.00
Application to Appear *Pro Hac Vice*	$ 250.00

(C) **Certificates & Copies**

Certificate of Judgment	$ 10.00
Exemplification of Judgment	$ 40.00
Certified Copies	$ 10.00
All copied material (except transcripts)	$ .50/page
Computer Screen Printout	$ .50/page

(II) **Surcharge**

Pursuant to RSA 490:26-a, II, the sum of $25.00 shall be added to each civil filing fee set forth in paragraph (I)(A) above, except for the following types of cases which pursuant to RSA 490:26-a, II(b) are exempt from the surcharge:

(A) Actions relating to children under RSA 169-B, RSA 169-C, and RSA 169-D.

(B) Domestic violence actions under RSA 173-B.

(C) Small claims actions under RSA 503.

(D) Landlord/tenant actions under RSA 540, RSA 540-A, RSA 540-B, and RSA 540-C.

(E) Stalking actions under RSA 633:3-a.

(III) **Records Research Fees**

(A) Records Research Fees. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of $20 per name will be assessed per name for up to 5 names. Additional names will be assessed $5 per name. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.

(B) The Clerk may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.

APPENDIX AA

Adopt on a permanent basis Circuit Court-Probate Division Rule 169, Fees, which was amended on a temporary basis by Supreme Court order dated June 26, 2013, as follows (no changes are being proposed to the temporary rule now in effect):

Rule 169. FEES.

(I) ENTRY FEES:

(a) Original Entry of any Equity Action or Counterclaim (including set-off, recoupment, cross-claims and third-party claims)	$ 225.00
(b) Petition File and Record Authenticated Copy of Will, Foreign Wills; Petition Estate Administration for estates with a gross value greater than $25,000; Petition Administration of Person Not Heard From; Petition Guardian, Foreign Guardian or Conservator (RSA 464-A)	$ 195.00
(c) Petition Termination of Parental Rights; Petition Involuntary Admission; Petition Guardian Minor Estate and Person and Estate (RSA 463); Petition Guardian of Incompetent Veteran (RSA 465)	$ 155.00
(d) Petition Adoption, includes one certificate (no entry fee when accompanied by a Petition for termination); Motion to Reopen (estate administration); Motion to Bring Forward	$ 125.00
(e) Petition Estate Administration for estates having a gross value of $25,000 or less; Petition Change of Name (includes one certificate); Petition Guardian Minor Person (RSA 463)	$ 85.00
(f) Marriage Waiver	$ 75.00
(g) Motion Prove Will in Common and/or Solemn Form (administration required); Motion to Re-examine Will	$ 155.00

(h) Petition Appoint Trustee	$ 155.00
(i) Motion Successor Trustee, Administrator, Executor, or Guardian of Estate and Person and Estate (RSA 463) (RSA 464-A); All Executor/Administrator Accounting for estates with a gross value greater than $25,000; Trustees Accounting; Guardian/Conservator Accounting; Motion for Summary Administration	$ 85.00
(j) Petition Change of Venue (includes authenticated copy fee); Motion Successor Guardian of Person (RSA 463) (RSA 464-A); Motion Sue on Bond; Motion Remove Fiduciary; Motion Fiduciary to Settle Account	$ 50.00
(k) Landlord Tenant Entry pursuant to ancillary jurisdiction under RSA 547:3-*l*	$ 125.00
(l) Small Claim Entry and Counterclaim, $5000 or less (including set-off, recoupment, cross-claims and third-party claims) pursuant to ancillary jurisdiction under RSA 547:3-*l*	$ 80.00
(m) Small Claim Transfer Fee pursuant to ancillary jurisdiction under RSA 547:3-*l*	$ 145.00
(n) Civil Writs of Summons and Counterclaims (including set-off, recoupment, cross-claims and third-party claims) pursuant to ancillary jurisdiction under RSA 547:3-*l*	$ 150.00
(o) Replevin pursuant to ancillary jurisdiction under RSA 547:3-*l*	$ 150.00
(p) Small Claim Entry and Counterclaim, $5001 to $7500 (including set-off, recoupment, cross-claims and third-party claims) pursuant to ancillary jurisdiction under RSA 547:3-*l*	$ 135.00

(q) Pursuant to RSA 490:26-a, II, the sum of $25.00 shall be added to each civil filing fee set forth in subsections (a), (b), (c), (d), (e), (f), (h), (n), and (o) above.

(II) ENTRY FEES INCLUDE:

Preparation and issuance of Original Orders of Notice, Notice, Copies of Decrees, mailing costs, certificate to discharge surety.

(III) ENTRY FEES DO NOT INCLUDE:

Notice by publication. The Party or the Attorney for the Party from whom the notice is required shall pay this fee. The clerk of each county shall determine the cost of publication. The request may require that payment be made directly to the publisher of the notice.

In-hand service. If service by a law enforcement officer is required, the Party or the Attorney for the Party from whom the notice is required shall pay the cost of service to the appropriate county sheriff's department.

Additional copies. If additional copies of any document, or additional certificates are requested beyond those included in normal processing as indicated above, the Party or the Attorney for the Party requesting the additional copies shall pay the costs in advance as indicated under "Certificates & Copies."

(IV) OTHER:

Defaults (RSA 548:5-a)	$ 25.00/each occurrence
Citations/show cause (RSA 548:5-a and 550:2)	$ 50.00/each occurrence
Duplicate Audio	$ 25.00/each CD or download
Application to Appear *Pro Hac Vice*	$ 250.00
Ex Parte Petition for Attachment, Ex Parte Petition for Writ of Trustee Process	$ 40.00
Motion for Periodic Payments	$ 25.00
Reissued Orders of Notice	$ 25.00
Writ of Execution	$ 40.00

(V) CERTIFICATES & COPIES:

Certificates	$ 10.00
Certification	$ 10.00 plus copy fee
Photocopy of Will	$ 1.00/page

All other copied material	$ .50/page
Original writ (form)	$ 1.00
Authenticated Copy of Probate	$ 40.00/each
Certificate of Judgment	$ 10.00
Exemplification of Judgment	$ 40.00

"**Certificates & Copies**" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

(VI) RECORDS RESEARCH FEES:

Records Research Fees. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of $20 per name will be assessed for up to 5 names. Additional names will be assessed $5 per name.

The clerk may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.

APPENDIX BB

Adopt on a permanent basis Circuit Court-Family Division Rule 1.3, Fees, which was amended on a temporary basis by Supreme Court order dated June 26, 2013, as follows (no changes are being proposed to the temporary rule now in effect):

1.3 Fees:

A. The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.

B. 18.22% of the entry fee paid in each petition and cross-petition in marital cases ($41.00) shall be deposited into the mediation and arbitration fund to be used to pay for mediation where both parties are indigent.

C. (1) Original Entry of all Marital Matters, Parenting Petitions (including Order of Notice and Guardian ad Litem Fee) and Foreign Decrees $225.00

(2) Cross Petition in all original entry Marital Matters and Parenting Petitions $225.00

(3) Petition to Change Court Order in all Marital Matters and Parenting Petitions

(a) With full agreement $100.00

(b) Without full agreement $225.00

D. (1) Divorce Certificate (VSR) only $10.00

(2) Divorce Certificate, Certified Copy of Decree and if applicable, Agreement, QDRO, USO, and other Decree-related documents $40.00

E. Petition for Ex Parte Attachment; Ex Parte Petition for Writ of Trustee Process $40.00

F. Reissued Orders of Notice $25.00

G. Writ of Execution $40.00

H. Petition for Termination of Parental Rights $155.00

I. Petition for Guardian Minor Person; Petition Change of Name (includes one certificate) $85.00

J. Petition for Adoption, includes one certificate (no entry fee when accompanied by a Petition for termination) $125.00

K. Motion for Successor Guardian of Person $50.00

L. Surcharges and Additional Fees

(1) Pursuant to RSA 490:26-a, II, the sum of $25.00 shall be added to each civil filing fee set forth in paragraphs (C)(1), (C)(2), (C)(3), (H), (I), and (J) above, except for the following types of cases which pursuant to RSA 490:26-a, II(b) are exempt from the surcharge:

(a) Actions relating to children under RSA 169-B, RSA 169-C, and RSA 169-D.

(b) Domestic violence actions under RSA 173-B.

(2) On the commencement of any proceeding involving the determination of parental rights and responsibilities for which a fee is required, including petitions and cross-petitions for divorce with minor children, an additional fee of $2.00 shall be paid by the petitioner or cross-petitioner.

M. OTHER FEES:

(1) Defaults in Minor Guardianship Actions $25.00/each occurrence

(2) Citations in Minor Guardianship Actions $50.00/each occurrence

(3) Duplicate Audio $25.00/each CD or download

(4) Application to Appear *Pro Hac Vice* $250.00

N. CERTIFICATES & COPIES:

(1) Certificates $10.00

(2) Certification	$10.00 plus copy fee
All other copied material	$.50/page
(3) Certificate of Judgment	$10.00
(4) Exemplification of Judgment	$40.00

"Certificates & Copies" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

O. The family division may waive any fee for good cause shown.

P. Records Research Fees:

(1) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of $20 per name will be assessed for up to 5 names. Additional names will be assessed $5 per name.

(2) The Clerk may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.