

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

ORDER

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

I. Technical Amendments

A. Non-payment of Bar Dues and Annual Fees

(These amendments change the dates upon which the Bar Association is to report to the supreme court the names of attorneys who have not paid annual bar dues or court fees and the names of foreign legal consultants who have not paid annual fees.)

1. Amend Supreme Court Rule 42A(I)(A) as set forth in Appendix A.
2. Amend Supreme Court Rule 42A(II)(A) as set forth in Appendix B.

B. Minimum Continuing Legal Education Requirements

(These amendments make minor changes and clarifications to Supreme Court Rules 53.1 to 53.5 regarding Minimum Continuing Legal Education Requirements, including changing the reporting year from the period from July 1 to June 30 to the period from June 1 to May 31.)

1. Amend Supreme Court Rule 53.1 C as set forth in Appendix C.
2. Amend Supreme Court Rule 53.2 B as set forth in Appendix D.
3. Amend Supreme Court Rule 53.3 as set forth in Appendix E.
4. Amend Supreme Court Rule 53.4 A 2 as set forth in Appendix F.
5. Amend Supreme Court Rule 53.5 E as set forth in Appendix G.

C. New Hampshire Rule of Criminal Procedure 14(b)(2)(A)

(This amendment corrects a spelling error in the rule.)

1. Amend New Hampshire Rule of Criminal Procedure 14(b)(2)(A) as set forth in Appendix H.

D. Superior Court Administrative Rules

(These amendments repeal obsolete superior court administrative rules.)

1. Repeal Superior Court Administrative Rules 6-3, 7-1, 7-2, 7-3, 7-4, 7-5, and 9-1 as set forth in Appendix I.

E. District Division Rules

(These amendments revise the headings of two rules and adopt the small claims rules on a permanent basis.)

1. Amend District Division Rule 1.8-A as set forth in Appendix J.
2. Amend the listing in the Table of Contents for District Division Rule 3.11 (Applicable to Cases Filed On or After the Implementation of Electronic Filing in Civil Cases in the District Division) as set forth in Appendix K.
3. Adopt District Division Rules 4.1 to 4.13 on a permanent basis as set forth in Appendix L.

F. Supplemental Rules of the Circuit Court for Electronic Filing

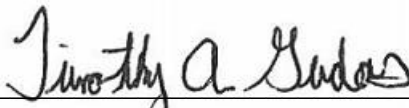
(These amendments update obsolete citations in the Comments to two rules.)

1. Amend the Comment to Rule 11 of the Supplemental Rules of the Circuit Court for Electronic Filing as set forth in Appendix M.
2. Amend the Comment to Rule 12 of the Supplemental Rules of the Circuit Court for Electronic Filing as set forth in Appendix N.

Effective Dates

These amendments to Supreme Court Rule 53.2 B set forth in Appendix D shall take effect on June 1, 2021. The remaining amendments shall take effect immediately.

Date: February 26, 2021

ATTEST: 

Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

APPENDIX A

Amend Supreme Court Rule 42A(I)(A) as follows (deletions are in ~~strikethrough~~ format; additions are in **[bold and in brackets]**):

(I) Bar Dues.

(A) ~~The New Hampshire Bar Association shall report to the court the names of attorneys admitted to the bar of this State who have not paid within 60 days of the date on which it is due the~~ **[On or before September 15, following the renewal date of June 1, the New Hampshire Bar Association shall report to the court the names of attorneys admitted to the bar of this State who have not yet paid]** annual fees assessed by the court or the annual bar dues provided for in the Constitution and By-Laws of the New Hampshire Bar Association. The court shall require the attorneys reported to show cause why they should not be suspended from the practice of law in this State for non-payment of the court fees or bar dues. If the court determines that an attorney has not shown good cause for non-payment of court fees or bar dues, an order shall be issued suspending that attorney from the practice of law in this State.

APPENDIX B

Amend Supreme Court Rule 42A(II)(A) as follows (deletions are in ~~strike~~ format; additions are in **[bold and in brackets]**):

(II) Foreign Legal Consultant Annual Fees.

(A) ~~The New Hampshire Bar Association shall report to the court the names of foreign legal consultants licensed to practice in New Hampshire who have not paid within 60 days of the date on which it is due~~ **[On or before September 15, following the renewal date of June 1, the New Hampshire Bar Association shall report to the court the names of foreign legal consultants licensed to practice in New Hampshire who have not yet paid]** the annual fee required by Rule 42D(7). The court shall require the foreign legal consultants reported to show cause why their licenses to practice as foreign legal consultants should not be suspended. If the court determines that a foreign legal consultant has not shown good cause for non-payment of the annual fee, an order shall be issued suspending the license of the foreign legal consultant.

APPENDIX C

Amend Supreme Court Rule 53.1 C as follows (deletions are in ~~striketrough~~ format; additions are in **[bold and in brackets]**):

C. *Reporting Year* — The reporting year shall be the period from ~~July 1 to June 30~~ **[June 1 to May 31]**. The annual ~~reporting date shall be July 1~~ **[NHMCLE affidavit filing period shall be June 1 to July 1 following the end of the reporting year]**, and reporting shall be done in the manner specified in Rule 53.3.

APPENDIX D

Amend Supreme Court Rule 53.2 B as follows (deletions are in ~~striketrough~~ format; additions are in **[bold and in brackets]**):

B. Exemptions From **[the]** Minimum CLE Requirement.

1. Those exempt from annual certification requirements under Rule 53.2(A)(2) or 53.2(A)(3) are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year.
2. Lawyers first admitted to New Hampshire practice on or after ~~January~~ **[December]** 1 of the reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.
3. Lawyers on active duty for the United States Armed Forces for more than three (3) months of the reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year.
4. Lawyers who change from any New Hampshire Bar Association active membership status to any inactive membership status before ~~January~~ **[December]** 1 of any reporting period, and who maintain inactive membership status for the remainder of that reporting period are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.
5. Lawyers who are elected State or Federal officials not engaged in the practice of law during a reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.

6. Lawyers may be exempted from meeting the minimum CLE requirements of Rule 53.1B, in whole or in part, by the NHMCLE Board, upon petition, for compelling reasons. Such reasons may include, but are not limited to, ~~physical or other disability which prevents compliance with this rule during the period of such disability~~ [financial, physical, or other hardship which prevents compliance with this rule during the period of such hardship].

APPENDIX E

Amend Supreme Court Rule 53.3 as follows (deletions are in ~~strike~~ format; additions are in **[bold and in brackets]**):

RULE 53.3—REPORTING AND CERTIFICATION [AFFIDAVIT] OF COMPLIANCE WITH RULE 53

A. On or before July 1 of each year, every lawyer having been in any New Hampshire Bar Association active membership status at any time during the immediately preceding ~~July 1 – June 30~~ **[June 1 – May 31]** reporting year and not exempt pursuant to Rule 53.2(A)(2) or 53.2(A)(3) shall file a ~~Certification~~ **[an Affidavit]** of Compliance with the NHMCLE Board, in such form as the NHMCLE Board shall prescribe, concerning either his or her completion of CLE during the previous reporting year, or the basis for his or her claim of exemption under Rule 53.2(B). **[A lawyer who has inadvertently neglected to report in their initial Affidavit of Compliance all credits earned in the immediately preceding reporting year can reopen the initial Affidavit of Compliance once within thirty days of the initial filing, but not later than July 31.]**

Lawyers may engage in and report CLE performed after the close of the reporting year and prior to the filing of a ~~Certification~~ **[an Affidavit]** of Compliance, provided that such CLE may not also be used to satisfy the requirement for the reporting year in which it is performed.

B. Each such lawyer shall maintain such records or certificates of attendance as may be required to substantiate his or her compliance or exemption for a period of two (2) years following the close of a reporting year.

C. The court shall assess each lawyer in New Hampshire Bar Association active membership status as of the assessment date an annual sum to support the administration of Rule 53.

D. Lawyers exempt under Rule 53.2(B) who wish to claim NHMCLE credit for activities completed during a reporting year for which such exemption applies (e.g., for purposes of carrying over such credits pursuant to Rule 53.1(D)) may do so by either (1) filing a ~~Certification~~ **[an Affidavit]** of Compliance for the reporting year in which the activity was completed, or (2) reporting such

activities on the ~~Certification~~ **[Affidavit]** of Compliance filed for the following reporting year if no exemption is then available.

E. The NHMCLE Board shall from time to time audit the ~~Certifications~~ **[Affidavits]** of Compliance filed by lawyers in accordance with this rule to determine whether the information reported is accurate and/or to determine whether the activities reported are qualifying activities. The NHMCLE Board may select ~~Certifications~~ **[Affidavits]** of Compliance for audit based on apparent deficiencies in the ~~Certifications~~ **[Affidavits]**, or based on any other factor that the NHMCLE Board, in its discretion, deems appropriate. ~~Certifications~~ **[Affidavits]** may also be selected for audit on a random basis. The NHMCLE Board shall notify a lawyer whose ~~Certification~~ **[Affidavit]** of Compliance has been selected for audit of the reporting period or periods to be audited. The NHMCLE Board shall request that, within thirty (30) days of the notification, the lawyer provide information about the CLE activities reported and/or evidence to substantiate that the lawyer completed the CLE activities reported. If the information provided by the lawyer is insufficient to establish that the ~~Certification~~ **[Affidavit]** of Compliance is accurate and/or that the activities reported are qualifying activities, the NHMCLE Board shall notify the lawyer of the issue(s) involved and invite the lawyer to submit a written response. If, upon consideration of the lawyer's response and any other facts and circumstances that the NHMCLE Board considers pertinent, the NHMCLE Board determines that a lawyer's ~~Certification~~ **[Affidavit]** of Compliance is inaccurate and/or deficient, it shall determine whether the lawyer should be required to take remedial action, and if so, the remedial action required. The decision of the NHMCLE Board as to the remedial action required shall be final.

APPENDIX F

Amend Supreme Court Rule 53.4 A 2 as follows (deletions are in strikethrough format; additions are in **[bold and in brackets]**):

2. *Final Demand for Compliance* — ~~On September 1 following the annual reporting date, any lawyer not in compliance with this rule shall be assessed an additional delinquency fee by the NHMCLE Board. Thereafter the Board shall send a second notice of delinquency to the lawyer notifying the lawyer of the additional delinquency fee and demanding that the lawyer comply with the rule for the prior reporting period.~~ On or about **[before]** September 15 following the annual reporting date, the NHMCLE Board shall report to the Supreme Court the name of any lawyer who still has not complied with the requirements of the rule, or who has failed to certify that the lawyer is exempt from the requirements and/or has not paid any outstanding delinquency fee. Upon receiving this report, the court shall initiate a proceeding to suspend the lawyer from the practice of law.

APPENDIX G

Amend Supreme Court Rule 53.5 E as follows (deletions are in ~~strike through~~ format; additions are in **[bold and in brackets]**):

E. *Powers and Duties* — The Board shall have the following powers and duties:

1. Administer this rule and establish appropriate committees for that purpose;
2. Adopt procedures and standards consistent with this rule and for its intended operation;
3. Report at least annually to the New Hampshire Bar Association and the Supreme Court; and
4. As provided in Rule 53.3(E), conduct audits of lawyers' ~~Certifications~~ **[Affidavits]** of Compliance to determine whether the requirements of the rule are being met.

APPENDIX H

Amend New Hampshire Rule of Criminal Procedure 14(b)(2)(A) as follows (deletions are in ~~striketrough~~ format; additions are in **[bold and in brackets]**):

(A) *General Notice Obligations*. If the defendant intends to rely upon any defense specified in the Criminal Code, the defendant shall within sixty calendar days if the case originated in superior court, or thirty calendar days if the case originated in circuit court-district division, after the entry of a plea of not guilty, or within such further time as the court may order for good cause shown, file a notice of such intention setting forth the grounds ~~therefore~~ **[therefor]** with the court and the prosecution. If the defendant fails to comply with this rule, the court may exclude any testimony relating to such defense or make such other order as the interest of justice requires.

APPENDIX I

Repeal Superior Court Administrative Rules 6-3 (Uniform Act on Paternity), 7-1 (Temporary Orders), 7-2 (Duty to Support Contested), 7-3 (Social Security Numbers), 7-4 (Marriage Counseling Referral Service), 7-5 (Time of Hearing), and 9-1 (Procedure Under Rule 13) in their entirety.

APPENDIX J

1. Amend the heading of District Division Rule 1.8-A as follows
(additions are in **[bold and in brackets]**):

Rule 1.8-A. Continuances and postponements [and motions for recusal]

2. Amend the listing for Rule 1.8-A in the Table of Contents of the
District Division Rules as follows (additions are in **[bold and in brackets]**):

Rule 1.8-A. Continuances and postponements **[and motions for recusal]**

APPENDIX K

Amend the listing for Rule 3.11 in the Table of Contents of the District Division Rules (Applicable to Cases Filed On or After the Implementation of Electronic Filing in Civil Cases in the District Division) as follows (additions are in **[bold and in brackets]**):

Rule 3.11. Motions~~[-General]~~

APPENDIX L

Adopt District Division Rules 4.1 through 4.13 (Small Claims Actions),
on a permanent basis.

APPENDIX M

Amend the Comment to Rule 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing as follows (deletions are in ~~striketrough~~ format; additions are in **[bold and in brackets]**):

Comment

These provisions are intended to ensure that confidential documents are accessible, upon filing, only to the court and its staff, to the parties and their attorneys or the parties' authorized representatives, and to others authorized to perform service of process. Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. *See, e.g., Associated Press v. State of N.H.*, 153 N.H. 120 (2005); *Petition of Keene Sentinel*, 136 N.H. 121 (1992); *see also* District Division Rule 1.26; Family Division Rule 1.30; Probate Division Rule 169-A; Superior Court Rule (Civil) 203 **[13B(e)]**; Superior Court Rule (Criminal) 169-A **[New Hampshire Rule of Criminal Procedure 50(e)]**.

APPENDIX N

Amend the Comment to Rule 12 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing as follows (deletions are in ~~striketrough~~ format; additions are in **[bold and in brackets]**):

Comment

These provisions are intended to ensure that confidential information contained within documents is accessible, upon filing, only to the court and its staff, to the parties and their attorneys or the parties' authorized representatives, and to others authorized to perform service of process. Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. *See, e.g., Associated Press v. State of N.H.*, 153 N.H. 120 (2005); *Petition of Keene Sentinel*, 136 N.H. 121 (1992); *see also* District Division Rule 1.26; Family Division Rule 1.30; Probate Division Rule 169-A; Superior Court Rule (Civil) 203 **[13B(e)]**; Superior Court Rule (Criminal) 169-A **[New Hampshire Rule of Criminal Procedure 50(e)]**.