

#2016-003

Carolyn A. Koegler

From: David M Rothstein <dmrothstein@nhpd.org>
Sent: Wednesday, May 18, 2016 1:39 PM
To: Carolyn A. Koegler; Justice Robert J Lynn
Cc: Sara Greene (SGreene@nhattyreg.org)
Subject: Proposed rule on summary suspension
Attachments: Proposed Summary Suspension Rule.docx

Hi Justice Lynn and Carolyn –

Attached is a draft of a rule for summary suspension that Sara has drafted and which the PCC has approved.

Is there a preferred way for me to submit it?

If possible, it would be a good rule to have in effect sooner than later.

Please let me know.

Thanks.

-David

David M. Rothstein
Deputy Director
New Hampshire Public Defender
10 Ferry Street, Suite 434
Concord, N.H. 03301
(603) 224-1236, x4170
dmrothstein@nhpd.org

Proposed Supreme Court Rule 37(9-B) Summary Suspension Procedure

- (a) In cases alleging serious misconduct, failure of an attorney to comply with a subpoena validly issued under Rule 37(8) or failure of an attorney to respond to requests for information by attorneys from the attorney discipline office made in the course of investigating a docketed matter may be grounds for summary suspension as set forth herein.
- (b) "Serious misconduct," for purposes of this Rule, is any misconduct involving (1) mishandling or misappropriation of client or third party property or funds or (2) any other misconduct which could result in a suspension or disbarment.
- (c) The attorney discipline office may file a petition for summary suspension with this court which sets forth the violation of this section, supported by an affidavit of the attorney discipline office affirming the facts set forth in subsection (d). Upon such filing, this court shall enter an order of summary suspension and may order such emergency relief as this court deems necessary to protect the public.
- (d) The affidavit in support of the petition for summary suspension shall affirm:
- (1) that the lawyer was served with the subpoena or was mailed the request(s) for information at the latest address provided to the New Hampshire Bar Association;
 - (2) that the lawyer was afforded a reasonable period of time for compliance with the request for information or the subpoena, and has failed to comply, to answer, or to appear; and
 - (3) that the subpoena or request for information was accompanied by a statement advising the attorney that failure to comply with the subpoena or request for

information would result in summary suspension without further hearing.

- (e) Any suspension under the provisions of subsection (c) above shall be immediately effective upon entry of the suspension order and shall be subject to the provisions of Rule 37(16)(g).
- (f) If, within thirty (30) days of the suspension order, an attorney cures the failure to comply with the subpoena or other request for information, the attorney shall file with this Court and with the attorney discipline office an affidavit of compliance stating the extent to which he or she has complied. The attorney discipline office may respond to the attorney's affidavit of compliance within 10 days. If the attorney discipline office disputes whether the attorney has complied, this Court may take such action as it deems appropriate.
- (g) If not reinstated pursuant to Rule 37(9-B)(f), the attorney shall become subject to the provisions of Rule 37(17).
- (h) A lawyer suspended in another jurisdiction pursuant to a procedure similar to that set forth herein may be suspended in this jurisdiction on a reciprocal basis as provided in Rule 37(12).