

#2016-014

Memorandum

To: N.H. Supreme Court Advisory Committee on Rules

From: N. William Delker

Date: March 8, 2018

Re: *In camera* review of confidential records

Consistent with the discussion which occurred at the December rules committee meeting, I propose amending the "Delker proposal," *i.e.* Appendix G to Carolyn Kogler's 3/5/2018 memo. This proposed amendment would give the defense the right to submit an *ex parte* memorandum to assist the judge in conducting his or her *in camera* review of the records.

Rule 54.

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(b) Procedure for *in camera* review of confidential records.

(1) Upon receiving records ordered produced under paragraph (a), the court shall review the records in order to determine whether, in fact, they contain any information that is essential and reasonably necessary to the requesting party's case.

(2) The parties may provide the court with memoranda describing the kinds of information that would be essential and reasonably necessary to the case. ***In a criminal case, the defendant shall be permitted submit this memorandum on an ex parte basis.*** However, in conducting its review of the records for such information, the court shall maintain the confidentiality of the records, and not disclose them to the parties or their counsel. Nothing in this paragraph shall prevent the court from enlisting the assistance of court staff in the review of the records.