

2017-007

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February 27, 2018

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NH SUPREME COURT

New Hampshire Supreme Court
Advisory Committee on Rules
Attn: Carolyn A. Koegler, Secretary
One Charles Doe Drive
Concord, NH 03301

**Re: Supreme Court Advisory Committee on Rules Docket #2017-007, Sup. Ct. Rule 41.
Limited Liability Entities**

Dear Carolyn:

Thank you for your letter dated November 15, 2017. Per your request, the Ethics Committee of the New Hampshire Bar Association has reviewed New Hampshire Supreme Court Rule 41, Limited Liability Entities. For the reasons that follow, the Ethics Committee believes Rule 41 serves no useful purpose and should be deleted.

Supreme Court Rule 41 sets forth requirements for the management and ownership of limited liability entities -- both New Hampshire and foreign -- that engage in the practice of law. Based on our review, the Rule 41 requirements are sufficiently achieved in various statutes or other rules. For example, the requirements set forth in 41(3) are largely covered by RSA 294-A:5, 8-9, 20, 25 and N.H. R. Prof. Conduct 5.4; the requirements set forth in Rule 41(6) are covered in RSA 294-A:7 (2017); and the requirements in Rule 41(8) are covered in Supreme Court Rule 50. Additionally, the statement in Rule 41(4) on "Standards of Conduct" appears to reflect the Supreme Court's pronouncement in *In re New Hampshire Bar Ass'n* that all lawyers who practice in New Hampshire are subject to the Supreme Court's authority and supervision, notwithstanding membership in a limited liability entity. See 110 N.H. 356, 357 (1970).

The only requirement set forth in Rule 41 not covered by other statutes or rules is Rule 41(7), which requires limited liability entities to file with the Court certain information regarding the identity and status of non-resident attorneys who are owners or managers of such entities but who are not licensed in New Hampshire.. It is not clear what purpose Rule 41(7) was intended to serve when adopted; however, it is clear to the Ethics Committee that today the requirements set forth in Rule 41(7) serve no practical purpose. In her memorandum dated April 5, 2017 as forwarded to us by you, Eileen Fox states that the Court "receives very few filings under the rule even though it seems likely that there are many limited liability law firms engaged in the practice of law that are subject to the rule's requirements."

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New Hampshire Supreme Court
Advisory Committee on Rules
February 27, 2018
Page 2

The Ethics Committee sees no implication that deletion of Rule 41 would have for the application of the Rules of Professional Conduct.

Please do not hesitate to get in touch with any questions or comments on this matter.

Sincerely yours,



Rolf Goodwin
for the Ethics Committee
New Hampshire Bar Association

RG:ds

Attorney Scott Harris, president, NHBA
Attorney Elizabeth LaRochelle, chair, Ethics Committee
Attorneys Lindsey Courtney and Gretchen Hamel, Rule 41 review taskforce