

#2017-008

New Hampshire Supreme Court
Attorney Discipline Office

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

Re: Correction to Rule 37(20)

Dear Ms. Koegler:

The confidentiality rules in former Rule 37A(IV) were eliminated as of July 1, 2015, and consolidated into Rule 37(20). [Rule 37(21) applies to grievances filed prior to April 1, 2000, and is not relevant to this issue.] I recently realized that a component of Rule 37A(IV), regarding the indexing of docketed and non-docketed grievances, did not make the transition to the new Rule.

Specifically, the previous version of Supreme Court Rule 37A(IV)(a)(2)(D) read as follows:

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.

To my knowledge, the discipline system has maintained the index of docketed complaints, and not maintained an index of non-docketed grievances, since it began.

Supreme Court Rule 37A(IV) now reads as follows:

(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) and (21).

Rule 37(20)(a) now reads as follows:

(20) Confidentiality and Public Access - Matters Initiated On Or After April 1, 2000:

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 professional conduct shall be returned to the grievant. No file on the grievance will be maintained.

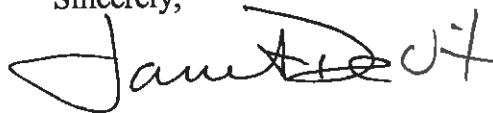
(2) All records and materials relating to a grievance determined by the attorney discipline office or the complaint screening committee not to meet the requirements for docketing as a complaint shall be available for public inspection (other than work product, internal memoranda, and deliberations) beginning 30 days 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. The records and material shall be maintained at the attorney discipline office for two (2) years from the date of the original filing. After this two-year period, the records shall be destroyed.

The Rule does not include the former language that requires indexing docketed complaints and prohibits indexing non-docketed grievances. We have continued to maintain those practices without noticing that the index section was no longer in the Rules. It came to our attention when someone asked the classic "where is it written?" question and I could not find it.

It is the ADO's suggestion that the language from former Rule 37A(IV)(a)(2)(D) become a new 37(20)(a)(3). Because this appears to have been an inadvertent oversight, and does not alter long-standing practices, it is our hope that this is a technical correction, and is not something that warrants a public hearing.

Please let me know if you or the Committee has any questions regarding this. Thank you.

Sincerely,



Janet F. DeVito
General Counsel

JFD/ksc

cc: Eileen Fox, Clerk, NH Supreme Court
David M. Rothstein, Chair, PCC