

Memorandum

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

From: N. William Delker

Date: March 8, 2018

Re: Agenda Item #2017-013: Amendment to N.H. R. (Civ.) 36

Existing Rule 36 does not clearly establish when a party is required to notify the opposing party he or she intends to subpoena the opposing party's lawyer as a witness. I was asked to submit a proposal to correct this deficiency. I believe that attached proposal would address the concerns about the timing or avoid unfair prejudice or surprise.

Rule 36(d)(5)

(5) *Attorney as Witness*

(i) *Compelling Testimony.* No attorney shall be compelled to testify in any cause in which he or she is retained, unless the attorney shall have been notified in writing ~~previous to the commencement of the term of trial~~ that he or she will be summoned as a witness therein, ~~and unless he or she shall have been so summoned previous to the commencement of the trial.~~ ***Such notice shall be provided no later than 30 days after the opposing party discovers that the attorney is a witness in the matter or 30 days after the attorney's appearance in the case, whichever occurs later.***