

#2017-014

New Hampshire Supreme Court

Attorney Discipline Office

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RECEIVED

AUG 28 2017

NH SUPREME COURT

Eileen Fox, Clerk
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

Re: Proposed Rule 37(16)

Dear Ms. Fox:

I write to follow up on our conversation of July 20, 2017. A recent disciplinary case resolved by global stipulation (*Horan, David A. advs. Attorney Discipline Office*, LD-2017-0009) highlighted two concerns about which we spoke. The first was procedural, and will be addressed in this letter. The second concern related to this Office's ability to obtain court records when investigating a disciplinary matter, and will be addressed in a separate letter.

As the Court is aware, many discipline cases are resolved by dispositive stipulation, *i.e.*, the ADO and Respondent agree on all facts, Rule violations, and proposed sanction. Under these circumstances, there are no legal or factual issues that the parties would ask the Court to review under current Rule 37(16). I have drafted proposed language for Rule 37(16) that would address matters resolved by dispositive stipulation. The change to Rule 37(16) would save judicial resources and reduce the time needed to reach a final conclusion, which is particularly important in cases of suspension or disbarment. Of course, the Court would continue to have discretion to reject the stipulation, order briefing on sanction, or such other further action as the Court deems appropriate after reviewing the stipulation.

The proposed Rule, with the changes, is attached to this letter. Perhaps this proposed change can be made part of the Rules Committee agenda for this September.

Please let me know if you have any questions regarding this. Thank you.

Sincerely,



Sara S. Greene
Disciplinary Counsel

SSG/ges
Enclosure

cc: David M. Rothstein, Esq.

(16) Procedure:

(a) Either a respondent attorney or disciplinary counsel may appeal findings of the professional conduct committee and the imposition of a reprimand, public censure or a suspension of six (6) months or less by filing a notice of appeal with the supreme court. The appeal shall not be a mandatory appeal. If the appeal is accepted by the court, the court may affirm, reverse or modify the findings of the professional conduct committee.

The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.

(b) The professional conduct committee shall initiate disciplinary proceedings requesting a discipline of greater than six (6) months in this court by filing the professional conduct committee's recommendation and the record of the proceedings with this court.

(c) Following receipt of the recommendation and the record, this court shall serve the respondent attorney with the recommendation at the latest address provided to the New Hampshire Bar Association. Simultaneously, the court shall notify the parties that the parties must, within 30 days of this court's order thereon, identify any legal or factual issues the parties wish this court to review. Thereafter, this court may issue a scheduling order setting forth a briefing schedule and any other matters as shall be deemed desirable or necessary. There shall not be a de novo evidentiary hearing. In matters resolved by dispositive stipulation, this paragraph shall not apply, though the court retains discretion to reject any dispositive stipulation in whole or in part, or to identify legal or factual issues it wishes the parties to address.

(d) The court may make such temporary orders as justice may require either with or without a hearing. Respondent attorney shall be entitled to be heard after any ex parte order.

(e) The court shall, after filing of any briefs and oral arguments, make such order as justice may require.

(f) The court may suspend attorneys or disbar New Hampshire licensed attorneys or publicly censure attorneys upon such terms and conditions as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession. The court may remand the matter to the professional conduct committee for such other discipline as the court may deem appropriate.

(g) In the event of suspension or disbarment, a copy of the court's order or the professional conduct committee's order, shall be sent to the clerk of every court in the State and to each State in which the respondent attorney is admitted to practice. The professional conduct committee shall continue to be responsible to insure respondent attorney's compliance with the order of suspension or disbarment, in the case of a New Hampshire licensed attorney, and to notify the court as to any violations for such action as the court deems necessary.

(h) In addition to the procedure described herein, the court may take such action on its own motion as it deems necessary.

(i) Appeals to the court shall be in the form prescribed by Rule 10, unless otherwise ordered by the court. Such appeals shall be based on the record and there shall not be a *de novo* evidentiary hearing.