

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE
ORDER

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

I. Supplemental Rules of the Superior Court of New Hampshire For Electronic Filing in Specified Civil Cases

(This amendment adopts Supplemental Rules of the Superior Court of New Hampshire for Electronic Filing in Specified Civil Cases.)

1. Adopt Supplemental Rules of the Superior Court of New Hampshire for Electronic Filing in Specified Civil Cases, as set forth in Appendix A.

II. Superior Court (Civ.) Rules – Electronic Filing

(These amendments to existing Rules of the Superior Court of the State of New Hampshire Applicable in Civil Actions are made to accommodate electronic filing.)

1. Amend Superior Court (Civ.) Rule 3, as set forth in Appendix B.
2. Amend Superior Court (Civ.) Rule 12(e), as set forth in Appendix C.
3. Amend Superior Court (Civ.) Rule 39, as set forth in Appendix D.
4. Amend Superior Court (Civ.) Rule 42, as set forth in Appendix E.
5. Amend Superior Court (Civ.) Rule 47, as set forth in Appendix F.
6. Amend Superior Court (Civ.) Rule 201, as set forth in Appendix G.

III. Circuit Court Rules

(These amendments: (a) delete the words “a will” from Circuit Court Electronic Filing Rule 7(d); and (b) change the language of Circuit Court Electronic Filing Rule 7(e) to state that unless otherwise ordered by the court, proposed trial exhibits shall not be submitted electronically.)

1. Amend Circuit Court Electronic Filing Rule 7, as set forth in Appendix H.

IV. New Hampshire Rules of Professional Conduct

(This amendment adds a comment to follow New Hampshire Rule of Professional Conduct 6.5.)

1. Adopt a comment to follow New Hampshire Rule of Professional Conduct 6.5, as set forth in Appendix I.

V. Technical Changes

A. Supreme Court Rule 42, XI

(These amendments make minor changes to the rule to make it consistent with Supreme Court Rule 53.)

1. Amend Supreme Court Rule 42, XI, as set forth in Appendix J.

B. Supreme Court Rule 49

(These amendments move the language set forth in Supreme Court Rule 49(I)(F) to a new section (G).)

1. Amend Supreme Court Rule 49(I), as set forth in Appendix K.

C. New Hampshire Rules of Criminal Procedure

(These amendments move the language set forth in New Hampshire Rule of Criminal Procedure 21(c) and the language set forth in New Hampshire Rule of Criminal Procedure 15(b)(5) to New Hampshire Rule of Criminal Procedure 35.)

1. Delete New Hampshire Rule of Criminal Procedure 15(b)(5), as set forth in Appendix L.

2. Delete New Hampshire Rule of Criminal Procedure 21(c), as set forth in Appendix M.

3. Amend New Hampshire Rule of Criminal Procedure 35, as set forth in Appendix N.

Effective Date

The amendments in Appendices A-G will become effective as of the date set forth in a subsequent order of this court implementing electronic filing in the superior court. The remaining amendments are effective on August 1, 2018. The amendment set forth in Appendix I is adopted on a temporary basis and shall be referred to the Advisory Committee on Rules for its recommendation as to whether the comment should be adopted on a permanent basis or some other action should be taken.

Date: July 13, 2018

ATTEST:



Eileen Fox, Clerk
Supreme Court of New Hampshire

APPENDIX I

Adopt a comment to follow New Hampshire Rule of Professional Conduct 6.5 as follows (new material is in **[bold and in brackets]**):

Rule 6.5. Nonprofit and Court-Annexed Limited Legal Service Programs

(a) A lawyer who, under the auspices of a program sponsored by the New Hampshire Bar Association, a nonprofit organization or court, provides one-time consultation with a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

(c) Rules 1.6 and 1.9(c) are applicable to a representation governed by this Rule.

[New Hampshire Supreme Court Comment

For purposes of participation by New Hampshire lawyers in the ABA Free Legal Answers website (to increase access to advice and information to clients who cannot afford an attorney), “one time consultation with a client” will include reasonably contemporaneous communication with a client, such as through an email exchange, online chat session, or other online messaging service, directly related to the matter initially discussed.]

Ethics Committee Comment

1. New Hampshire’s version differs from the Model Rule as follows:
 - a. Application of this Rule in (a) is limited to a “one time consultation with a client” instead of the ABA’s version “short-term limited legal services to a client”.

b. Section (c) is added.

2. The change in (a) is intended to give the attorney some clarity as to the scope of this Rule. This Rule relaxes certain of the normal conflicts limitations to allow this important pro bono service; this Rule applies only under circumstances where it is not reasonably possible for the attorney to otherwise comply with normal conflict of interest records checks procedures. Therefore, the situation where an attorney provides repeated services for the same client, and not a “one time consultation”, would not permit any deviation from the normal conflicts rules.

3. The addition of Section (c) is intended simply to emphasize the attorney's continuing responsibility to maintain confidences under Rule 1.6, and the attorney's duties to a former client under Rule 1.9(c). This inclusion raises this language, already contained in ABA Comment [2], to Rule status.

4. The value of the services rendered to the public in this pro bono context is important enough to justify carving out a special exception to the normal conflicts rules applicable in general client representation. In this special context, not even the protective “screening” rules, such as those adopted in 1.11(b), were employed.

5. Should a lawyer participating in a one-time consultation under this Rule later discover that the lawyer's firm was representing or later undertook the representation of an adverse client, the prior participation of the attorney will not preclude the lawyer's firm from continuing or undertaking representation of such adverse client. But the participating lawyer will be disqualified and must be screened from any involvement with the firm's adverse client. See ABA Comment [4].

2004 ABA Model Rule Comment
RULE 6.5 NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES
PROGRAMS

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.