

#2020-011

From: Paula D. Lewis [mailto:plewis@nhbar.org]

Sent: Monday, December 14, 2020 7:23 PM

To: Justice Patrick E. Donovan <PDonovan@courts.state.nh.us>

Subject: Proposed Court Rule Updates to NH Supreme Court Rules 42A, 53.1 - 53.5

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Justice Donovan,

Please find attached the proposed NH Supreme Court Rule updates as discussed.

Best regards,

Paula

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Proposed updates to NH Supreme Court Rule 42A

Original

(I) Bar Dues.

~~(A) The New Hampshire Bar Association shall report to the court the names of attorneys admitted to the bar of this State who have not paid within 60 days of the date on which it is due the annual fees assessed by the court or the annual bar dues provided for in the Constitution and By Laws of the New Hampshire Bar Association.~~ The court shall require the attorneys reported to show cause why they should not be suspended from the practice of law in this State for non-payment of the court fees or bar dues. If the court determines that an attorney has not shown good cause for non-payment of court fees or bar dues, an order shall be issued suspending that attorney from the practice of law in this State.

Proposed

(I) Bar Dues.

(A) On or before September 15, following the renewal date of June 1, the New Hampshire Bar Association shall report to the court the names of attorneys admitted to the bar of this State who have not yet paid annual fees assessed by the court or the annual bar dues provided for in the Constitution and By-Laws of the New Hampshire Bar Association. The court shall require the attorneys reported to show cause why they should not be suspended from the practice of law in this State for non-payment of the court fees or bar dues. If the court determines that an attorney has not shown good cause for non-payment of court fees or bar dues, an order shall be issued suspending that attorney from the practice of law in this State.

Reason – Remove the 60-day reporting requirement and replace with the date of September 15 as per the proposed attorney license renewal schedule for the next reporting year. In practice, reporting of names has occurred up to 150 days from the assessment date. The proposed schedule for the next reporting year will have names reported to the court at 106 days.

Original

(II) Foreign Legal Consultant Annual Fees.

(A) The New Hampshire Bar Association shall report to the court the names of foreign legal consultants licensed to practice in New Hampshire who have not paid within 60 days of the date on which it is due the annual fee required by Rule 42D(7). The court shall require the foreign legal consultants reported to show cause why their licenses to practice as foreign legal consultants should not be suspended. If the court determines that a foreign legal consultant has not shown good cause for non-payment of the annual fee, an order shall be issued suspending the license of the foreign legal consultant.

Proposed

(II) Foreign Legal Consultant Annual Fees.

(A) On or before September 15, following the renewal date of June 1, the New Hampshire Bar Association shall report to the court the names of foreign legal consultants licensed to practice in New Hampshire who have not yet paid the annual fee required by Rule 42D(7). The court shall require the foreign legal consultants reported to show cause why their licenses to practice as foreign legal consultants should not be suspended. If the court determines that a foreign legal consultant has not shown good cause for non-payment of the annual fee, an order shall be issued suspending the license of the foreign legal consultant.

Reason - Remove the 60-day reporting requirement and replace with the date of September 15 as per the proposed attorney license renewal schedule for the next reporting year. In practice, reporting of names has occurred up to 150 days from the assessment date. The proposed schedule for the next reporting year will have names reported to the court at 106 days.

Proposed updates to NH Supreme Court Rule 53.1 NHMCLE Requirement

Original

C. *Reporting Year* -- The reporting year shall be the period from ~~July 1 to June 30~~. The annual ~~reporting date shall be July 1~~, and reporting shall be done in the manner specified in Rule 53.3.

Proposed

C. *Reporting Year* -- The reporting year shall be the period from ~~June 1 to May 31~~. The annual NHMCLE affidavit filing period shall be June 1 to July 1 following the end of the reporting year, and reporting shall be done in the manner specified in Rule 53.3.

Reason

Syncing the NHMCLE reporting year with NH Supreme Court fee assessments, NHBA Dues assessment and Trust Account Compliance reporting year.

Clarifying that all CLEs must be taken prior to July 1 in order to file the NHMCLE affidavit. In prior years, attorneys have taken CLEs on July 1, particularly in the evening hours, and then have filed their NHMCLE affidavit on July 2 without penalty.

Proposed updates to NH Supreme Court Rule 53.2 NHMCLE Requirement

Original

B. Exemptions From Minimum CLE Requirement.

1. Those exempt from annual certification requirements under Rule 53.2(A)(2) or 53.2(A)(3) are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year.

2. Lawyers first admitted to New Hampshire practice on or after ~~January~~ 1 of the reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.

3. Lawyers on active duty for the United States Armed Forces for more than three (3) months of the reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year.

4. Lawyers who change from any New Hampshire Bar Association active membership status to any inactive membership status before ~~January~~ 1 of any reporting period, and who maintain inactive membership status for the remainder of that reporting period are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.

5. Lawyers who are elected State or Federal officials not engaged in the practice of law during a reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.

6. Lawyers may be exempted from meeting the minimum CLE requirements of Rule 53.1B, in whole or in part, by the NHMCLE Board, upon petition, for compelling reasons. Such reasons may include, but are not limited to, ~~physical or other disability which prevents compliance with this rule during the period of such disability.~~

Proposed

B. Exemptions From ~~the~~ Minimum CLE Requirement.

1. Those exempt from annual certification requirements under Rule 53.2(A)(2) or 53.2(A)(3) are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year.

2. Lawyers first admitted to New Hampshire practice on or after ~~December~~ 1 of the reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.

3. Lawyers on active duty for the United States Armed Forces for more than three (3) months of the reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year.

4. Lawyers who change from any New Hampshire Bar Association active membership status to any inactive membership status before ~~December~~ 1 of any reporting period, and who maintain inactive membership status for the remainder of that reporting period are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.

5. Lawyers who are elected State or Federal officials not engaged in the practice of law during a reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.

6. Lawyers may be exempted from meeting the minimum CLE requirements of Rule 53.1B, in whole or in part, by the NHMCLE Board, upon petition, for compelling reasons. Such reasons may include, but are not limited to, ~~financial, physical, or other hardship which prevents compliance with this rule during the period of such hardship.~~

Reason

Added 'the' in the header

Updating the 'six month' date from January to December as per the reporting date change from July 1 – June 30 to June 1 – May 31 beginning June 1, 2021

Note: for the current reporting year (6/1/2020-5/31/2021) the date will remain January 1, 2021.

Update in paragraph 53.2 B 6 to use same language as used for NH Supreme Court fees and NHBA dues waivers.

Proposed updates to NH Supreme Court Rule 53.3 NHMCLE Requirement

Original

53.3. Reporting ~~And Certification~~ of Compliance with Rule 53

A. On or before July 1 of each year, every lawyer having been in any New Hampshire Bar Association active membership status at any time during the immediately preceding ~~July 1-June 30~~ reporting year and not exempt pursuant to Rule 53.2(A)(2) or 53.2(A)(3) shall file a ~~Certification~~ of Compliance with the NHMCLE Board, in such form as the NHMCLE Board shall prescribe, concerning either his or her completion of CLE during the previous reporting year, or the basis for his or her claim of exemption under Rule 53.2(B).

Lawyers may engage in and report CLE performed after the close of the reporting year and prior to the filing of a ~~Certification~~ of Compliance, provided that such CLE may not also be used to satisfy the requirement for the reporting year in which it is performed.

B. Each such lawyer shall maintain such records or certificates of attendance as may be required to substantiate his or her compliance or exemption for a period of two (2) years following the close of a reporting year.

C. The court shall assess each lawyer in New Hampshire Bar Association active membership status as of the assessment date an annual sum to support the administration of Rule 53.

D. Lawyers exempt under Rule 53.2(B) who wish to claim NHMCLE credit for activities completed during a reporting year for which such exemption applies (e.g., for purposes of carrying over such credits pursuant to Rule 53.1(D)) may do so by either (1) filing a ~~Certification~~ of Compliance for the reporting year in which the activity was completed, or (2) reporting such activities on the ~~Certification~~ of Compliance filed for the following reporting year if no exemption is then available.

E. The NHMCLE Board shall from time to time audit the ~~Certifications~~ of Compliance filed by lawyers in accordance with this rule to determine whether the information reported is accurate and/or to determine whether the activities reported are qualifying activities. The NHMCLE Board may select ~~Certifications~~ of Compliance for audit based on apparent deficiencies in the ~~Certifications~~, or based on any other factor that the NHMCLE Board, in its discretion, deems appropriate. ~~Certifications~~ may also be selected for audit on a random basis. The NHMCLE Board shall notify a lawyer whose ~~Certification~~ of Compliance has been selected for audit of the reporting period or periods to be audited. The NHMCLE Board shall request that, within thirty (30) days of the notification, the lawyer provide information about the CLE activities reported and/or evidence to substantiate that the lawyer completed the CLE activities reported. If the information provided by the lawyer is insufficient to establish that the ~~Certification~~ of Compliance is accurate and/or that the activities reported are qualifying activities, the NHMCLE Board shall notify the lawyer of the issue(s) involved and invite the lawyer to submit a written response. If, upon consideration of the lawyer's response and any other facts and circumstances that the NHMCLE Board considers pertinent, the NHMCLE Board determines that a lawyer's ~~Certification~~ of Compliance is inaccurate and/or deficient, it shall determine whether the lawyer should be required to take remedial action, and if so, the remedial action required. The decision of the NHMCLE Board as to the remedial action required shall be final.

Proposed

53.3. Reporting and Affidavit of Compliance with Rule 53

A. On or before July 1 of each year, every lawyer having been in any New Hampshire Bar Association active membership status at any time during the immediately preceding June 1-May 31 reporting year and not exempt pursuant to Rule 53.2(A)(2) or 53.2(A)(3) shall file an Affidavit of Compliance with the NHMCLE Board, in such form as the NHMCLE Board shall prescribe, concerning either his or her completion of CLE during the previous reporting year, or the basis for his or her claim of exemption under Rule 53.2(B). A lawyer who has inadvertently neglected to report in their initial Affidavit of Compliance all credits earned in the immediately preceding reporting year can reopen the initial Affidavit of Compliance once within thirty days of the initial filing, but not later than July 31.

Lawyers may engage in and report CLE performed after the close of the reporting year and prior to the filing of an Affidavit of Compliance, provided that such CLE may not also be used to satisfy the requirement for the reporting year in which it is performed.

B. Each such lawyer shall maintain such records or certificates of attendance as may be required to substantiate his or her compliance or exemption for a period of two (2) years following the close of a reporting year.

C. The court shall assess each lawyer in New Hampshire Bar Association active membership status as of the assessment date an annual sum to support the administration of Rule 53.

D. Lawyers exempt under Rule 53.2(B) who wish to claim NHMCLE credit for activities completed during a reporting year for which such exemption applies (e.g., for purposes of carrying over such credits pursuant to Rule 53.1(D)) may do so by either (1) filing an Affidavit of Compliance for the reporting year in which the activity was completed, or (2) reporting such activities on the Affidavit of Compliance filed for the following reporting year if no exemption is then available.

E. The NHMCLE Board shall from time to time audit the Affidavits of Compliance filed by lawyers in accordance with this rule to determine whether the information reported is accurate and/or to determine whether the activities reported are qualifying activities. The NHMCLE Board may select Affidavits of Compliance for audit based on apparent deficiencies in the Affidavits or based on any other factor that the NHMCLE Board, in its discretion, deems appropriate. Affidavits may also be selected for audit on a random basis. The NHMCLE Board shall notify a lawyer whose Affidavit of Compliance has been selected for audit of the reporting period or periods to be audited. The NHMCLE Board shall request that, within thirty (30) days of the notification, the lawyer provide information about the CLE activities reported and/or evidence to substantiate that the lawyer completed the CLE activities reported. If the information provided by the lawyer is insufficient to establish that the Affidavit of Compliance is accurate and/or that the activities reported are qualifying activities, the NHMCLE Board shall notify the lawyer of the issue(s) involved and invite the lawyer to submit a written response. If, upon consideration of the lawyer's response and any other facts and circumstances that the NHMCLE Board considers pertinent, the NHMCLE Board determines that a lawyer's Affidavit of Compliance is inaccurate and/or deficient, it shall determine whether the lawyer should be required to take remedial action, and if so, the remedial action required. The decision of the NHMCLE Board as to the remedial action required shall be final.

Reason

Syncing the NHMCLE reporting year with NH Supreme Court fee assessments, NHBA Dues assessment and Trust Account Compliance reporting year.

Replacing the word 'Certification(s)' with 'Affidavit(s)' to match the document name stemming from implementation of 3-1-1.

Clarify the process and time frame allowed for entering additional CLEs post filing of the Affidavit of Compliance for the said reporting year.

Proposed updates to NH Supreme Court Rule 53.4 NHMCLE Requirement

Original

53.4. Sanctions And Appeal

A. Delinquency -

1. *Notice of Delinquency* - On August 1, following the annual reporting date, any lawyer not in compliance with this rule shall be assessed a delinquency fee by the NHMCLE Board. Thereafter, the Board shall send a notice to the lawyer notifying the lawyer of the delinquency fee and directing the lawyer to comply with this rule for the prior reporting period.

2. ~~*Final Demand for Compliance*~~ — On September 1 following the annual reporting date, any lawyer not in compliance with this rule shall be assessed an additional delinquency fee by the NHMCLE Board. Thereafter the Board shall send a second notice of delinquency to the lawyer notifying the lawyer of the additional delinquency fee and demanding that the lawyer comply with the rule for the prior reporting period. On or about September 15 following the annual reporting date, the NHMCLE Board shall report to the Supreme Court the name of any lawyer who still has not complied with the requirements of the rule, or who has failed to certify that the lawyer is exempt from the requirements and/or has not paid any outstanding delinquency fee. Upon receiving this report, the court shall initiate a proceeding to suspend the lawyer from the practice of law.

Proposed

53.4. Sanctions and Appeal

A. Delinquency -

1. *Notice of Delinquency* - On August 1, following the annual reporting date, any lawyer not in compliance with this rule shall be assessed a delinquency fee by the NHMCLE Board. Thereafter, the Board shall send a notice to the lawyer notifying the lawyer of the delinquency fee and directing the lawyer to comply with this rule for the prior reporting period.

2. On or ~~before~~ September 15 following the annual reporting date, the NHMCLE Board shall report to the Supreme Court the name of any lawyer who still has not complied with the requirements of the rule, or who has failed to certify that the lawyer is exempt from the requirements and/or has not paid any outstanding delinquency fee. Upon receiving this report, the court shall initiate a proceeding to suspend the lawyer from the practice of law.

Reason

Update date by which the non-compliant names are to be forwarded by the NHMCLE Board to the NH Supreme Court and aligning the date with NH Supreme Court Rule 42A stating when the NH Bar Association reports such names to the NH Supreme Court.

Proposed updates to NH Supreme Court Rule 53.5 NHCLE Requirement

Original

53.5. NHCLE Board

E. *Powers and Duties* - The Board shall have the following powers and duties:

1. Administer this rule and establish appropriate committees for that purpose;
2. Adopt procedures and standards consistent with this rule and for its intended operation;
3. Report at least annually to the New Hampshire Bar Association and the Supreme Court; and
4. As provided in Rule 53.3(E), conduct audits of lawyers' **Certifications** of Compliance to determine whether the requirements of the rule are being met.

Proposed

53.5. NHCLE Board

E. *Powers and Duties* - The Board shall have the following powers and duties:

1. Administer this rule and establish appropriate committees for that purpose;
2. Adopt procedures and standards consistent with this rule and for its intended operation;
3. Report at least annually to the New Hampshire Bar Association and the Supreme Court; and
4. As provided in Rule 53.3(E), conduct audits of lawyers' **Affidavits** of Compliance to determine whether the requirements of the rule are being met.

Reason

Replacing the word 'Certification(s)' with 'Affidavit' to match what the document name stemming from implementation of 3-1-1.