

**TO:** Supreme Court  
**FROM:** Tim Gudas  
**DATE:** March 25, 2021  
**RE:** Proposed Technical Amendments to Rule 50-A and Rule 53.4

The New Hampshire Bar Association seeks to simplify the process and timing for the assessment of delinquency fees on those attorneys who fail to comply with one or more of the following annual registration requirements: (1) payment of bar dues and court fees, see Rule 42A; (2) compliance with trust accounting certification, see Rule 50-A; and (3) compliance with NHMCLE, see Rule 53.4. Specifically, the Bar Association wishes to have a single date (August 2) for the assessment of delinquency fees, rather than two dates (one date for the attorney's initial noncompliance, and a subsequent date for the attorney's continued noncompliance). The date of August 2 essentially provides attorneys with a month-long grace period to come into compliance prior to the assessment of delinquency fees, but those attorneys still not in compliance by the end of the day on August 1 would face the following delinquency assessments (as applicable): \$100 for nonpayment of bar dues and/or court fees;<sup>1</sup> \$300 for failure to file the trust accounting

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<sup>1</sup> This delinquency amount is set by the Board of Governors, pursuant to the authority delegated by the Bar Association's Constitution and By-Laws.

certification;<sup>2</sup> and \$300 for failure to satisfy and report NHCLE credits.<sup>3</sup>

No additional delinquency fees would be assessed after August 2.

Justice Donovan supports the Bar Association's objectives and recommends that the court adopt the following technical amendments to Rule 50-A and Rule 53.4 (see next pages).

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<sup>2</sup> This delinquency amount is established by Rule 50-A(2).

<sup>3</sup> This delinquency amount is set by the NHCLE Board, pursuant to the authority granted by Rule 53.4.

Rule 50-A(2)

An attorney or foreign legal consultant who fails to comply with the requirements of Rule 50 with respect to the maintenance, availability, and preservation of accounts and records, who fails to file the required annual Trust Accounting Compliance Certification, or who fails to produce trust account records as required shall be deemed to be in violation of Rule 1.15 of the Rules of Professional Conduct and the applicable Supreme Court Rule. Unless upon petition to the Supreme Court an extension has been granted, failure to file the required annual Trust Accounting Compliance Certification by July 1st shall, in addition, subject the attorney or foreign legal consultant to one or more of the following penalties and procedures:

A. On August ~~1~~ **2**, attorneys and foreign legal consultants who have not filed their Trust Accounting Compliance Certifications shall be assessed a delinquency fee of ~~\$50.00~~ **\$300, or as subsequently amended by order of the Supreme Court.** ~~On September 1, attorneys and foreign legal consultants who have not filed their Trust Accounting Compliance Certifications shall be assessed an additional delinquency fee of \$250.00.~~

B. On or after September 1, the New Hampshire Bar Association shall provide the Supreme Court with the names of attorneys and foreign legal consultants who have not filed their Trust Accounting Compliance Certifications. The court shall initiate proceedings to suspend the attorneys from the practice of law or to suspend the licenses of the foreign legal consultants.

C. An audit of the attorney's or foreign legal consultant's trust accounts and other financial records, at the expense of the attorney or foreign legal consultant, may be required.

Delinquency fees provided for by this rule shall be collected by the New Hampshire Bar Association for the benefit of the Attorney Discipline Office. The delinquency fee may be used by the Attorney Discipline Office to pay for audits of the trust accounts of attorneys or foreign legal consultants, or for other purposes related to trust accounting compliance upon approval of the Supreme Court.

Rule 53.4

A. Delinquency -

1. Notice of Delinquency - On August ~~1~~ **2**, 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.