

NEW HAMPSHIRE SUPREME COURT ADVISORY COMMITTEE ON RULES

PUBLIC HEARING NOTICE

The New Hampshire Supreme Court Advisory Committee on Rules will hold a PUBLIC HEARING at 12:30 p.m. on Friday, June 6, 2014, at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar on court rules changes which the Committee is considering for possible recommendation to the Supreme Court.

Comments on any of the court rules proposals which the Committee is considering for possible recommendation to the Supreme Court may be submitted in writing to the secretary of the Committee at any time on or before June 6, 2014 or may be submitted at the hearing on June 6, 2014. Comments may be e-mailed to the Committee on or before June 6, 2014, at:

rulescomment@courts.state.nh.us

Comments may also be mailed or delivered to the Committee at the following address:

N.H. Supreme Court
Advisory Committee on Rules
1 Charles Doe Drive
Concord, NH 03301

Any suggestions for rules changes other than those set forth below may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

Copies of the specific changes being considered by the Committee are available on request to the secretary of the Committee at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Telephone 271-2646). In addition, the changes being considered are available

on the Internet (in the Appendix to the Public Hearing Notice) at:

<http://www.courts.state.nh.us/committees/adviscommrules/notices.htm>

The changes being considered concern the following rules:

I. Depositions: Notice or Subpoena Directed to An Organization

(This proposal would amend Rule 26 of the Rules of the Superior Court of the State of New Hampshire Applicable in Civil Actions to include a provision which would allow a party to name as a deponent a public or private corporation, a partnership, an association, a governmental agency, and require the named organization to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf).

1. Amend Rule 26 of the Rules of the Superior Court of the State of New Hampshire Applicable in Civil Actions, as set forth in Appendix A.

II. Attorney Discipline: Supreme Court Rules 37 and 37-A

1. Amend Supreme Court Rule 37(16) to allow disciplinary counsel to participate separately in Supreme Court disciplinary proceedings if the PCC recommends greater than a six month suspension and disciplinary counsel believes that the PCC's decision is based on a clearly erroneous factual finding or is erroneous as a matter of law, as set forth in Appendix B.

2. Adopt Supreme Court Rule 37(19-A) to authorize the Professional Conduct Committee or the Court to order a respondent attorney to forfeit legal fees or pay restitution as a sanction for misconduct, as set forth in Appendix C.

3. Amend Supreme Court Rule 37A(I)(e) to authorize the Professional Conduct Committee or the Court to order a respondent attorney to forfeit legal fees or pay restitution as a sanction for misconduct, as set forth in Appendix D.

4. Amend Supreme Court Rule 37(8) to authorize attorneys in the Attorney Discipline Office to issue subpoenas during the investigative stage of a proceeding, as set forth in Appendix E.

5. Amend Supreme Court Rule 37A(III)(b) to make pre-hearing conferences mandatory, add details regarding exhibits and change the timing in two provisions, as set forth in Appendix F.

6. Amend Supreme Court Rule 37(20) to make available for public review all final decisions of the PCC on docketed matters, to keep all non-docketed matters confidential, and to make all "non-disciplinary decisions with warning"

confidential but retained for review by the Attorney Discipline Office and the Professional Conduct Committee, as set forth in Appendix G.

7. Amend Supreme Court Rule 37A(IV) to make all grievances not docketed as a complaint confidential, and to require that non-disciplinary decisions with warning be retained for a period of five years and non-disciplinary decisions without warning be retained for a period of one year, as set forth in Appendix H.

8. Amend Supreme Court Rule 37(20)(a) to eliminate the requirement that the Attorney Discipline Office retain and make available to the public letters sent to grievants who file complaints against individuals who are not subject to the rules, as set forth in Appendix I.

9. Amend Supreme Court Rule 37A(IV) to eliminate the requirement that the Attorney Discipline Office make available to the public letters sent to grievants who file complaints against individuals who are not subject to the rules, as set forth in Appendix J.

10. Amend Supreme Court Rule 37(20) and delete Supreme Court Rules 37(21) and 37(23) to reorganize the “pre-2000” and the “post-2000” confidentiality and public access rules into a single, unified rule, create retention rules and add a provision to make clear that upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the PCC, as set forth in Appendix K.

11. Amend Supreme Court Rule 37A(IV) as part of the reorganization of the confidentiality and public access rules into a single, unified rule, as set forth in Appendix L.

12. Amend Supreme Court Rule 37(9) to make clear that suspension pending final disciplinary proceedings when a certified copy of a court record is filed that indicates that the attorney has been convicted of a serious crime is immediate and summary, as set forth in Appendix M.

13. Amend Supreme Court Rule 37A(II)(d) to delete the provision relating to “Conviction of Crime; Determination of Serious Crime,” as set forth in Appendix N.

14. Amend Supreme Court Rule 37 to adopt a new subsection (9-A) to provide that the Attorney Discipline office may file a petition for interim suspension alleging that an attorney has engaged in conduct that poses a substantial threat of serious harm to the public, and sets out the process to be followed when such a petition is filed, as set forth in Appendix O.

15. Amend Supreme Court Rule 37A(II)(a)(7) to allow for the waiver of formal proceedings and the filing of stipulations as to facts, rule violations and/or sanction, as set forth in Appendix P.

16. Amend Supreme Court Rule 37A(III) to expand upon the rules governing the use and effect of both dispositive and partial stipulations in attorney discipline proceedings, as set forth in Appendix Q.

17. Amend Supreme Court Rule 37A(I) to add a new subsection (j) to make clear that complainants are not parties to disciplinary matters, as set forth in Appendix R.

18. Amend Supreme Court Rule 37A(III)(b) to eliminate the requirement that disciplinary counsel forward a copy of the entire file to the panel, and to add the requirement that disciplinary counsel provide the respondent with bates-stamped copies of all relevant documents to the respondent at the time of filing of the notice of charges, as set forth in Appendix S.

19. Amend Supreme Court Rule 37A(I)(i) to require that a grievance be filed within one year of the conclusion of a civil proceeding involving the same conduct, as set forth in Appendix T.

20. Amend Supreme Court Rule 37(9), to require that any attorney who has been convicted of a crime shall notify the court within ten days of sentencing on the conviction as set forth in Appendix U.

III. Supreme Court Rule 50 – Trust Accounts

1. Amend Supreme Court Rule 50(1)(C) to require lawyers to direct a depository institution to provide the New Hampshire Attorney Discipline Office with a notice whenever a trust account contains insufficient funds or shows a negative balance, as set forth in Appendix V.

New Hampshire Supreme Court
Advisory Committee on Rules

By: Robert J. Lynn, Chairperson
and Carolyn A. Koegler, Secretary

April 23, 2014

APPENDIX A

Amend Rule 26 of the Rules of the Superior Court of the State of New Hampshire Applicable in Civil Actions as follows (new material is in **brackets**):

Rule 26. Depositions.

(a) A party may take as many depositions as necessary to adequately prepare a case for trial so long as the combined total of deposition hours does not exceed 20 unless otherwise stipulated by counsel or ordered by the court for good cause shown.

(b) No notice to the adverse party of the taking of depositions shall be deemed reasonable unless served at least 3 days, exclusive of the day of service and the day of caption, before the day on which they are to be taken. Provided, however, that 20 days' notice shall be deemed reasonable in all cases, unless otherwise ordered by the court. No deposition shall be taken within 30 days after service of the Complaint, except by agreement or by leave of court for good cause shown.

(c) Every notice of a deposition to be taken within the State shall contain the name of the stenographer proposed to record the testimony.

(d) When a statute requires notice of the taking of depositions to be given to the adverse party, it may be given to such party or the party's representative of record. In cases where the action is in the name of a nominal party and the Complaint or docket discloses the real party in interest, notice shall be given either to the party in interest or that party's attorney of record. Notices given pursuant to this rule may be given by mail or by service in hand. If a subpoena duces tecum is to be served on the deponent, the notice to the adverse party must be served before service of the subpoena, and the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment.

(e) The interrogatories shall be put by the attorneys or non-attorney representatives and the interrogatories and answers shall be taken in shorthand or other form of verbatim reporting approved by the court and transcribed by a competent stenographer agreed upon by the parties or their attorneys present at the deposition. In the absence of such agreements, the stenographer shall be designated by the court. Failure to object in writing to a stenographer in advance of the taking of a deposition shall be deemed agreement to the stenographer recording the testimony.

(f) No deposition, as transcribed, shall be changed or altered, but any alleged errors may be set forth in a separate document attached to the original and copies.

(g) The stenographer shall cause to be noted any objection to any interrogatory or answer without deciding its competency. If complaint is made of interference with any witness, the stenographer shall cause such complaint to be noted and shall certify the correctness or incorrectness thereof in the caption.

(h) Upon motion, the court may order the filing of depositions, and, upon failure to comply with such order, the court may take such action as justice may require.

(i) The signature of a person outside the State, acting as an officer legally empowered to take depositions or affidavits, with his or her seal affixed, where one is required, to the certificate of an oath administered by him or her in the taking of affidavits or depositions, will be prima facie evidence of his or her authority so to act.

(j) The deponent, on deposition or on written interrogatory, shall ordinarily be required to answer all questions not subject to privilege or excused by the statute relating to depositions, and it is not grounds for refusal to answer a particular question that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence and does not violate any privilege.

(k) If any deponent refuses to answer any question propounded on deposition, or any party fails or refuses to answer any written interrogatory authorized by these rules, or fails to comply within 30 days after written request to comply, the party propounding the question may, upon notice to all persons affected thereby, apply by motion to the court for an order compelling an answer. If the motion is granted, and if the court finds that the refusal was without substantial justification or was frivolous or unreasonable, the court may, and ordinarily will, require the deponent or the party, attorney, or non-attorney representative advising the refusal, or both of them, to pay the examining or requesting party the reasonable expenses incurred in obtaining the order, including reasonable counsel fees.

If the motion is denied and if the court finds that the motion was made without substantial justification or was frivolous or unreasonable, the court may, and ordinarily will, require the examining party or the attorney advising the motion, or both of them, to pay to the witness the reasonable expenses incurred in opposing the motion, including reasonable counsel fees.

(l) *Videotape Depositions.*

(1) A party may, at such party's expense, record a videotape deposition, provided the party indicates the intent to record the videotape deposition in the notice of deposition. At the commencement of the videotape deposition, counsel representing the deponent should state whose deposition it is, what case it is being taken for, where it is being taken, who the lawyers are that will be asking the questions, and the date and the time of the deposition. Care should be taken to have the witnesses speak slowly and distinctly and that papers be readily available for reference without undue delay and unnecessary noise. Counsel and witnesses shall comport themselves at all times as if they were actually in the courtroom.

(2) If any problem arises as to the admissibility or inadmissibility of evidence, this should be handled in the same manner as written depositions.

(3) A party objecting to a question asked of, or an answer given by, a witness whose testimony is being taken by videotape shall provide the court at the Trial Management Conference with a transcript of the videotape proceedings that is sufficient to enable the court to act upon the objection before the trial of the case, or the objection shall be deemed waived.

[(m) *Notice or Subpoena Directed to An Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (m) does not preclude a deposition by any other procedure allowed by these rules.]

Comment

Rule 26(a) is a major change from current New Hampshire deposition practice. This new limitation is warranted by the adoption of the Automatic Disclosure requirements of Rule 22, which itself tracks in part the provision of Fed. R. Civ. P. 26(a)(1). While the typical case ordinarily does not consume 20 hours of depositions, the rule recognizes that there are others for which 20 hours may not be adequate.

APPENDIX B

Amend Supreme Court Rule 37(16) as follows (new material is in **bold and in brackets**]; deleted material is in ~~striketrough~~ format):

(16) **Procedure:**

(a) Disciplinary proceedings requesting a discipline of greater than six (6) months shall be initiated in this court by the professional conduct committee by petition setting forth allegations of facts giving rise to the complaint and alleging the specific provisions of the rules of professional conduct which have been violated. The record of proceedings before the professional conduct committee shall be filed with the petition. There shall not be a de novo evidentiary hearing.

(b) Service shall be made to the respondent attorney in such manner as the court may direct. In all cases, however, service upon the respondent attorney at the latest address provided to the New Hampshire Bar Association shall be deemed to be sufficient.

(c) Respondent attorney shall answer each allegation specifically and shall file an answer within thirty (30) days after service of the petition. Should the respondent attorney fail to answer the petition, the allegations set forth therein shall be deemed to be admitted and no further hearing shall be required.

(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 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) 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.

[(h) In the event that the professional conduct committee imposes discipline of greater than six months, and disciplinary counsel believes that the professional conduct committee's decision is based on a clearly erroneous factual finding, or is erroneous as a matter of law, disciplinary counsel may participate separately in the appellate proceedings. Special counsel may be designated by the committee, and may represent the committee in all proceedings before the court.]

~~(h)~~**[(i)]** 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.

~~(i)~~ **[(j)]** In addition to the procedure described herein, the court may take such action on its own motion as it deems necessary.

~~(j)~~ **[(k)]** 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.

APPENDIX C

Adopt Supreme Court Rule 37(19-A) as follows:

(19-A) *Monetary Sanctions: Restitution, Forfeiture of Legal Fees, Public Protection Fund.* The professional conduct committee or the court may order the disciplined attorney to make restitution to persons financially injured, to disgorge all or part of the lawyer's or law firm's fee, or to reimburse the public protection fund.

APPENDIX D

Amend Supreme Court Rule 37A(I)(e) as follows (new material is in **and in brackets**):

(e) *Types of Discipline and Other Possible Action.*

(1) Misconduct under Supreme Court Rule 37(1)(c), the disciplinary rules or decisional law shall be grounds for any of the following:

(A) Disbarment - by the court.

(B) Suspension for more than six months - by the court.

(C) Suspension for six months or less - by the professional conduct committee or the court.

(D) Public Censure - by the professional conduct committee or the court.

(E) Reprimand - by the professional conduct committee.

(F) Monetary Sanctions Pursuant to Rule 37(19) – by the professional conduct committee or the court.

[(G) Monetary Sanctions Pursuant to Rule 37(19-A) – by the professional conduct committee or the court.]

(2) The attorney discipline office general counsel, the complaint screening committee or the professional conduct committee may issue a warning to an attorney when it is deemed to be appropriate. The issuance of a warning does not constitute discipline.

(3) The attorney discipline office general counsel, the complaint screening committee or the professional conduct committee may divert a matter involving minor discipline, in lieu of discipline, subject to compliance with the terms of a written agreement. The professional conduct committee may require an attorney to participate in a diversion program as a condition of discipline. Any component of the attorney discipline system may refer to a diversion program, on a voluntary basis, an attorney who engages in conduct that does not violate the rules of professional conduct but which should be addressed as a corrective matter.

APPENDIX E

Amend Supreme Court Rule 37(8) as follows (new material is in **bold and in brackets**]; deleted material is in ~~strikethrough~~ format):

(8) ***Discovery and Subpoena Power:***

[(a)] At any stage of proceedings ~~before a panel of the hearings committee or in preparation for a hearing before a panel of the hearings committee,~~ attorneys from the attorney discipline office, ~~counsel for respondent attorneys and respondent attorneys representing themselves may conduct discovery, including interrogatories and depositions,~~ and may issue subpoenas and subpoenas *duces tecum* to summon witnesses with or without documents.

[(b) At any stage after the filing of a Notice of Charges, attorneys from the attorney discipline office, counsel for respondent attorneys and respondent attorneys representing themselves may issue subpoenas and subpoenas *duces tecum* to summon witnesses with or without documents, and may conduct additional discovery, including, but not limited to, interrogatories and depositions.]

APPENDIX F

Amend Supreme Court Rule 37A(III)(b) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(b) *Institution of Proceedings.*

(1) *General.*

Upon receipt of a file referred by the attorney discipline office general counsel or the complaint screening committee, disciplinary counsel may engage in such additional preparation to allow counsel to formalize allegations into a notice of charges. The notice of charges shall be served on the respondent by certified mail, return receipt requested, unless some other type of service is authorized upon application to the chair of the professional conduct committee. Throughout the proceedings, disciplinary counsel shall exercise independent professional judgment. Nevertheless, disciplinary counsel shall keep the complainant apprised of developments in the matter and consider input from the complainant.

(2) *Notice of Charges.*

The notice of charges shall set forth the allegations of misconduct against the respondent and the disciplinary rules alleged to have been violated. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel and to present evidence in respondent's own behalf.

(3) *Answer.*

(A) *General Rule.* The respondent shall answer the notice of charges by serving and filing an answer with disciplinary counsel within thirty (30) days after service of the notice of charges. Should the respondent fail to file an answer, the allegations set forth in the notice of charges shall be deemed to be admitted.

(B) *Contents of Answer.* The answer shall be in writing, and shall respond specifically to each allegation of the notice of charges and shall assert all affirmative defenses.

(4) *Assignment for Hearing.*

Upon receiving an answer from the respondent, or the expiration for the thirty (30) day period for a respondent to file an answer, it shall be the duty

of disciplinary counsel to request that the chair of the hearings committee appoint a hearing panel.

Once a hearing panel has been appointed, disciplinary counsel shall forward the panel a copy of the file, other than work product, deliberations and internal correspondence and memoranda of the component parts of the attorney discipline system. To the extent not already provided, disciplinary counsel shall also provide the respondent with the same documents provided to the hearing panel.

(5) *Discovery.*

(A) Discovery shall be available to the disciplinary counsel. Discovery shall also be available to the respondent, provided that an answer has been filed. All such requests shall be in writing.

(B) On written request the following information, if relevant or reasonably calculated to lead to the discovery of admissible evidence in the matter, and if within the possession, custody or control of the disciplinary counsel, the respondent or respondent's counsel, is subject to discovery and shall be made available for inspection and copying as set forth in this rule:

(i) A writing or any other tangible object, including those obtained from or belonging to the respondent;

(ii) Signed written statements, or taped statements, if any, by any witness, including the respondent;

(iii) Results or reports of mental or physical examinations and of scientific tests or experiments made in connection with the matter;

(iv) Names, addresses and telephone numbers of all persons known to have relevant information based on personal knowledge about the matter, including a designation by the disciplinary counsel and respondent as to which of those persons will be called as witnesses;

(v) Police reports and any investigation reports generated by any agency other than the attorney discipline office;

(vi) Names and address of each person expected to be called as an expert witness, the expert's qualifications, the subject matter on which the expert will testify, a copy of all written reports submitted by the expert or, if none, a statement of facts and opinions to which the expert will testify and a summary of the grounds for each opinion; and

(vii) If disciplinary counsel or the respondent are unable to

agree on discovery issues, a request must be made for a pre-hearing conference.

(C) This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or that party's attorney or agents in connection with a disciplinary proceeding. Nor does it require discovery of statements, signed or unsigned, made by respondent to respondent's attorney or that attorney's agents. This rule does not authorize discovery of any internal materials or documents prepared by the attorney discipline office.

(D) Depositions shall be permitted in any matter to preserve the testimony of a witness likely to be unavailable for hearing due to death, incapacity or if otherwise agreed to by the parties. If disciplinary counsel or the respondent deem it necessary to take any other depositions, a request must be made for a pre-hearing conference.

(E) Discovery shall be made available within thirty (30) days after receipt of a written request therefor. A party's obligation to provide discovery is a continuing one. If, subsequent to compliance with a request for discovery, a party discovers additional names or statements of witnesses or other information reasonably encompassed by the initial request for discovery, the original discovery response shall be promptly supplemented accordingly. In any case in which a pre-hearing conference has been held, the case management order shall set forth the time period within which all discovery shall be completed.

(F) Any discoverable information which is not timely furnished either by original or supplemental response to a discovery request may, on application of the aggrieved party, be excluded from evidence at hearing. The failure of the disciplinary counsel or respondent to disclose the name and provide the report or summary of any expert who will be called to testify in accordance with prior agreement of the parties or as provided in the case management order at least twenty (20) days prior to the hearing date shall result in the exclusion of the witness, except on good cause shown.

(6) Pre-Hearing Conference.

(A) A pre-hearing conference shall be held **[in all matters]** ~~at the request of any party or the trier of fact.~~ The pre-hearing conference shall be held by the hearing panel chair **[no earlier than sixty (60) days after an Answer has been filed]**. ~~Unless for good cause shown, the request for a pre-hearing conference must be made within thirty (30) days of the date of the hearing panel appointment.~~ At least fourteen (14) days written notice of the date of the conference shall be given. Attendance is mandatory by all parties at

the conference. A pre-hearing conference may be held by telephone call where appropriate. No transcript shall be made of the pre-hearing conference.

(B) At the pre-hearing conference, the hearing panel chair shall address the following matters:

- (i) The formulation and simplification of issues;
- (ii) Admissions and stipulations of the parties with respect to allegations, defenses and any aggravation or mitigation;
- (iii) The factual and legal contentions of the parties;
- (iv) The identification and limitation of witnesses, including character and expert witnesses;
- (v) Rulings on discovery disputes, deadlines for the completion of discovery, including the timely exchange of expert reports, and a ruling on any requests to take depositions;
- (vi) The hearing date and its estimated length;
- (vii) Deadline for **[exchanging of proposed exhibits; deadline for objections to exhibits; exhibits not objected to shall be deemed stipulated exhibits]** ~~the pre-marking of all exhibits to which the parties consent;~~ and
- (viii) Any other preliminary issues or matters which may aid in the disposition of the case.

(C) Within fourteen (14) days following the pre-hearing conference, the hearing panel chair shall issue a case management order, designated as such in the caption, memorializing any agreements by the parties and any determinations made respecting any matters considered at the conference. The case management order, which constitutes part of the record, shall be sent to the disciplinary counsel and the respondent.

(D) At the pre-hearing conference the hearing panel chair shall schedule a date for the hearing of the case within **[ninety]** ~~sixty (6[9]0)~~ days after the date of the conference, except for good cause shown.

~~(7) Matters in Which a Pre-hearing Conference Has Not Been Held.~~

~~(A) In any matter in which a pre-hearing conference is not requested, both disciplinary counsel and respondent shall be responsible for compiling~~

and pre-marking all documentary evidence, to which the parties consent, to be considered by the hearing panel;

~~(B) In such matters, both disciplinary counsel and respondent shall also be responsible for preparing lists of names, addresses and telephone numbers of persons who will be called as witnesses, and, in the case of expert witnesses, the experts' qualifications, the subject matter upon which each will testify, a copy of the written reports submitted by such experts, or if none, a statement of the facts and opinions to which each expert will testify and a summary of the grounds for each such opinion.~~

~~(C) Also, in such matters, both disciplinary counsel and respondent shall be responsible for preparing requests for findings of fact and rulings of law.~~

~~(D) Copies of pre-marked exhibits, witnesses lists and expert witness disclosures, shall be filed by disciplinary counsel and respondent with the attorney discipline office at least ten (10) days prior to the date of the hearing. Five (5) copies shall be provided. Copies shall be also provided to the opposing party concurrent with the submission to the attorney discipline office. Requests for findings of fact and rulings of law shall be filed at the beginning of the hearing.~~

~~(8)~~**(7)** Further Review.

If at any point prior to the hearing on the merits, disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing, he or she shall submit a written report to the professional conduct committee requesting that the matter be dismissed either with a finding of no professional misconduct or on some other basis.

APPENDIX G

Amend Supreme Court Rule 37(20) as follows (new material is in **bold and in brackets**]; deleted material is in ~~strikethrough~~ format):

(20) **Confidentiality:**

Applicability Note: Section 20 shall apply to records and proceedings in all matters initiated on or after April 1, 2000.

(a) *Grievance outside the Jurisdiction of the Attorney Discipline System or Not Meeting the Requirements for Docketing as a Complaint:*

(1) A grievance against a person who is not subject to the rules of professional conduct shall be returned to the grievant. No file on the grievance will be maintained; however, the attorney discipline office shall retain a copy of the letter to the grievant returning the grievance, which shall be available for public inspection in accordance with Supreme Court Rule 37A.

(2) All records and materials relating to a grievance determined by the attorney discipline office or the complaint screening committee not to meet the requirements for docketing as a complaint~~],~~ **including non-disciplinary decisions with a warning,** shall be available for public inspection (other than work product, internal memoranda, and deliberations) in accordance with Supreme Court Rule 37A after correspondence is sent to the respondent attorney who is the subject of the grievance and the respondent attorney has the opportunity to provide a reply to be filed in the public record **[kept confidential. Though confidential, non-disciplinary decisions with a warning may be utilized by the attorney discipline office and the professional conduct committee when investigating, considering and deliberating a grievance or complaint against an attorney who has been the subject of such a non-disciplinary decision with warning. Such non-disciplinary decisions with warning relating to an attorney against whom a grievance or complaint has been filed shall be available to the attorney discipline office and provided to the professional conduct committee, upon the professional conduct committee's request.]**

(b) *Grievance Docketed as Complaint:* All records and proceedings relating to a complaint docketed by the attorney discipline system shall be available for public inspection (other than work product, internal memoranda, and deliberations) in accordance with Supreme Court Rule 37A upon the earliest of the following:

(1) When the Attorney Discipline Office general counsel, the

complaint screening committee or the professional conduct committee finally disposes of a complaint;

(2) When disciplinary counsel issues a notice of charges;

(3) When the professional conduct committee files a petition with the supreme court, except as provided by section (11) regarding resignations; or

(4) When the respondent attorney, prior to dismissal of a complaint or the issuance of a notice of charges, requests that the matter be public.

(c) *Proceedings for Reinstatement or Readmission:* When an attorney seeks reinstatement or readmission pursuant to section (14), the records, with the exception of the bar application, and the proceedings before the hearing panel and the professional conduct committee shall be public (other than work product, internal memoranda, and deliberations).

(d) *Proceedings Based upon Conviction or Public Discipline:* If the investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the respondent in another jurisdiction, the entire file pertaining to the crime or the public discipline, other than the work product, internal memoranda, and deliberations of the attorney discipline system, shall be available for public inspection.

(e) *Proceedings Alleging Disability:* All proceedings involving allegations of disability on the part of a New Hampshire licensed attorney shall be kept confidential until and unless the supreme court enters an order suspending said attorney from the practice of law pursuant to section (10), in which case said order shall be public.

(f) *Protective Orders:* Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant, a witness, or the attorney. In order to protect the interests of the complainant, witness, or attorney, the professional conduct committee, may, upon request, or on its own initiative, issue a protective order prohibiting the disclosure of confidential, malicious, personal, privileged information or material submitted in bad faith. Any person aggrieved by a decision on a protective order may, within thirty (30) days of the decision, request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the court has acted or the period for requesting court review has expired.

(g) *Disclosure to Authorized Agency:* The attorney discipline office may disclose relevant information that is otherwise confidential to agencies authorized to investigate the qualifications of judicial candidates, to authorized agencies investigating qualifications for admission to practice or fitness to continue practice, to law enforcement agencies investigating qualifications for government employment, and to law enforcement agencies authorized to investigate and prosecute violations of the criminal law. If the attorney discipline office decides to answer a request for relevant information, and if the attorney who is the subject of the request has not signed a waiver permitting the requesting agency to obtain confidential information, the attorney discipline office shall send to the attorney at his or her last known address, by certified mail, a notice that information had been requested and by whom, together with a copy of the information that the attorney discipline office proposes to release to the requesting agency. The attorney discipline office shall inform the subject attorney that the information shall be released at the end of ten (10) days from the date of mailing the notice unless the attorney obtains a supreme court order restraining such disclosure. Notice to the attorney, as provided in this section, shall not be required prior to disclosure of relevant information that is otherwise confidential to law enforcement agencies authorized to investigate and prosecute violations of the criminal law.

(h) *Disclosure to Supreme Court for Rule 36 Review:* The attorney discipline office shall disclose relevant information that is otherwise confidential to the supreme court, upon its request, in connection with the court's review of applications under Supreme Court Rule 36.

(i) *Disclosure to National Discipline Data Bank:* The clerk of the supreme court shall transmit notice of all public discipline imposed on an attorney by the supreme court or the professional conduct committee (upon notice from said committee), or the suspension from law practice due to disability of an attorney, to the National Discipline Data Bank maintained by the American Bar Association.

(j) *Disclosure to Lawyers Assistance Program:* The Attorney Discipline Office shall have the power to disclose otherwise confidential information to the New Hampshire Lawyers Assistance Program whenever the Attorney Discipline Office determines that such disclosure would be in the public interest.

(k) *Duty of Participants:* All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule.

Nothing in this section prevents a grievant from disclosing publicly the conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. The immunity from civil liability provided by section (7) does not apply to such disclosures. This section

does prohibit a grievant, however, from disclosing publicly the fact that a grievance or complaint against the attorney about the conduct had been filed with the attorney discipline system pending the grievance or complaint becoming public in accordance with the provisions of this section.

(l) *Violation of Duty of Confidentiality:* Any violation of the duty of confidentiality imposed by section (20) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the proceedings earlier than would have been the case under section (20), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.

[(m) With respect to records to be made available for public inspection under this Rule or Rule 37A, final disciplinary decisions of the PCC and the Court shall be made available for public inspection electronically via the internet; all other records shall be made available for public inspection only at the attorney discipline office.]

APPENDIX H

Amend Supreme Court Rule 37A(IV) as follows (new material is in **bold and in brackets**]; deleted material is in ~~strikethrough~~ format):

(IV) **Confidentiality and Public Access**

(a) *Confidentiality of and Public Access to Proceedings and Records.*

(1) *General Rule.* The confidentiality of and public access to records, files and proceedings shall be governed by Supreme Court Rule 37.

(2) *Public Access to Files.*

(A) *Grievance against Person Not Subject to Rules of Professional Conduct.* Correspondence to the grievant relating to a grievance against a person who is not subject to the rules of professional conduct shall be available for public inspection for a period of two years. After this two-year period, the correspondence shall be destroyed.

(B) *Grievance Not Docketed as a Complaint.* All records ~~(other than work product, internal memoranda and deliberations)~~ relating to a grievance filed against a person who is subject to the rules of professional conduct but which is not docketed as a complaint, **[including non-disciplinary decisions with warning,]** shall be **[kept confidential]** ~~maintained at the attorney discipline office for two (2) years from the date of original filing, and it shall be available for public inspection during this period. After this two-year period, the records shall be destroyed.~~ **[Though confidential, non-disciplinary decisions with warning shall be retained for a period of five years and non-disciplinary decisions without warning shall be retained for a period of one year.]**

(C) *Complaints.* All records (other than work product, internal memoranda and deliberations) relating to a complaint that is docketed shall be maintained at the attorney discipline office and shall be available for public inspection in accordance with the provisions of Supreme Court Rule 37. Paper records may be destroyed after:

(i) three years of the date of notice of dismissal with or without a caution; or

(ii) three years of the date of an annulment in accordance with section (V) of this rule; or

(iii) five years after the death of the attorney-respondent.

(D) *Index of Complaints.* The attorney discipline office shall maintain an index of complaints docketed against each attorney, which shall contain pertinent information, including the outcome of the complaint. No index of grievances that are not docketed as complaints shall be maintained.

(E) *Protective Order.* Any person or entity, at any point in the processing of a complaint, may request a protective order from the professional conduct committee, or the committee may issue on its own initiative, a protective order prohibiting the disclosure of confidential, malicious, personal, or privileged information or material submitted in bad faith, and directing that the proceedings be so conducted as to implement the order. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time. Within thirty (30) days of the committee's decision on a request for protective order, or of the committee's issuance of one on its own initiative, an aggrieved person or entity may request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the supreme court has acted, or the period for seeking supreme court review has expired.

APPENDIX I

Amend Supreme Court Rule 37(20)(a) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(20) **Confidentiality:**

Applicability Note: Section 20 shall apply to records and proceedings in all matters initiated on or after April 1, 2000.

(a) *Grievance outside the Jurisdiction of the Attorney Discipline System or Not Meeting the Requirements for Docketing as a Complaint:*

(1) A grievance against a person who is not subject to the rules of professional conduct shall be returned to the grievant. No file on the grievance will be maintained[.]; ~~however, the attorney discipline office shall retain a copy of the letter to the grievant returning the grievance, which shall be available for public inspection in accordance with Supreme Court Rule 37A.~~

(2) All records and materials relating to a grievance determined by the attorney discipline office or the complaint screening committee not to meet the requirements for docketing as a complaint shall be available for public inspection (other than work product, internal memoranda, and deliberations) in accordance with Supreme Court Rule 37A after correspondence is sent to the respondent attorney who is the subject of the grievance and the respondent attorney has the opportunity to provide a reply to be filed in the public record.

Amend Supreme Court Rule 37A(IV) as follows (new material is in **bold and in brackets**]; deleted material is in ~~strikethrough~~ format):

(IV) **Confidentiality and Public Access**

(a) *Confidentiality of and Public Access to Proceedings and Records.*

(1) *General Rule.* The confidentiality of and public access to records, files and proceedings shall be governed by Supreme Court Rule 37.

(2) *Public Access to Files.*

(A) *Grievance against Person Not Subject to Rules of Professional Conduct.* Correspondence to the grievant relating to a grievance against a person who is not subject to the rules of professional conduct shall **[not be maintained.]** ~~be available for public inspection for a period of two years. After this two-year period, the correspondence shall be destroyed.~~

(B) *Grievance Not Docketed as a Complaint.* All records (other than work product, internal memoranda and deliberations) relating to a grievance filed against a person who is subject to the rules of professional conduct but which is not docketed as a complaint, shall be maintained at the attorney discipline office for two (2) years from the date of original filing, and it shall be available for public inspection during this period. After this two-year period, the records shall be destroyed.

(C) *Complaints.* All records (other than work product, internal memoranda and deliberations) relating to a complaint that is docketed shall be maintained at the attorney discipline office and shall be available for public inspection in accordance with the provisions of Supreme Court Rule 37. Paper records may be destroyed after:

(i) three years of the date of notice of dismissal with or without a caution; or

(ii) three years of the date of an annulment in accordance with section (V) of this rule; or

(iii) five years after the death of the attorney-respondent.

(D) *Index of Complaints.* The attorney discipline office shall maintain an index of complaints docketed against each attorney, which shall contain

pertinent information, including the outcome of the complaint. No index of grievances that are not docketed as complaints shall be maintained.

(E) *Protective Order.* Any person or entity, at any point in the processing of a complaint, may request a protective order from the professional conduct committee, or the committee may issue on its own initiative, a protective order prohibiting the disclosure of confidential, malicious, personal, or privileged information or material submitted in bad faith, and directing that the proceedings be so conducted as to implement the order. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time. Within thirty (30) days of the committee's decision on a request for protective order, or of the committee's issuance of one on its own initiative, an aggrieved person or entity may request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the supreme court has acted, or the period for seeking supreme court review has expired.

APPENDIX K

Amend Supreme Court Rule 37(20) and delete Rules 37(21) and 37(23) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(20) **Confidentiality [and Public Access]:**

~~Applicability Note: Section 20 shall apply to records and proceedings in all matters initiated on or after April 1, 2000.~~

(a) *Grievance outside the Jurisdiction of the Attorney Discipline System or Not Meeting the Requirements for Docketing as a Complaint:*

(1) A grievance against a person who is not subject to the rules of professional conduct shall be returned to the grievant. No file on the grievance will be maintained; however, the attorney discipline office shall retain a copy of the letter to the grievant returning the grievance, which shall be available for public inspection ~~in accordance with Supreme Court Rule 37A.~~ **[for a period of two years. After this two-year period, the correspondence shall be destroyed.]**

(2) All records and materials relating to a grievance determined by the attorney discipline office or the complaint screening committee not to meet the requirements for docketing as a complaint shall be available for public inspection (other than work product, internal memoranda, and deliberations) ~~in accordance with Supreme Court Rule 37A~~ after correspondence is sent to the respondent attorney who is the subject of the grievance and the respondent attorney has the opportunity to provide a reply to be filed in the public record.

(b) *Grievance Docketed as Complaint:* All records and proceedings relating to a complaint docketed by the attorney discipline system shall be available for public inspection (other than work product, internal memoranda, and deliberations) ~~in accordance with Supreme Court Rule 37A~~ upon the earliest of the following:

(1) When the Attorney Discipline Office general counsel, the complaint screening committee or the professional conduct committee finally disposes of a complaint;

(2) When disciplinary counsel issues a notice of charges;

(3) When the professional conduct committee files a petition with

the supreme court, except as provided by section (11) regarding resignations;
or

(4) When the respondent attorney, prior to dismissal of a complaint or the issuance of a notice of charges, requests that the matter be public.

[Paper records may be destroyed after:

(1) three years of the date of notice of dismissal with or without a caution; or

(2) three years of the date of an annulment in accordance with 37A; or

(3) five years after the death of the attorney-respondent.]

(c) *Proceedings for Reinstatement or Readmission:* When an attorney seeks reinstatement or readmission pursuant to section (14), the records, with the exception of the bar application, and the proceedings before the hearing panel and the professional conduct committee shall be public (other than work product, internal memoranda, and deliberations).

(d) *Proceedings Based upon Conviction or Public Discipline:* If the investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the respondent in another jurisdiction, the entire file pertaining to the crime or the public discipline, other than the work product, internal memoranda, and deliberations of the attorney discipline system, shall be available for public inspection.

(e) *Proceedings Alleging Disability:* All proceedings involving allegations of disability on the part of a New Hampshire licensed attorney shall be kept confidential until and unless the supreme court enters an order suspending said attorney from the practice of law pursuant to section (10), in which case said order shall be public.

(f) *Protective Orders:* Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant, a witness, or the attorney, **[or other persons]**. In order to protect the **[legitimate privacy]** interests of **[such persons]** ~~the complainant, witness, or attorney,~~ the professional conduct committee, may, upon request, or on its own initiative, issue a protective order prohibiting the disclosure of confidential, malicious, personal, privileged information or material submitted in bad faith. **[Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time.]** Any person aggrieved by a decision on a protective order may, within thirty (30) days of the decision,

request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the court has acted or the period for requesting court review has expired.

(g) *Disclosure to Authorized Agency:* The attorney discipline office may disclose relevant information that is otherwise confidential to agencies authorized to investigate the qualifications of judicial candidates, to authorized agencies investigating qualifications for admission to practice or fitness to continue practice, to law enforcement agencies investigating qualifications for government employment, and to law enforcement agencies authorized to investigate and prosecute violations of the criminal law. If the attorney discipline office decides to answer a request for relevant information, and if the attorney who is the subject of the request has not signed a waiver permitting the requesting agency to obtain confidential information, the attorney discipline office shall send to the attorney at his or her last known address, by certified mail, a notice that information had been requested and by whom, together with a copy of the information that the attorney discipline office proposes to release to the requesting agency. The attorney discipline office shall inform the subject attorney that the information shall be released at the end of ten (10) days from the date of mailing the notice unless the attorney obtains a supreme court order restraining such disclosure. Notice to the attorney, as provided in this section, shall not be required prior to disclosure of relevant information that is otherwise confidential to law enforcement agencies authorized to investigate and prosecute violations of the criminal law.

(h) *Disclosure to Supreme Court for Rule 36 Review:* The attorney discipline office shall disclose relevant information that is otherwise confidential to the supreme court, upon its request, in connection with the court's review of applications under Supreme Court Rule 36.

(i) *Disclosure to National Discipline Data Bank:* The clerk of the supreme court shall transmit notice of all public discipline imposed on an attorney by the supreme court or the professional conduct committee (upon notice from said committee), or the suspension from law practice due to disability of an attorney, to the National Discipline Data Bank maintained by the American Bar Association.

(j) *Disclosure to Lawyers Assistance Program:* The Attorney Discipline Office shall have the power to disclose otherwise confidential information to the New Hampshire Lawyers Assistance Program whenever the Attorney Discipline Office determines that such disclosure would be in the public interest.

(k) *Duty of Participants:* All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule.

Nothing in this section prevents a grievant from disclosing publicly the **[underlying]** conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. The immunity from civil liability provided by section (7) does not apply to such disclosures. This section does prohibit a grievant, however, from disclosing publicly the fact that a grievance or complaint against the attorney about the conduct had been filed with the attorney discipline system pending the grievance or complaint becoming public in accordance with the provisions of this section.

(l) *Violation of Duty of Confidentiality:* Any violation of the duty of confidentiality imposed by section (20) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the proceedings earlier than would have been the case under section (20), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.

~~(21) **Confidentiality:**~~

~~*Applicability Note:* Section 21 shall not apply to records and proceedings in matter initiated on or after April 1, 2000.~~

~~(a) *Proceedings Alleging Misconduct:* All records and proceedings involving allegations of misconduct by an attorney shall be confidential and shall not be disclosed except:~~

~~(1) When disciplinary counsel issues a notice of charges, in which case the notice, the file (other than work product and internal memoranda), the proceedings before the committees (other than deliberations), and the decision shall be public; or~~

~~(2) When the professional conduct committee files a petition with the supreme court in which case, except as provided in section (11) regarding resignations, the pleadings, all information admitted at the proceedings, the proceedings themselves (other than deliberations of the supreme court), and the decision, shall be public; or~~

~~(3) When an attorney seeks reinstatement or readmission pursuant to section (14), in which case the proceedings before the hearings committee panel and the professional conduct committee and the court shall be conducted the same as prescribed in subsections (1) and (2); or~~

~~(4) When the respondent attorney, prior to the issuance of a notice~~

of charges as prescribed in subsection (1), requests that the matter be public, in which case the entire file, other than the work product and internal memoranda, of the attorney discipline system, shall be public; or

(5) ~~If the investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the respondent in another jurisdiction, in which case the entire file pertaining to the crime or the public discipline, other than the work product and internal memoranda, of the attorney discipline system shall be public.~~

~~(b) *Proceedings Alleging Disability*: All proceedings involving allegations of disability on the part of an attorney shall be kept confidential until and unless the supreme court enters an order suspending said attorney from the practice of law pursuant to section (10), in which case said order shall be public.~~

~~(c) *Protective Orders*: Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant, a witness, or the attorney. In order to protect the interests of the complainant, witness, or attorney, the professional conduct committee, may, upon request, or on its own initiative, issue a protective order prohibiting the disclosure of confidential, malicious, personal, privileged information or material submitted in bad faith. Any person aggrieved by a decision on a protective order may, within thirty (30) days of the decision, request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the court has acted or the period for requesting court review has expired.~~

~~(d) *Disclosure to Authorized Agency*: The attorney discipline office may disclose relevant information that is otherwise confidential to agencies authorized to investigate the qualifications of judicial candidates, to authorized agencies investigating qualifications for admission to practice or fitness to continue practice, to law enforcement agencies investigating qualifications of government employment, and to law enforcement agencies authorized to investigate and prosecute violations of the criminal law. If the attorney discipline office decides to answer a request for relevant information, and if the attorney who is the subject of the request has not signed a waiver permitting the requesting agency to obtain confidential information, the attorney discipline office shall send to the attorney at his or her last known address, by certified mail, a notice that information has been requested and by whom, together with a copy of the information that the attorney discipline office proposes to release to the requesting agency. The attorney discipline office shall inform the subject attorney that the information shall be released at the end of ten (10) days from the date of mailing the notice unless the attorney obtains a supreme court order restraining such disclosure. Notice to the attorney, as provided in this section, shall not be required prior to disclosure of relevant information that is~~

~~otherwise confidential to law enforcement agencies authorized to investigate and prosecute violations of the criminal law.~~

~~(e) *Disclosure to Supreme Court for Rule 36 Review:* The attorney discipline office shall disclose relevant information that is otherwise confidential to the supreme court, upon its request, in connection with the court's review of applications under Supreme Court Rule 36.~~

~~(f) *Disclosure to National Discipline Data Bank:* The clerk of the supreme court shall transmit notice of all public discipline imposed on an attorney by the supreme court or the professional conduct committee (upon notice from said committee), or the suspension from law practice due to disability of an attorney, to the National Discipline Data Bank maintained by the American Bar Association.~~

~~(g) *Duty of Participants:* All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule.~~

~~Nothing in the rule of confidentiality prevents a complainant from disclosing publicly the conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. The immunity from civil liability provided by section (7) does not apply to such disclosures. This rule does prohibit a complainant, however, from disclosing publicly the fact that a complaint against the attorney about the conduct has been filed with the attorney discipline system pending action on the complaint or pending the complaint becoming public in accordance with the provisions of this section.~~

~~If a complaint has been dismissed or otherwise disposed of by the attorney discipline system without discipline having been imposed, a complainant may make a public disclosure concerning the filing of the complaint, including the conduct complained of and the action of the attorney discipline system. The immunity from civil liability provided in section (7) does not apply to such disclosures.~~

~~(h) *Violation of Duty of Confidentiality:* Any violation of the duty of confidentiality imposed by section (21) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the proceedings earlier than would have been the case under section (21)(a), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.~~

~~(22)[(21)] **Copy of Rule:**~~

A copy of Supreme Court Rules 37 and 37A shall be provided to all grievants, complainants, and respondent attorneys.

~~(23) **Applicability to Pending Disciplinary Matters:**~~

~~The provisions of this rule, as amended effective January 1, 2004, shall not apply to any disciplinary matter pending before the supreme court on January 1, 2004. The provisions of this rule, as amended effective January 1, 2004, shall not apply to any disciplinary matter pending before the committee on January 1, 2004, in which prior to that date the committee has determined that formal proceedings shall be held and the hearing panel has concluded its evidentiary hearing. All such proceedings shall be governed by the provisions of Supreme Court Rule 37 that were in effect prior to January 1, 2004.~~

Amend Supreme Court Rule 37A(IV) as follows (new material is in **bold and in brackets**]; deleted material is in ~~strikethrough~~ format):

(IV) **Confidentiality and Public Access**

[The duties of confidentiality in and rights of public access to disciplinary proceedings are detailed in Supreme Court Rule 37(20).]

~~(a) Confidentiality of and Public Access to Proceedings and Records.~~

~~—(1) General Rule. The confidentiality of and public access to records, files and proceedings shall be governed by Supreme Court Rule 37.~~

~~—(2) Public Access to Files.~~

~~(A) Grievance against Person Not Subject to Rules of Professional Conduct. Correspondence to the grievant relating to a grievance against a person who is not subject to the rules of professional conduct shall be available for public inspection for a period of two years. After this two year period, the correspondence shall be destroyed.~~

~~(B) Grievance Not Docketed as a Complaint. All records (other than work product, internal memoranda and deliberations) relating to a grievance filed against a person who is subject to the rules of professional conduct but which is not docketed as a complaint, shall be maintained at the attorney discipline office for two (2) years from the date of original filing, and it shall be available for public inspection during this period. After this two year period, the records shall be destroyed.~~

~~(C) Complaints. All records (other than work product, internal memoranda and deliberations) relating to a complaint that is docketed shall be maintained at the attorney discipline office and shall be available for public inspection in accordance with the provisions of Supreme Court Rule 37. Paper records may be destroyed after:~~

~~(i) three years of the date of notice of dismissal with or without a caution; or~~

~~(ii) three years of the date of an annulment in accordance with section (V) of this rule; or~~

~~(iii) five years after the death of the attorney respondent.~~

~~(D) *Index of Complaints.* The attorney discipline office shall maintain an index of complaints docketed against each attorney, which shall contain pertinent information, including the outcome of the complaint. No index of grievances that are not docketed as complaints shall be maintained.~~

~~(E) *Protective Order.* Any person or entity, at any point in the processing of a complaint, may request a protective order from the professional conduct committee, or the committee may issue on its own initiative, a protective order prohibiting the disclosure of confidential, malicious, personal, or privileged information or material submitted in bad faith, and directing that the proceedings be so conducted as to implement the order. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time. Within thirty (30) days of the committee's decision on a request for protective order, or of the committee's issuance of one on its own initiative, an aggrieved person or entity may request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the supreme court has acted, or the period for seeking supreme court review has expired.~~

Amend Supreme Court Rule 37(9) as follows (new material is in **and in brackets**]; deleted material is in ~~format~~ format):

(9) ***Attorneys Convicted of Serious Crime:***

(a) Upon the filing with the court of a certified copy of any court record establishing that an attorney has been convicted of a serious crime as hereinafter defined, the court may enter an order suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. **[Any order of suspension entered pursuant to this provision shall be effective immediately.]**

(b) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(c) A certified copy of any court record establishing the conviction of an attorney for any "serious crime" shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction. **[The certified copy shall constitute evidence sufficient to issue an order of immediate suspension under subparagraph (a) without further hearing.]**

(d) Upon the receipt of a certificate of conviction of an attorney for a "serious crime," the court may, and shall if suspension has been ordered pursuant to subsection (a) above, institute a formal disciplinary proceeding by issuing an order to the attorney to show cause why the attorney should not be disbarred as a result of the conviction. If the court determines that no such good cause has been shown, the court shall issue an order of disbarment, or such other discipline as the court shall deem appropriate. If the court determines that the attorney has shown cause why disbarment may not be appropriate, the court shall refer the matter to the professional conduct committee, in which the sole issue to be determined shall be the extent of the final discipline to be imposed. Provided, however, that final discipline will not be imposed until all appeals from the conviction are concluded.

(e) Upon receipt of a certificate of conviction of an attorney for a

crime not constituting a "serious crime," the court shall refer the matter to the attorney discipline office for such action as it deems appropriate. Referral to the attorney discipline office hereunder does not preclude the court from taking whatever further action it deems appropriate.

(f) An attorney suspended under the provisions of subsection (a) above may be reinstated upon the filing of a certificate demonstrating that the underlying conviction for a serious crime has been reversed but the reinstatement will not terminate any proceeding then pending against the attorney.

(g) The clerk of any court within the State in which an attorney is convicted of any crime shall, within ten (10) days of said conviction, transmit a certificate thereof to this court.

(h) Upon being advised that an attorney has been convicted of a crime within this State, the attorney discipline office shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate to this court in accordance with the provisions of subsection (g) above. If the certificate has not been forwarded by the clerk or if the conviction occurred in another jurisdiction, it shall be the responsibility of the attorney discipline office to obtain a certificate of conviction and to transmit it to this court.

(i) Whenever an attorney is indicted or bound over for any felony, the court shall take such actions as it deems necessary, including but not limited to the suspension of the attorney.

APPENDIX N

Amend Supreme Court Rule 37A(II)(d) as follows (deleted material is in ~~strikethrough~~ format):

(d) *Resignation, Reinstatement, ~~Conviction of Crime.~~*

(1) *Resignation by a New Hampshire Licensed Attorney under Disciplinary Investigation.*

(A) *Recommendation to the Court.* Upon receipt by any component part of the attorney discipline system of an affidavit from a New Hampshire licensed attorney who intends to resign pursuant to the rules of the court, it shall refer the matter to the professional conduct committee, to review the affidavit and such other matters as it deems appropriate to determine either (i) to recommend to the court that the resignation be accepted and to recommend any terms and conditions of acceptance it deems appropriate, or (ii) to recommend to the court that the resignation not be accepted with the reasons therefore. The professional conduct committee shall submit the affidavit and its recommendation to the court, and the proceedings, if any, before the court shall be conducted by disciplinary counsel.

(B) *Notification of Grievant.* In the event the court accepts the resignation of a respondent and removes the respondent on consent, the professional conduct committee by means of written notice shall notify the grievant of such action.

(2) *Application for Reinstatement or Readmission.*

(A) *Timeliness after Suspension.* An attorney who has been suspended for a specific period, whether by the court or the professional conduct committee, may not move for reinstatement until the expiration of the period of suspension, and upon the completion of all the terms and conditions set forth in the order of suspension.

(B) *Procedure.* A motion for reinstatement by an attorney suspended by the court for misconduct rather than disability or an application for readmission by a New Hampshire licensed attorney who has been disbarred or has resigned while under disciplinary investigation shall be referred to the professional conduct committee by the supreme court. A motion for reinstatement by an attorney suspended by the professional conduct committee shall be filed directly with the professional conduct committee.

Upon receipt of a motion for reinstatement or an application for readmission, the professional conduct committee shall refer the motion or application to the hearings committee for appointment of a hearing panel. The attorney discipline office shall then cause a notice to be published in a newspaper with statewide circulation, and one with circulation in the area of respondent's former primary office, as well as the New Hampshire Bar News that the respondent has moved for reinstatement or applied for readmission. The notice shall invite anyone to comment in writing to the attorney discipline office within twenty (20) days. All comments shall be made available to the respondent and shall be part of the public file. Where feasible, the attorney discipline office shall give notice to the original complainant. The hearing panel shall promptly schedule a hearing at which the respondent shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency and learning in law required for admission to practice law in this state and that the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration for justice nor subversive to the public interest. The attorney discipline system shall be represented at the hearing by disciplinary counsel. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings of fact, conclusions and recommendations in written reports, along with the record, to the professional conduct committee. Following receipt of written memoranda by disciplinary counsel and respondent, the hearing transcript and oral argument, the professional conduct committee shall review the record in its entirety and shall file its own recommendations and findings with the court, together with the record. After the submission of briefs and oral arguments to the court, if any, the court shall enter a formal order.

(C) *Readmission after Resignation.* Upon receipt of a referral from the supreme court, pursuant to Rule 37(15), of a motion for readmission after resignation, the professional conduct committee shall further refer the motion to the hearings committee for the appointment of a hearing panel. The hearing panel shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competency and learning in law required for readmission. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the professional conduct committee. Following receipt of written memoranda of disciplinary counsel and the attorney, review of the hearing transcript, and oral argument, the professional conduct committee shall review the record in its entity, and shall file its own recommendations and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument to the supreme court, if any, the court shall enter a final order.

(D) *Special Rule for Suspensions of Six Months or Less.* Notwithstanding the provisions of Rule 37A(II)(d)(2)(B), a lawyer who has been suspended for six

months or less pursuant to disciplinary proceedings shall be reinstated by the court following the end of the period of suspension by filing with the court and serving upon disciplinary counsel a motion for reinstatement accompanied by: (1) an affidavit stating that he or she has fully complied with the requirements of the suspension order and has paid any required fees and costs; and (2) evidence that he or she has satisfactorily completed the Multistate Professional Responsibility Examination since his or her suspension.

~~(3) Conviction of Crime; Determination of Serious Crime.~~

~~— Upon receipt by any component part of the attorney discipline system of a certificate by the clerk of any court demonstrating that an attorney has been convicted of a crime in the State of New Hampshire or in any other state, territory or district, it shall determine whether the crime is a "serious crime" as defined in Supreme Court Rule 37(7)(b). Upon a determination that the crime is a serious crime, it shall file the certificate of conviction with the Court.~~

Amend Supreme Court Rule 37 by creating a new subsection (9-A) following subsection (9) titled “Proceedings Where An Attorney is Alleged to Have Engaged in Conduct that Poses a Substantial Threat of Serious Harm” as follows:

(9-A) *Proceedings Where an Attorney is Alleged to have Engaged in Conduct that Poses a Substantial Threat of Serious Harm.*

(a) The attorney discipline office may file a petition for interim suspension in this court alleging that an attorney has engaged in conduct that poses a substantial threat of serious harm to the public.

(b) The term “substantial threat of serious harm” encompasses any non-serious crime, conduct, or course of conduct that substantially impairs the attorney’s ability to continue to practice in conformity with the Rules of Professional Conduct and Rule 50 or creates a substantial risk of harm to the public if the attorney is not suspended on an interim basis.

(c) The petition must state with particularity the conduct alleged as well as why the interim suspension is necessary to prevent a threat of serious harm to the public. The attorney discipline office shall serve the petition on the attorney, who shall have ten (10) days to respond. If the attorney contests the interim suspension, the court will convene a hearing before a judicial referee or a hearing panel of the professional conduct committee. If the attorney consents to the interim suspension, the court will issue an order of interim suspension which will be effective immediately.

(d) The hearing on the petition shall be recorded. The parties shall have thirty (30) days to prepare for the hearing, but no continuance of the hearing shall be granted absent extraordinary circumstances. The attorney discipline office shall have the burden to prove the need for interim suspension by clear and convincing evidence. The referee or panel may consider whether measures short of interim suspension adequately safeguard the public against the threat of substantial harm.

(e) After the hearing, the referee or panel shall issue a recommendation with regard to the need for interim suspension within ten (10) days, and shall forward that recommendation, with the record of the hearing, to the court. The court shall review the recommendation and the record. It may enter an order of interim suspension, dismiss the petition for interim suspension, issue an order directing the attorney to abide by specific conditions in lieu of interim suspension, or remand the matter for further proceedings. Any order issued by the court shall be effective immediately, and shall remain in effect unless it is modified by the court, or it is superseded by an order stemming from disciplinary proceedings arising out of the same or related conduct.

APPENDIX P

Amend Supreme Court Rule 37A(II)(a)(7) as follows (new material is in

[bold and in brackets]; deleted material is in ~~strikethrough~~ format):

(7) *Action By the Attorney Discipline Office General Counsel or the Complaint Screening Committee.*

(A) *Diversion.* In any matter in which the attorney discipline office general counsel or the complaint screening committee determines that diversion is appropriate, it shall be structured consistent with the provisions of section (I)(g).

(B) *Dismissal For Any Reason.* In any matter in which the Attorney Discipline Office General Counsel or the complaint screening committee determines that a complaint should be dismissed, either on grounds of no professional misconduct or any other reason, general counsel or the committee shall dismiss the complaint and it shall notify the complainant and the respondent in writing and the attorney discipline office shall close its file on the matter.

(C) *Dismissal With A Warning.* If the Attorney Discipline Office General Counsel or the complaint screening committee determines that the complaint should be dismissed and that a warning should issue, general counsel or the committee shall notify the complainant and the respondent of such disposition in writing and shall notify the respondent of his or her rights, if any, pursuant to section (II)(b)(1)(B) of this rule.

(D) *Formal Proceedings.* If the respondent agrees with the recommendation of the Attorney Discipline Office General Counsel to refer a complaint to disciplinary counsel, or the complaint screening committee determines that formal proceedings should be held, the complaint shall be referred to disciplinary counsel for the issuance of notice of charges and the scheduling of a hearing on the merits before a panel of the hearings committee **[or, alternatively, for waiver of formal proceedings by respondent and the filing of stipulations as to facts, rule violations and/or sanction].**

Amend Supreme Court Rule 37A(III) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(III) ***Formal Proceedings***

Preface

As good cause appears and as justice may require, the professional conduct committee may waive the application of any rule under this section.

(a) *Preliminary Provisions.*

(1) *Representation of Respondent.*

When a respondent is represented by counsel in a formal proceeding, counsel shall file with the hearings committee and disciplinary counsel a written notice of such appearance, which shall state such counsel's name, address, and telephone number, the name and address of the respondent on whose behalf counsel appears, and the caption of the subject proceedings. If the appearance is filed after a hearing panel has submitted its reports and recommendations to the professional conduct committee, the notice of the appearance shall be filed with the professional conduct committee rather than the hearings committee. In any proceeding where counsel has filed a notice of appearance pursuant to this section, any notice or other written communication required to be served on or furnished to the respondent shall also be served on or furnished to the respondent's counsel (or one of such counsel if the respondent is represented by more than one counsel) in the same manner as prescribed for the respondent, notwithstanding the fact that such communication may be furnished directly to the respondent.

(2) *Format of Pleadings and Documents.*

Pleadings or other documents filed in formal proceedings shall comply with and conform to the rules from time to time in effect for comparable documents in the court.

(3) *Avoidance of Delay.*

All formal proceedings under this rule shall be as expeditious as possible. In any matter pending before the hearings committee, only the chair of the panel assigned to hear the matter may grant an extension of time, and only upon good cause shown. In any matter pending before the professional conduct committee, only the chair of the committee may grant an extension of

time, and only upon good cause shown. Application for such an extension shall be made, in advance, and in writing where practicable, to the appropriate chair.

(4) *Additional Evidence.*

Whenever, in the course of any hearing under this rule, evidence shall be presented upon which another charge or charges against the respondent might be made, it shall not be necessary to prepare or serve an additional notice of charges with respect thereto, but the hearing panel may, after reasonable notice to the respondent and disciplinary counsel and an opportunity to answer and be heard, proceed to the consideration of such additional charge or charges as if they had been made and served at the time for service of the notice of charges, and may render its decision upon all such charges as may be justified by the evidence in the case.

[(aa) *Stipulations*

(1) *Dispositive Stipulations as to Facts, Rule Violations and Sanction*

(A) The respondent and the attorney discipline office may enter into a stipulation to facts, rule violations, and sanction disposing of all issues at any time after a file has been referred to disciplinary counsel by the complaint screening committee.

(B) If a dispositive stipulation is reached before a hearing panel has been appointed, the stipulation shall be filed with and reviewed by the professional conduct committee. If a dispositive stipulation is reached after a hearing panel has been appointed, it shall be filed with and reviewed by the hearing panel.

(2) *Partial Stipulations*

(A) A partial stipulation to resolve some but not all issues of fact, rule violation and sanction may be entered into by the parties at any time after a file has been referred to disciplinary counsel by the complaint screening committee.

(B) A partial stipulation shall be filed with a hearing panel. If a hearing panel has not been appointed, one shall be appointed prior to the filing of the partial stipulation.

(C) The hearing panel shall review the partial stipulation and

approve, conditionally approve or reject the partial stipulation in accordance with Rule 37A(III)(aa)(3). A partial stipulation approved by the hearing panel shall be deemed binding on all matters stipulated therein.

(D) Upon the hearing panel's review of a partial stipulation, any remaining contested issues of facts, rule violations and sanction shall be heard by the hearing panel pursuant to Rule 37A(III)(b) and (c).

(3) *Review of Dispositive Stipulation to Facts, Rule Violations and Sanction*

(A) The professional conduct committee or the hearing panel (the "reviewing body") shall review a stipulation based solely on the record agreed to by the respondent and disciplinary counsel. Either party may request to appear before the reviewing body to address the stipulation, or the reviewing body may, in its discretion, direct the parties to appear before it to address the stipulation. The oral proceedings on stipulations shall not be recorded or transcribed and shall not become part of the record.

(B) The reviewing body may accept, reject, or conditionally accept the stipulation and shall issue a written order or report, as appropriate, with supporting grounds.

(C) If the reviewing body accepts the stipulation in its entirety, the reviewing body shall adopt all findings of fact and conclusions of law in the stipulation.

(D) If the reviewing body rejects the stipulation in its entirety, the rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible into evidence in any disciplinary, civil or criminal proceeding.

(E) The reviewing body may conditionally approve a stipulation upon agreement by the Respondent and disciplinary counsel to a different sanction, probation, or other term the reviewing body deems necessary to accomplish the purposes of lawyer discipline.

(i) The conditionally approved stipulation is deemed approved by the reviewing body, if, within 21 days of service of the reviewing body's order or report, or within additional time granted by the reviewing body, both parties consent in writing to the conditional terms in the order.

(ii) Absent such consent, the parties may amend and resubmit the stipulation to the reviewing body or, alternatively, disciplinary counsel may file a Notice of Charges or otherwise proceed.

(iii) Absent consent or amendment and resubmission of the stipulation, the stipulation has no force or effect and neither it nor the fact of its execution is admissible into evidence in any disciplinary, civil or criminal proceeding.]

(b) *Institution of Proceedings.*

(1) *General.*

Upon receipt of a file referred by the attorney discipline office general counsel or the complaint screening committee, disciplinary counsel may engage in such additional preparation to allow counsel to formalize allegations into a notice of charges. The notice of charges shall be served on the respondent by certified mail, return receipt requested, unless some other type of service is authorized upon application to the chair of the professional conduct committee. Throughout the proceedings, disciplinary counsel shall exercise independent professional judgment. Nevertheless, disciplinary counsel shall keep the complainant apprised of developments in the matter and consider input from the complainant.

(2) *Notice of Charges.*

The notice of charges shall set forth the allegations of misconduct against the respondent and the disciplinary rules alleged to have been violated. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel and to present evidence in respondent's own behalf.

(3) *Answer.*

(A) *General Rule.* The respondent shall answer the notice of charges by serving and filing an answer with disciplinary counsel within thirty (30) days after service of the notice of charges. Should the respondent fail to file an answer, the allegations set forth in the notice of charges shall be deemed to be admitted.

(B) *Contents of Answer.* The answer shall be in writing, and shall respond specifically to each allegation of the notice of charges and shall assert all affirmative defenses.

(4) *Assignment for Hearing.*

Upon receiving an answer from the respondent, or the expiration for the thirty (30) day period for a respondent to file an answer, it shall be the duty of disciplinary counsel to request that the chair of the hearings committee appoint a hearing panel.

Once a hearing panel has been appointed, disciplinary counsel shall forward the panel a copy of the file, other than work product, deliberations and internal correspondence and memoranda of the component parts of the attorney discipline system. To the extent not already provided, disciplinary counsel shall also provide the respondent with the same documents provided to the hearing panel.

(5) *Discovery.*

(A) Discovery shall be available to the disciplinary counsel. Discovery shall also be available to the respondent, provided that an answer has been filed. All such requests shall be in writing.

(B) On written request the following information, if relevant or reasonably calculated to lead to the discovery of admissible evidence in the matter, and if within the possession, custody or control of the disciplinary counsel, the respondent or respondent's counsel, is subject to discovery and shall be made available for inspection and copying as set forth in this rule:

(i) A writing or any other tangible object, including those obtained from or belonging to the respondent;

(ii) Signed written statements, or taped statements, if any, by any witness, including the respondent;

(iii) Results or reports of mental or physical examinations and of scientific tests or experiments made in connection with the matter;

(iv) Names, addresses and telephone numbers of all persons known to have relevant information based on personal knowledge about the matter, including a designation by the disciplinary counsel and respondent as to which of those persons will be called as witnesses;

(v) Police reports and any investigation reports generated by any agency other than the attorney discipline office;

(vi) Names and address of each person expected to be called as an expert witness, the expert's qualifications, the subject matter on which the expert will testify, a copy of all written reports submitted by the expert or, if none, a statement of facts and opinions to which the expert will testify and a summary of the grounds for each opinion; and

(vii) If disciplinary counsel or the respondent are unable to agree on discovery issues, a request must be made for a pre-hearing conference.

(C) This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or that party's attorney or agents in connection with a disciplinary proceeding. Nor does it require discovery of statements, signed or unsigned, made by respondent to respondent's attorney or that attorney's agents. This rule does not authorize discovery of any internal materials or documents prepared by the attorney discipline office.

(D) Depositions shall be permitted in any matter to preserve the testimony of a witness likely to be unavailable for hearing due to death, incapacity or if otherwise agreed to by the parties. If disciplinary counsel or the respondent deem it necessary to take any other depositions, a request must be made for a pre-hearing conference.

(E) Discovery shall be made available within thirty (30) days after receipt of a written request therefor. A party's obligation to provide discovery is a continuing one. If, subsequent to compliance with a request for discovery, a party discovers additional names or statements of witnesses or other information reasonably encompassed by the initial request for discovery, the original discovery response shall be promptly supplemented accordingly. In any case in which a pre-hearing conference has been held, the case management order shall set forth the time period within which all discovery shall be completed.

(F) Any discoverable information which is not timely furnished either by original or supplemental response to a discovery request may, on application of the aggrieved party, be excluded from evidence at hearing. The failure of the disciplinary counsel or respondent to disclose the name and provide the report or summary of any expert who will be called to testify in accordance with prior agreement of the parties or as provided in the case management order at least twenty (20) days prior to the hearing date shall result in the exclusion of the witness, except on good cause shown.

(6) Pre-Hearing Conference.

(A) A pre-hearing conference shall be held at the request of any party or the trier of fact. The pre-hearing conference shall be held by the hearing panel chair. Unless for good cause shown, the request for a pre-hearing conference must be made within thirty (30) days of the date of the hearing panel appointment. At least fourteen (14) days written notice of the date of the conference shall be given. Attendance is mandatory by all parties at the

conference. A pre-hearing conference may be held by telephone call where appropriate. No transcript shall be made of the pre-hearing conference.

(B) At the pre-hearing conference, the hearing panel chair shall address the following matters:

- (i) The formulation and simplification of issues;
- (ii) Admissions and stipulations of the parties with respect to allegations, defenses and any aggravation or mitigation;
- (iii) The factual and legal contentions of the parties;
- (iv) The identification and limitation of witnesses, including character and expert witnesses;
- (v) Rulings on discovery disputes, deadlines for the completion of discovery, including the timely exchange of expert reports, and a ruling on any requests to take depositions;
- (vi) The hearing date and its estimated length;
- (vii) Deadline for the pre-marking of all exhibits to which the parties consent; and
- (viii) Any other preliminary issues or matters which may aid in the disposition of the case.

(C) Within fourteen (14) days following the pre-hearing conference, the hearing panel chair shall issue a case management order, designated as such in the caption, memorializing any agreements by the parties and any determinations made respecting any matters considered at the conference. The case management order, which constitutes part of the record, shall be sent to the disciplinary counsel and the respondent.

(D) At the pre-hearing conference the hearing panel chair shall schedule a date for the hearing of the case within sixty (60) days after the date of the conference, except for good cause shown.

(7) Matters in Which a Pre-hearing Conference Has Not Been Held.

(A) In any matter in which a pre-hearing conference is not requested, both disciplinary counsel and respondent shall be responsible for compiling and pre-marking all documentary evidence, to which the parties consent, to be considered by the hearing panel;

(B) In such matters, both disciplinary counsel and respondent shall also be responsible for preparing lists of names, addresses and telephone numbers of persons who will be called as witnesses, and, in the case of expert witnesses, the experts' qualifications, the subject matter upon which each will testify, a copy of the written reports submitted by such experts, or if none, a statement of the facts and opinions to which each expert will testify and a summary of the grounds for each such opinion.

(C) Also, in such matters, both disciplinary counsel and respondent shall be responsible for preparing requests for findings of fact and rulings of law.

(D) Copies of pre-marked exhibits, witnesses lists and expert witness disclosures, shall be filed by disciplinary counsel and respondent with the attorney discipline office at least ten (10) days prior to the date of the hearing. Five (5) copies shall be provided. Copies shall be also provided to the opposing party concurrent with the submission to the attorney discipline office. Requests for findings of fact and rulings of law shall be filed at the beginning of the hearing.

(8) *Further Review.*

If at any point prior to the hearing on the merits, disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing, he or she shall submit a written report to the professional conduct committee requesting that the matter be dismissed either with a finding of no professional misconduct or on some other basis.

(c) *Conduct of Hearings.*

(1) *General Rule.*

The hearing panel chair shall conduct the hearing. A record shall be required and a transcript provided to the respondent, disciplinary counsel and the professional conduct committee. A transcript may be provided to the complainant if requested. A copy of the transcript may be obtained from the stenographer by anyone else at the expense of the person requesting it, and it shall thereafter be provided within a reasonable time. The respondent may have the right to be represented by counsel, and respondent and disciplinary counsel shall present their evidence. The hearing shall be public.

(2) *Limiting Number of Witnesses.*

The hearing panel may limit the number of witnesses who may be heard upon any issue before it to eliminate unduly repetitious or cumulative evidence.

(3) *Additional Evidence.*

At the hearing the hearing panel may, if it deems it advisable, authorize either the respondent or disciplinary counsel to file specific post-hearing documentary evidence as part of the record within such time as shall be fixed by the hearing panel chair.

(4) *Oral Examination.*

Witnesses shall be examined orally by disciplinary counsel or the respondent calling the witnesses as well as by the members of the hearing panel. Witnesses whose testimony is to be taken, including the complainant and the respondent, shall be sworn, or shall affirm, before their testimony shall be deemed evidence in any proceeding or any questions are put to them. Cross-examination of witnesses, including the complainant and respondent, shall be allowed but may be limited by the hearing panel chair if such cross-examination is not assisting the hearing panel in developing facts relating to, or reaching a just and proper determination of, the matters before the hearing panel.

~~(5) *Presentation and Effect of Stipulations.*~~

~~Disciplinary counsel and the respondent may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding with respect to matters therein stipulated.~~

(6) *Admissibility of Evidence.*

(A) *General Rule.* All evidence which is deemed by the hearing panel chair to be relevant, competent and not privileged shall be admissible in accordance with the principles set out in section (I)(b) of this rule. Except as provided above, the formal rules of evidence shall not apply.

(B) *Pleadings.* The notice of charges and answer thereto shall, without further action, be considered part of the record.

(7) *Reception and Ruling on Evidence.*

When objections to the admission or exclusion of evidence are made the grounds shall be stated concisely. Formal exceptions are unnecessary. The hearing panel chair shall rule on the admissibility of all evidence.

(8) *Copies of Exhibits.*

When exhibits of a documentary character are received in evidence, copies shall, unless impracticable, be furnished to each member of the hearing panel present at the hearing, as well as to opposing counsel or the other party. Legible copies shall be admissible, unless otherwise required by the hearing panel chair.

(9) *Photographing, Recording and Broadcasting.*

(A) The hearing panel should permit the media to photograph, record and broadcast all proceedings that are open to the public. The hearing panel may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence. Except as specifically provided in this rule, or by order of the hearing panel, no person shall within the hearing room take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of any proceeding.

(B) Reporters hired by the hearings committee to record hearings pursuant to this rule and authorized recorders are not prohibited by this rule from making voice recordings for the sole purpose of discharging their official duties.

(C) *Proposed Limitations on Coverage by the Electronic Media.* Any party to a formal proceeding – or any other interested person – shall notify the hearings committee at the inception of a matter, or as soon as practicable, if that person intends to ask the hearing panel to limit electronic media coverage of any proceeding that is open to the public. Failure to notify the hearings committee in a timely fashion may be sufficient grounds for the denial of such a request. In the event of such a request, the hearings committee or hearing panel shall either deny the request or issue an order notifying the parties to the proceeding and all other interested persons that such a limitation has been requested, establish deadlines for the filing of written objections by parties and interested persons, and order an evidentiary hearing during which all interested persons will be heard. The same procedure for notice and hearing shall be utilized in the event that the hearing panel sua sponte proposes a limitation on coverage by the electronic media. A copy of the order shall, in addition to being incorporated in the case docket, be sent to the Associated Press, which will disseminate the order to its members and inform them of upcoming deadlines/hearing.

(D) *Advance Notice of Requests for Coverage.* Any requests to bring cameras, broadcasting equipment and recording devices into a hearing room for coverage of any proceedings shall be made as far in advance as practicable. If no objection to the requested electronic coverage is received by the hearings committee or hearing panel, coverage shall be permitted in compliance with this rule. If an objection is made, the media will be so advised and the panel will conduct an evidentiary hearing during which all interested parties will be

heard to determine whether, and to what extent, coverage by the electronic media or still photography will be limited.

(E) *Pool Coverage.* The hearing panel retains discretion to limit the number of still cameras and the amount of video equipment in the hearing room at one time and may require the media to arrange for pool coverage. The panel will allow reasonable time prior to a proceeding for the media to set up pool coverage for television, radio and still photographers providing broadcast quality sound and video.

(1) It is the responsibility of the news media to contact the attorney discipline office in advance of a proceeding to determine if pool coverage will be required. If the hearing panel has determined that pool coverage will be required, it is the sole responsibility of the media, with assistance as needed from the attorney discipline office, to determine which news outlet will serve as the “pool.” Disputes about pool coverage will not be resolved by the hearing panel. Access may be curtailed if pool agreements cannot be reached.

(2) In the event of multiple requests for media coverage, because scheduling renders a pool agreement impractical, the attorney discipline office retains the discretion to rotate media representatives into and out of the courtroom.

(F) *Live Feed.* Except for good cause shown, requests for live coverage should be made at least five (5) days in advance of a proceeding.

(G) *Exhibits.* For purposes of this rule, access to exhibits will be at the discretion of the hearing panel. The panel retains the discretion to make one “media” copy of each exhibit available in the attorney discipline office.

(H) *Equipment.* Exact locations for all video and still cameras, and audio equipment within the hearing room will be determined by the hearing panel. Movement in the hearing room is prohibited, unless specifically approved by the panel.

(1) Placement of microphones in the hearing room will be determined by the hearing panel. An effort should be made to facilitate broadcast quality sound. All microphones placed in the hearing room will be wireless.

(2) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash equipment and other supplemental lighting or sound equipment is prohibited unless otherwise approved by the hearing panel.

(I) *Restrictions.* Unless otherwise ordered by the hearing panel, the following standing orders shall govern.

(1) No flash or other lighting devices will be used.

(2) Set up and dismantling of equipment is prohibited when the proceedings are in session.

(3) No camera movement during the proceedings.

(4) No cameras permitted behind the respondent's table.

(5) Broadcast equipment will be positioned so that there will be no audio recording of conferences between attorney and client or among counsel and the hearing panel at the bench. Any such recording is prohibited.

(6) Photographers and videographers must remain a reasonable distance from parties, counsel tables, alleged victims, witnesses and families unless the hearing participant voluntarily approaches the camera position.

(7) All reporters and photographers will abide by the directions of the hearing room officers at all times.

(8) Broadcast or print interviews will not be permitted inside the hearing room before or after a proceeding.

(9) Photographers, videographers and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings.

(10) Appropriate dress is required.

(d) *Concluding Procedures.*

(1) *Report of Hearing Panel.* After hearing the evidence, the hearing panel shall make a written report of its findings of fact which shall be signed by the hearing panel chair. The hearing panel shall include its recommendations whether its factual findings support a conclusion that the rules of professional conduct were violated by clear and convincing evidence and, if so, an appropriate sanction. The report shall be submitted to the professional conduct committee no more than sixty (60) days after the close of each hearing. If the hearing panel is not unanimous in any recommendations it may make, a minority report may also be submitted to the professional conduct committee. Copies of all hearing panel reports shall be sent to disciplinary counsel, the complainant and the respondent at the same time they are sent to the professional conduct committee.

[At any time during the hearing panel proceedings, respondent and disciplinary counsel may request approval of a partial or dispositive stipulation. The hearing panel shall forward to the committee any stipulations approved by the hearing panel. Such approved stipulations shall accompany the hearing panel's written report on contested issues of fact, rule violation and sanction.]

(2) *Professional Conduct Committee.* Within fifteen (15) days of the date of the hearing panel report or reports, disciplinary counsel and respondent may file stipulations with proposed resolutions for the committee's review and approval and may submit memoranda addressing any issues in the hearing panel reports[, **stipulations**] or raised during the hearings.

(A) Whether memoranda are filed or not, either disciplinary counsel or respondent may during the same fifteen (15) day period request oral argument before the professional conduct committee **[to address any issues in the hearing panel report, stipulations or record agreed to by the parties. The committee may, in its discretion, direct the parties to appear before it to address any issues raised in dispositive or partial stipulations, as set forth in Rule 37A(III)(aa)(3).]**

(B) Unless waived, oral arguments will be conducted to allow disciplinary counsel and each respondent ten (10) minutes to address the findings and rulings contained in the hearing panel reports.

(C) After consideration of **[dispositive or partial stipulations,]** oral arguments, hearing panel reports and memoranda, if any, and transcripts of hearings before the hearing panel, the professional conduct committee shall determine whether there is clear and convincing evidence of violations of the rules of professional conduct. ~~The professional conduct committee may:~~ **[In making such determination, the committee shall:**

(i) review the hearing panel's report addressing any contested matters of fact and law. The committee shall uphold the hearing panel's findings of fact unless clearly erroneous or manifestly in error. The committee shall review the hearing panel's conclusions of law and recommendation of sanction de novo.

(ii) review all stipulations in accordance with Rule 37A(II)(aa)(3) and issue orders thereon. The committee shall state in its order the basis for rejection of any stipulation and shall remand remaining contested issues.

(iii) after such determination, the professional conduct committee may:

~~(i)~~ **[(a)]** dismiss complaints, with or without a warning, administer a reprimand, public censure or a suspension not to exceed six (6) months;

~~(ii)~~ **[(b)]** attach such conditions as may be appropriate to any discipline it imposes;

~~(iii)~~ **[(c)]** divert attorneys out of the attorney discipline system as appropriate and on such terms and conditions as is warranted; and

~~(iv)~~ **[(d)]** initiate proceedings in the supreme court, through disciplinary counsel, on all matters in which the professional conduct committee has determined warrant the imposition of disbarment or of suspension for a period in excess for six (6) months;

~~(v)~~ **[(e)]** assess to a disciplined attorney to the extent appropriate, in whole or in part, expenses incurred by the attorney discipline system in the investigation and enforcement of discipline. An assessment made under this section shall have the same force, effect and characterization and shall be subject to the same procedures for finalization, resolution and enforcement as an assessment under Rule 37(19).

(D) If neither disciplinary counsel nor the respondent requests oral argument, the professional conduct committee **[may direct the parties to appear before it on stipulations and]** shall make its decision **[in all matters]** based on the hearing panel report, the hearing transcript, and any memoranda that may be filed **[or, for stipulations, on the record agreed to by the parties and any oral statements presented by the parties].**

(3) *Form of Sanctions.*

In the event that the professional conduct committee determines that the proceeding should be concluded by reprimand, public censure or a suspension of six (6) months or less, it shall give written notice thereof to the respondent, disciplinary counsel and the complainant.

The reprimand, public censure or suspension shall state the charges that were sustained, any charges that were dismissed and the respondent's right to appeal to the supreme court.

Any public censure or suspension issued by the professional conduct committee that becomes final and not subject to further appeal shall be sent to

newspapers of general circulation, one with statewide circulation, and one with circulation in the area of respondent's primary office, as well as to the New Hampshire Bar News for publication.

In the event the professional conduct committee finds a violation of the rules of professional conduct but determines that a petition should be filed with the supreme court for a sanction of greater than a six (6) month suspension, it shall give notice of its findings and its intent to file a petition to the respondent, disciplinary counsel and the complainant.

(4) *Appeal of Sanction.*

(A) A respondent shall be entitled to appeal a finding of professional misconduct or a sanction, and disciplinary counsel shall be entitled to appeal a sanction, issued by the professional conduct committee by filing a written appeal in accordance with Rule 10, unless otherwise ordered by the court. The appeal shall not be a mandatory appeal. The appeal shall be public.

(B) 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.

APPENDIX R

Amend Supreme Court Rule 37A(I) to add a new subsection (j), as follows

(new material is in **[bold and in brackets]**):

[(j) *Status of Complainants.* Complainants are not parties to informal or formal disciplinary proceedings. Complainants lack standing to file pleadings or object to motions or recommendations of disposition of disciplinary matters.]

APPENDIX S

Amend Supreme Court Rule 37A(III)(b) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

(b) *Institution of Proceedings.*

(1) *General.*

Upon receipt of a file referred by the attorney discipline office general counsel or the complaint screening committee, disciplinary counsel may engage in such additional preparation to allow counsel to formalize allegations into a notice of charges. The notice of charges shall be served on the respondent by certified mail, return receipt requested, unless some other type of service is authorized upon application to the chair of the professional conduct committee. Throughout the proceedings, disciplinary counsel shall exercise independent professional judgment. Nevertheless, disciplinary counsel shall keep the complainant apprised of developments in the matter and consider input from the complainant.

(2) *Notice of Charges***;** ***Initial Disclosure.***

The notice of charges shall set forth the allegations of misconduct against the respondent and the disciplinary rules alleged to have been violated. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel and to present evidence in respondent's own behalf. **[At the time of filing the notice of charges or as soon thereafter as is practicable, disciplinary counsel shall provide respondent with bates-stamped copies of all relevant documents (excluding work product and internal memoranda of the ADO).]**

(3) *Answer.*

(A) *General Rule.* The respondent shall answer the notice of charges by serving and filing an answer with disciplinary counsel within thirty (30) days after service of the notice of charges. Should the respondent fail to file an answer, the allegations set forth in the notice of charges shall be deemed to be admitted.

(B) *Contents of Answer.* The answer shall be in writing, and shall respond specifically to each allegation of the notice of charges and shall assert all affirmative defenses.

(4) *Assignment for Hearing.*

Upon receiving an answer from the respondent, or the expiration for the thirty (30) day period for a respondent to file an answer, it shall be the duty of disciplinary counsel to request that the chair of the hearings committee appoint a hearing panel.

~~Once a hearing panel has been appointed, disciplinary counsel shall forward the panel a copy of the file, other than work product, deliberations and internal correspondence and memoranda of the component parts of the attorney discipline system. To the extent not already provided, disciplinary counsel shall also provide the respondent with the same documents provided to the hearing panel.~~

(5) *Discovery.*

(A) Discovery shall be available to the disciplinary counsel. Discovery shall also be available to the respondent, provided that an answer has been filed. All such requests shall be in writing.

(B) On written request the following information, if relevant or reasonably calculated to lead to the discovery of admissible evidence in the matter, and if within the possession, custody or control of the disciplinary counsel, the respondent or respondent's counsel, is subject to discovery and shall be made available for inspection and copying as set forth in this rule:

(i) A writing or any other tangible object, including those obtained from or belonging to the respondent;

(ii) Signed written statements, or taped statements, if any, by any witness, including the respondent;

(iii) Results or reports of mental or physical examinations and of scientific tests or experiments made in connection with the matter;

(iv) Names, addresses and telephone numbers of all persons known to have relevant information based on personal knowledge about the matter, including a designation by the disciplinary counsel and respondent as to which of those persons will be called as witnesses;

(v) Police reports and any investigation reports generated by any agency other than the attorney discipline office;

(vi) Names and address of each person expected to be called as an expert witness, the expert's qualifications, the subject matter on which the expert will testify, a copy of all written reports submitted by the expert or, if

none, a statement of facts and opinions to which the expert will testify and a summary of the grounds for each opinion; and

(vii) If disciplinary counsel or the respondent are unable to agree on discovery issues, a request must be made for a pre-hearing conference.

(C) This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or that party's attorney or agents in connection with a disciplinary proceeding. Nor does it require discovery of statements, signed or unsigned, made by respondent to respondent's attorney or that attorney's agents. This rule does not authorize discovery of any internal materials or documents prepared by the attorney discipline office.

(D) Depositions shall be permitted in any matter to preserve the testimony of a witness likely to be unavailable for hearing due to death, incapacity or if otherwise agreed to by the parties. If disciplinary counsel or the respondent deem it necessary to take any other depositions, a request must be made for a pre-hearing conference.

(E) Discovery shall be made available within thirty (30) days after receipt of a written request therefor. A party's obligation to provide discovery is a continuing one. If, subsequent to compliance with a request for discovery, a party discovers additional names or statements of witnesses or other information reasonably encompassed by the initial request for discovery, the original discovery response shall be promptly supplemented accordingly. In any case in which a pre-hearing conference has been held, the case management order shall set forth the time period within which all discovery shall be completed.

(F) Any discoverable information which is not timely furnished either by original or supplemental response to a discovery request may, on application of the aggrieved party, be excluded from evidence at hearing. The failure of the disciplinary counsel or respondent to disclose the name and provide the report or summary of any expert who will be called to testify in accordance with prior agreement of the parties or as provided in the case management order at least twenty (20) days prior to the hearing date shall result in the exclusion of the witness, except on good cause shown.

(6) Pre-Hearing Conference.

(A) A pre-hearing conference shall be held at the request of any party or the trier of fact. The pre-hearing conference shall be held by the hearing panel chair. Unless for good cause shown, the request for a pre-hearing conference must be made within thirty (30) days of the date of the

hearing panel appointment. At least fourteen (14) days written notice of the date of the conference shall be given. Attendance is mandatory by all parties at the conference. A pre-hearing conference may be held by telephone call where appropriate. No transcript shall be made of the pre-hearing conference.

(B) At the pre-hearing conference, the hearing panel chair shall address the following matters:

- (i) The formulation and simplification of issues;
- (ii) Admissions and stipulations of the parties with respect to allegations, defenses and any aggravation or mitigation;
- (iii) The factual and legal contentions of the parties;
- (iv) The identification and limitation of witnesses, including character and expert witnesses;
- (v) Rulings on discovery disputes, deadlines for the completion of discovery, including the timely exchange of expert reports, and a ruling on any requests to take depositions;
- (vi) The hearing date and its estimated length;
- (vii) Deadline for the pre-marking of all exhibits to which the parties consent; and
- (viii) Any other preliminary issues or matters which may aid in the disposition of the case.

(C) Within fourteen (14) days following the pre-hearing conference, the hearing panel chair shall issue a case management order, designated as such in the caption, memorializing any agreements by the parties and any determinations made respecting any matters considered at the conference. The case management order, which constitutes part of the record, shall be sent to the disciplinary counsel and the respondent.

(D) At the pre-hearing conference the hearing panel chair shall schedule a date for the hearing of the case within sixty (60) days after the date of the conference, except for good cause shown.

(7) *Matters in Which a Pre-hearing Conference Has Not Been Held.*

(A) In any matter in which a pre-hearing conference is not

requested, both disciplinary counsel and respondent shall be responsible for compiling and pre-marking all documentary evidence, to which the parties consent, to be considered by the hearing panel;

(B) In such matters, both disciplinary counsel and respondent shall also be responsible for preparing lists of names, addresses and telephone numbers of persons who will be called as witnesses, and, in the case of expert witnesses, the experts' qualifications, the subject matter upon which each will testify, a copy of the written reports submitted by such experts, or if none, a statement of the facts and opinions to which each expert will testify and a summary of the grounds for each such opinion.

(C) Also, in such matters, both disciplinary counsel and respondent shall be responsible for preparing requests for findings of fact and rulings of law.

(D) Copies of pre-marked exhibits, witnesses lists and expert witness disclosures, shall be filed by disciplinary counsel and respondent with the attorney discipline office at least ten (10) days prior to the date of the hearing. Five (5) copies shall be provided. Copies shall be also provided to the opposing party concurrent with the submission to the attorney discipline office. Requests for findings of fact and rulings of law shall be filed at the beginning of the hearing.

(8) *Further Review.*

If at any point prior to the hearing on the merits, disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing, he or she shall submit a written report to the professional conduct committee requesting that the matter be dismissed either with a finding of no professional misconduct or on some other basis.

APPENDIX T

Amend Supreme Court Rule 37A(I)(i) as follows (new material is in **and in brackets**]; deleted material is in ~~strikethrough~~ format):

(i) *Period of Limitation*

(1) Except as provided in subsection (3), no formal disciplinary proceedings shall be commenced unless a grievance is filed with the attorney discipline office in accordance with section (II)(a) or a complaint is generated and docketed by the attorney discipline office under section (II)(a)(5)(B) of this rule:

(A) within six (6) years after the commission of the alleged misconduct when the alleged misconduct was committed before April 1, 2000;

(B) within two (2) years after the commission of the alleged misconduct when the alleged misconduct was committed on or after April 1, 2000; except when the acts or omissions that are the basis of the grievance were not discovered and could not reasonably have been discovered at the time of the acts or omissions, in which case, the grievance must be filed within two (2) years of the time the grievant discovers, or in the exercise of reasonable diligence should have discovered, the acts and omissions complained of.

(2) Misconduct will be deemed to have been committed when every element of the alleged misconduct has occurred, except, however, that where there is a continuing course of conduct, misconduct will be deemed to have been committed beginning at the termination of that course of conduct.

If the continuing course of conduct began before but terminated after April 1, 2000, continuing misconduct through March 31, 2000, will be subject to the six (6) year period of limitation while continuing misconduct for the period beginning April 1, 2000, will be subject to the two (2) year period of limitation.

(3) If a grievance is filed after the period prescribed in subsection (1) has expired, the attorney discipline office may elect to commence formal proceedings in the following cases:

(A) if based on charges which include commission of a "serious crime," as defined in Supreme Court Rule 37(9)(b), or conduct which would be a material element of a "serious crime," or

(B) if based on charges which do not include conduct described in

(A) but which include as a material element fraud or fraudulent misrepresentation, dishonesty, deceit, or breach of a fiduciary duty, but only if commenced within one (1) year after actual discovery of the misconduct by the aggrieved party.

(4) The period of limitation does not run:

(A) during any time the attorney is outside this jurisdiction with a purpose to avoid commencement of proceedings, or wherein the attorney refuses to cooperate with an investigation into alleged misconduct, or

(B) during any period in which the attorney has engaged in active concealment of the alleged misconduct, provided that the period begins to run when the concealment is discovered by the aggrieved party or the attorney discipline office.

(5) If, while proceedings of any kind are pending against the attorney in any court or tribunal and arising out of the same acts or transactions that provide the basis for the allegations of misconduct, the limitations period prescribed in subsection (1) expires, **[a grievance or referral may nonetheless be filed with the attorney discipline office so long as it is filed]** ~~formal disciplinary proceedings may be commenced~~ within one year after final conclusion of those proceedings notwithstanding the expiration of the period of limitation.

Amend Supreme Court Rule 37(9) as follows (new material is in **[bold**

and in brackets]:

(9) Attorneys Convicted of Serious Crime:

(a) Upon the filing with the court of a certified copy of any court record establishing that an attorney has been convicted of a serious crime as hereinafter defined, the court may enter an order suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction.

(b) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(c) A certified copy of any court record establishing the conviction of an attorney for any "serious crime" shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

(d) Upon the receipt of a certificate of conviction of an attorney for a "serious crime," the court may, and shall if suspension has been ordered pursuant to subsection (a) above, institute a formal disciplinary proceeding by issuing an order to the attorney to show cause why the attorney should not be disbarred as a result of the conviction. If the court determines that no such good cause has been shown, the court shall issue an order of disbarment, or such other discipline as the court shall deem appropriate. If the court determines that the attorney has shown cause why disbarment may not be appropriate, the court shall refer the matter to the professional conduct committee, in which the sole issue to be determined shall be the extent of the final discipline to be imposed. Provided, however, that final discipline will not be imposed until all appeals from the conviction are concluded.

(e) Upon receipt of a certificate of conviction of an attorney for a crime not constituting a "serious crime," the court shall refer the matter to the attorney discipline office for such action as it deems appropriate. Referral to the attorney discipline office hereunder does not preclude the court from taking whatever further action it deems appropriate.

(f) An attorney suspended under the provisions of subsection (a) above may be reinstated upon the filing of a certificate demonstrating that the underlying conviction for a serious crime has been reversed but the reinstatement will not terminate any proceeding then pending against the attorney.

(g) **[Any attorney who has been convicted of a crime in this state or in any other state shall notify the court, in writing, within ten (10) days of sentencing on said conviction. The notice shall inform the court of the crime, the criminal statute violated, the court of conviction, the date of conviction, and the sentence imposed.]** The clerk of any court within the State in which an attorney is convicted of any crime shall, within ten (10) days of said conviction, transmit a certificate thereof to this court.

(h) Upon being advised that an attorney has been convicted of a crime within this State, the attorney discipline office shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate to this court in accordance with the provisions of subsection (g) above. If the certificate has not been forwarded by the clerk or if the conviction occurred in another jurisdiction, it shall be the responsibility of the attorney discipline office to obtain a certificate of conviction and to transmit it to this court.

(i) Whenever an attorney is indicted or bound over for any felony, the court shall take such actions as it deems necessary, including but not limited to the suspension of the attorney.

APPENDIX V

Amend Supreme Court Rule 50(1)(C) as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

C. Lawyers, law firms or others acting on their behalf when depositing clients' funds in a pooled, interest-bearing account shall direct the depository institution:

(i) to remit interest or dividends, as the case may be, at least quarterly, to the New Hampshire Bar Foundation; and

(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the account number(s), and rate of interest applied for the reporting period; and

(iii) to transmit to the depositing lawyer or law firm at the same time a report showing the accounts number(s), rate of interest applied for the reporting period, and amount paid to the Foundation.

[(iv) to provide the New Hampshire Attorney Discipline Office with a notice whenever a trust account contains insufficient funds or shows a negative balance. Such notice shall be a duplicate of the standard depository institution notice provided to the customer. The Attorney Discipline Office will determine what investigation and further action may be appropriate.]