

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 1, 2018, 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 May 31, 2018 or may be submitted at the hearing on June 1, 2018. Comments may be e-mailed to the Committee on or before May 31, 2018 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. 2017-007. Supreme Court Rule 41. Limited Liability Entities.

(This proposed amendment would delete Supreme Court Rule 41.)

1. Delete Supreme Court Rule 41, as set forth in Appendix A.

II. 2017-009. Supreme Court Rules. Identification of Crime Victims.

(This proposed amendment would protect crime victims' identities from disclosure in supreme court pleadings.)

1. Adopt as a Supreme Court Rule the proposed rule set forth in Appendix B.

III. 2017-013. Superior Court (Civ.) Rule 36. Standing Trial Orders.

(This proposed amendment would clearly establish when a party is required to notify the opposing party that he or she intends to subpoena the opposing party's lawyer as a witness.)

1. Amend Superior Court (Civ.) Rule 36(d) ("Standing Trial Orders – Procedures – Examination of Witnesses") as set forth in Appendix C.

IV. 2017-017. Superior Court (Civ.) Rules. Appeals - Municipal Actions.

(This proposed rule would require a party who submits, in an appeal to the superior court from the action of a state or municipal government body, an audio or video recording of the proceedings below, to provide the court with a transcript of the relevant portion of the proceedings.)

1. Adopt Superior Court (Civ.) Rule 55, Appeal from Municipal Actions, as set forth in Appendix D.

V. 2016-006. Superior Court (Civ.) Rules. Motions to Seal.

(These proposed rules would amend trial court rules to delineate the procedure for the filing of case records which contain confidential information or

are confidential in their entirety and to provide the procedure for seeking access to case records that have been determined to be confidential.)

1. Adopt Proposed Rule I, Access to Case Records, as set forth in Appendix E.
2. Adopt Proposed Rule II, Case Records Which Contain Confidential Information, as set forth in Appendix F.
3. Adopt Proposed Rule III, Filing a Case Record Which is Confidential in its Entirety, as set forth in Appendix G.
4. Adopt Proposed Rule IV, Motions to Seal, as set forth in Appendix H.
5. Adopt Proposed Rule V, Procedure for Seeking Access to Case Records That Have Been Determined to be Confidential, as set forth in Appendix I.
6. Adopt Proposed Rule VI, Sanctions for Disclosure of Confidential Information, as set forth in Appendix J.

VI. 2016-009. Rule of Professional Conduct 8.4 Harassment and Discrimination.

(The Committee is requesting comment on three different proposed amendments to Rule of Professional Conduct 8.4. The Committee will consider all three proposals at the public hearing on June 1, along with any other language that is suggested at the public hearing.)

1. Amend Rule of Professional Conduct 8.4, as set forth in Appendix K.
2. Amend Rule of Professional Conduct 8.4, as set forth in Appendix L.
3. Amend Rule of Professional Conduct 8.4, as set forth in Appendix M.

New Hampshire Supreme Court
Advisory Committee on Rules

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

April 3, 2018

Delete Supreme Court Rule 41, which currently reads:

RULE 41. Limited Liability Entities

(1) *Definitions.* The following terms used in this rule shall have the meanings set forth below:

(a) "Limited liability entity" shall mean a professional corporation, a professional limited liability company, or a limited liability partnership, that engages in the practice of law in the State of New Hampshire and which is organized under the laws of any state or the District of Columbia which permits a limited liability entity to be engaged in the practice of law.

(b) "Owner" shall mean a shareholder of a professional corporation, a member of a professional limited liability company, or a partner of a limited liability partnership.

(c) "Manager" shall mean an individual who is licensed to practice law in this state or who is duly licensed by the licensing authority of a state or territory of the United States or the District of Columbia and who is named as a manager of a professional limited liability company in or designated as a manager of a professional limited liability company pursuant to a professional limited liability company agreement or similar instrument under which the professional limited liability company is formed.

(2) *Applicable Law.* The provisions of the laws of this state shall be applicable to attorneys practicing law in this state, subject to the terms and conditions of this rule. Nothing in this rule is to be construed to permit a limited liability entity to practice law in New Hampshire if said practice is prohibited by New Hampshire statute.

(3) *Shareholders, Members, Managers, Officers, Directors, Employees.* In addition to other provisions required by law, each limited liability entity shall assure compliance with the following requirements:

(a) All owners shall be persons who are duly licensed by this court to practice law in this state, or who are duly licensed by the licensing authority of a state or territory of the United States or the District of Columbia.

(b) All owners shall be in good standing before this court or before the licensing authority of the jurisdiction(s) in which they are actively engaged in the practice of law.

(c) All owners shall own their shares or other ownership interests in their own right.

(d) All owners shall be persons who, except for temporary absence due to illness or accident, time spent in the Armed Services of the United States, vacations and leaves of absence not to exceed two years, are actively engaged in the practice of law with the limited liability entity, in this state or in another jurisdiction in which they have been admitted to practice.

(e) Any owner who ceases to be eligible to be an owner and the executor, administrator, or other legal representative of a deceased or incapacitated owner shall be required to dispose of that owner's shares or other ownership interest as soon as reasonably possible, either to the limited liability entity or to an individual duly qualified to be an owner of the limited liability entity.

(f) All owners and managers of and attorneys employed by a limited liability entity shall by being licensed to practice law in this state, be subject to and bound by the provisions of this rule, including, without limitation, paragraph (10) hereof.

(g) All directors and officers of a professional corporation and all members, managers and officers of a professional limited liability company, as the case may be, shall be owners.

(h) No owner or attorney employed by a limited liability entity shall be an owner, director, officer, member or manager of more than one limited liability entity; provided, however, that an attorney who is acting as the fiduciary representative of the estate of an attorney may hold the stock or other interest of the attorney in another limited liability entity for a reasonable time during administration of the estate.

(i) Attorneys who are partners, members, managers, or employees of the limited liability entity and who practice law in New Hampshire shall be duly licensed by this court to practice law.

(j) One or more owners of the limited liability entity shall be admitted to practice law by this court and shall be engaged in the practice of law in New Hampshire.

(4) *Standards of Conduct.*

(a) Nothing in this rule shall be deemed to diminish or change the obligation of each attorney who is an owner of or who is employed by the limited liability entity to conduct the practice of law in accordance with generally recognized standards of professional conduct and in accordance with the specific standards which may be promulgated by this court or the licensing authority of the jurisdiction(s) in which the attorney practices. Any attorney who, by act or omission, causes the entity to act or fail to act in a way which violates any applicable standard of professional conduct, including any provision of this rule, shall be personally responsible for such act or omission and shall be subject to discipline therefor.

(b) The final responsibility for the delivery of professional services in this state shall be vested in New Hampshire licensed attorneys.

(5) *Confidentiality.* Nothing in this rule shall be deemed to modify, abrogate or reduce the attorney-client privilege or any comparable privilege or relationship, whether statutory or derived from the common law.

(6) *Name.* The name of the limited liability entity shall contain words or abbreviations which indicate that it is a limited liability entity.

(7) *Identity of Non-Resident Attorneys.*

(a) Within thirty (30) days after the organization of a limited liability entity under the laws of the State of New Hampshire or the qualification to do business in New Hampshire of a foreign limited liability entity, the limited liability entity shall file with the clerk of this court a written list of the names and addresses of the owners or managers of the limited liability entity who are not licensed to practice law in the State of New Hampshire and a notarized statement certifying that such owners or managers are in good standing before the licensing authority of the jurisdiction(s) in which they are actively engaged in the practice of law. Within thirty (30) days after any change in the status of such owners or managers, a revised list setting forth the information required by the preceding sentence shall be filed with the clerk of this court. There shall also be filed with the clerk of this court such other information as this court may from time to time prescribe.

(b) In the event that any disciplinary proceeding shall be instituted against any attorney not licensed in New Hampshire who is an owner, manager, or employee of a limited liability entity, notice of such proceeding shall be given to the clerk of this court forthwith.

(c) All applications, reports, and other documents required to be filed with this court by this rule shall be signed and verified by an owner of the limited liability entity who is an attorney licensed to practice law by this court.

(8) *Trust Accounts.* Each limited liability entity which maintains an office in a state other than the State of New Hampshire shall comply with the provisions of Rules [50](#) and [50-A](#), subject, however, to any requirements which may be imposed by the comparable rules adopted by the highest court of that state with respect to trust funds being maintained in that state. To the extent that the rule of such other state may apply to trust funds maintained in that state, the limited liability entity shall comply with such rule and shall so certify to the clerk of this court annually on or before August 1.

(9) *Letterhead.* A limited liability entity which practices law in a jurisdiction other than New Hampshire and which lists its employees on its letterhead and in other permissible listings shall do so in a manner which makes clear the jurisdictional limitations on those employees of the limited liability entity not licensed to practice in all listed jurisdictions.

(10) *Liability.* The liability of individuals and limited liability entities for performance of professional services in this state shall be determined under the common law and statutory law of this state.

Advisory Rules Committee Comment

This rule does not authorize a limited liability entity to practice law in New Hampshire if said practice is prohibited by New Hampshire statute. It appears to be an unsettled question under New Hampshire law whether a foreign professional corporation is prohibited from practicing law in New Hampshire. See RSA 311:11, :11-a; RSA ch. 294-A.

APPENDIX B

Adopt a Supreme Court Rule as follows:

Rule _____. Protecting Crime Victims' Identity.

(1) No party shall disclose a crime victim's name, address, place of employment or other personal information in any petition, motion, brief, memorandum, or other pleading unless filed under seal or authorized by the Court for good cause. An alias, pseudonym, appropriate designation, or initials may be used in lieu of a crime victim's name.

(2) For purposes of this Rule:

(a) "Victim" means a person who suffers direct or threatened physical, emotional, psychological, or financial harm as a result of the commission or attempted commission of a crime.

(b) "Crime" means a violation of penal law of this State for which the offender, upon conviction, may be punished by imprisonment for more than one year or an offense expressly designated by law to be a felony.

APPENDIX C

Amend Superior Court (Civ.) Rule 36 as follows (new material is in

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

Rule 36. Standing Trial Orders – Procedures.

(a) *Addressing the Court.* Anyone addressing the court or examining a witness shall stand. The rule may be waived if the person is physically unable to stand or for other good cause. No one should approach the bench to address the court except by leave of the court.

(b) *Opening Statements and Closing Arguments.* Opening statements shall not be argumentative and shall not be longer than 30 minutes unless the court otherwise directs. Closing arguments shall be limited to 1 hour each, unless otherwise ordered by the court in advance. Before any person shall read to the jury any excerpt of testimony from a transcript prepared by the designated court transcriber, he or she shall furnish the opposing party with a copy thereof.

(c) *Copies of Documents for Court.* Counsel shall seasonably furnish for the convenience of the court, as it may require, copies of the specifications, contracts, letters or other papers offered in evidence.

(d) *Examination of Witnesses.*

(1) Only one counsel on each side will be permitted to examine a witness.

(2) A witness cannot be re-examined by the party calling him or her, after his or her cross-examination, unless by leave of court, except so far as may be necessary to explain his or her answers on his or her cross-examination, and except as to new matter elicited by cross-examination, regarding which the witness has not been examined in chief.

(3) After a witness has been dismissed from the stand, the witness cannot be recalled without permission of the court.

(4) No person, who has assisted in the preparation of a case, shall act as an interpreter at the trial thereof, if objection is made.

(5) *Attorney as Witness.*

(i) *Compelling Testimony.* No attorney shall be compelled to testify in any cause in which he or she is retained, unless the attorney shall have been notified in writing ~~previous to the commencement of the term of trial that he or she will be summoned as a witness therein, and unless he or she shall have been so summoned previous to the commencement of the trial.~~

[Except for good cause shown, such notice shall be provided no later

than 30 days after the opposing party discovers that the attorney is a witness in the matter or 30 days after the attorney's appearance in the case, whichever occurs later.]

(ii) *Participation as Advocate.* An attorney who gives testimony at trial or hearing shall not act as advocate at such trial or hearing unless the attorney's testimony relates to an uncontested issue, or relates to the nature and value of legal services rendered in the case, or unless the court determines that disqualification of the attorney would work unreasonable hardship on the attorney's client.

(e) *Exceptions Unnecessary.* Formal exceptions to non-evidentiary rulings or orders of the court are unnecessary, and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at or before the time the ruling or order of the court is made or sought, makes known to the court by motion or orally on the record the action which the party desires the court to take or his or her objection to the action requested by a party opponent, provided that in each instance the party has informed the court of the specific factual or legal basis for his or her position.

(f) *Objections.* When stating an objection, counsel will state only the basis of the objection (e.g., "leading," "non-responsive," or hearsay"), provided, however, that upon counsel's request, counsel shall be permitted a reasonable opportunity to approach the bench to elaborate and present additional argument or grounds for the objection.

(g) *Submission of Case.* In all trials, the plaintiff shall put in his or her whole case before resting and shall not thereafter, except by permission of the court for good cause shown, be permitted to put in any evidence except such as may be strictly rebutting; and the defendant shall, before resting, put in his or her whole defense, and shall not thereafter introduce any evidence except such as may be in reply to the rebutting evidence.

(h) *Bench Motions.* Motions for dismissal or mistrial as well as offers of proof should be made at the bench and out of the hearing of the jury.

APPENDIX D

Adopt Superior Court (Civ.) Rule 55, Appeal from Municipal Actions, as follows:

Rule 55. Appeal from Municipal Actions.

In all appeals to the superior court from the action of a state or municipal government body, including but not limited to appeals from the decision of a planning board, zoning board of adjustment, local land use commission, or any other local legislative body, a party may submit an audio or video recording of the proceedings below provided that the recording is also accompanied by the relevant portion of the transcript of the proceedings. The party relying on the recording has the responsibility for providing the court with a transcript.

APPENDIX E

Adopt Proposed Rule I, Access to Case Records, as follows:

Proposed Rule I. Access to Case Records.

(a) *General Rule.* Except as otherwise provided by statute or court rule, all pleadings, attachment to pleadings, exhibits submitted at hearings or trials, and other docket entries (hereinafter referred to collectively as “case records”) shall be available for public inspection. This rule shall not apply to confidential or privileged documents submitted to the court for *in camera* review as required by court rule, statute or case law. The following rules regarding sealed case records also do not apply to the rules regarding electronic filings.

(b) *Burden of Proof.* The burden of proving that a case record or a portion of a case record should be confidential rests with the party or person seeking confidentiality.

APPENDIX F

Adopt Proposed Rule II, Case Records Which Contain Confidential

Information, as follows:

Proposed Rule II. Case Records Which Contain Confidential Information.

(a) The following provisions govern a party's obligations when filing a case record containing "confidential information" as defined in this rule. If a case record is confidential in its entirety, as defined in Rule III, the party must follow the procedures for filing a confidential document set forth in Rule III.

(b) "Confidential Information" means:

(1) Information that is not public pursuant to state or federal statute, administrative or court rule, a prior court order placing the information under seal, or case law; or

(2) Information which, if publicly disclosed, would substantially impair:

(A) the privacy interests of an individual; or

(B) the business, financial, or commercial interests of an individual or entity; or

(C) the right to a fair adjudication of the case; or

(3) Information for which a party can establish a specific and substantial interest in maintaining confidentiality that outweighs the strong presumption in favor of public access to court records.

(c) The following is a non-exhaustive list of the type of information that should ordinarily be treated as "confidential information" under this rule:

(1) information that would compromise the confidentiality of juvenile delinquency, children in need of services, or abuse/neglect, termination of parental rights proceedings, adoption, mental health, grand jury or other court or administrative proceedings that are not open to the public; or

(2) financial information that provides identifying account numbers on specific assets, liabilities, accounts, credit card numbers or Personal Identification Numbers (PINs) of individuals including parties and non-parties; or

(3) personal identifying information of any person, including but not limited to social security number, date of birth (except a defendant's date of birth in a criminal case), mother's maiden name, a driver's license number, a fingerprint number, the number of other government-issued identification documents or a health insurance identification number.

(d) Filing Case Records Containing Confidential Information.

(1) When a party files a case record the party shall omit or redact confidential information from the filing when the information is not required to be included for filing and is not material to the proceeding. If none of the

confidential information is required or material to the proceeding, the party should file only the version of the case record from which the omissions or redactions have been made. At the time the case record is submitted to the court the party must clearly indicate on the case record or by separate cover letter that the case record has been redacted or information has been omitted pursuant to Rule II(d)(1).

(2) It is the responsibility of the filing party to ensure that confidential information is omitted or redacted from a case record before the case record is filed. It is not the responsibility of the clerk or court staff to review case records filed by a party to determine whether appropriate omissions or redactions have been made.

(3) If confidential information is required for filing and/or is material to the proceeding and therefore must be included in the case record, the filer shall:

(A) File a motion to seal as provided in Rule IV;

(B) Submit for the public file the case record with the confidential information redacted by blocking out the text or using some other method to clearly delineate the redactions; and

(C) Submit an unredacted version of the case record clearly marked as confidential.

APPENDIX G

Adopt proposed Rule III, Filing a Case Record which is Confidential in its Entirety, as follows:

Proposed Rule III. Filing a Case Record Which Is Confidential In Its Entirety.

(a) The following provisions govern a party's obligations when filing a "confidential document" as defined in this rule. "Confidential document" means a case record that is confidential in its entirety because it contains confidential information and there is no practicable means of filing a redacted version of the document.

(b) A confidential document shall not be included in a case record if it is neither required for filing nor material to the proceeding. If the confidential document is required or is material to the proceeding, the party must file the confidential document in the manner prescribed by this rule.

(c) A party filing a confidential document must also file a separate motion to seal pursuant to Rule IV.

(d) A party filing a confidential document shall identify the document either in the caption of the pleading or in a cover letter to the court so as not to jeopardize the confidentiality of the document but in sufficient detail to allow a party seeking access to the confidential document to file a motion to unseal pursuant to Rule V.

APPENDIX H

Adopt Proposed Rule IV, Motions to Seal, as follows:

Proposed Rule IV. Motions to Seal.

(a) No confidential document or case record containing confidential information shall be filed under seal unless accompanied by a separate motion to seal consistent with this rule. In other words, labeling a document as “confidential” or “under seal” or requesting the court to seal a pleading in the prayers for relief without a separate motion to seal filed pursuant to this rule will result in the case record being filed as part of the public record in the case.

(b) A motion to seal a confidential document or a case record containing confidential information shall state the authority for the confidentiality, *i.e.*, the statute, case law, administrative order or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. An agreement of the parties that a case record is confidential or contains confidential information is not a sufficient basis alone to seal the record.

(c) The motion to seal shall specifically set forth the duration the party requests that the case record remain under seal.

(d) Upon filing of the motion to seal with a confidential document or the unredacted version of a case record, the confidential document or unredacted case record shall be kept confidential pending a ruling on the motion.

(e) The motion to seal shall itself automatically be placed under seal without separate motion in order to facilitate specific arguments about why the party is seeking to maintain the confidentiality of the case record or confidential information.

(f) The court shall review the motion to seal and any objection to the motion to seal that may have been filed and determine whether the unredacted version of the document shall be confidential. An order will be issued setting forth the court’s ruling on the motion to seal. The order shall include the duration that the confidential document or case record containing confidential information shall remain under seal.

(g) A party or person with standing may move to seal or redact confidential documents or confidential information that is contained or disclosed in the party’s own filing or the filing of any other party and may request an immediate order to seal the document pending the court’s ruling on the motion.

(h) If the court determines that the case record is not confidential, any party or person with standing shall have 10 days from the date of the clerk's notice of the decision to file a motion to reconsider or a motion for interlocutory appeal to the supreme court. The case record shall remain under seal pending ruling on a timely motion. The court may issue additional orders as necessary to preserve the confidentiality of a case record pending a final ruling or appeal of an order to unseal.

APPENDIX I

Adopt Proposed Rule V, Procedure for Seeking Access to Case Records That Have Been Determined to be Confidential, as follows:

Proposed Rule V. Procedure for Seeking Access to Case Records That Have Been Determined to be Confidential.

(a) Any person who seeks access to a case record or portion of a case record that has been determined to be confidential shall file a motion with the court requesting access to the record in question.

(b) The person filing a motion to unseal shall have the burden to establish that notice of the motion to unseal was provided to all parties and other persons with standing in the case. If the person filing the motion to unseal cannot provide actual notice of the motion to all interested parties and persons, then the moving person shall demonstrate that he or she exhausted reasonable efforts to provide such notice. Failure to effect actual notice shall not alone be grounds to deny a motion to unseal where the moving party has exhausted reasonable efforts to provide notice.

(c) The Court shall examine the case record in question together with the motion to unseal and any objections thereto to determine whether there is a basis for nondisclosure and, if necessary, hold a hearing thereon.

(d) An order shall be issued setting forth the court's ruling on the motion, which shall be made public. In the event that the court determines that the records are confidential, the order shall include findings of fact and rulings of law that support the decision of nondisclosure.

(e) If the court determines that the case record is not confidential, the court shall not make the record public for 10 days from the date of the clerk's notice of the decision in order to give any party or person with standing aggrieved by the decision time to file a motion to reconsider or appeal to the supreme court.

APPENDIX J

Adopt Proposed Rule VI, Sanctions for Disclosure of Confidential

Information, as follows:

Proposed Rule VI. Sanctions for Disclosure of Confidential Information

If a party knowingly publicly files documents that contain or disclose confidential information in violation of these rules, the court may, upon its own motion or that of any other party or affected person, impose sanctions against the filing party.

APPENDIX K

Amend New Hampshire Rule of Professional Conduct 8.4, and update the Ethics Committee Comment as follows (new material is in **brackets**]; deleted material is in ~~strikethrough~~ format):

Rule 8.4 Misconduct.

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) state or imply an ability to influence improperly a government agency or official;
- (e) state or imply an ability to achieve results by means that violate the Rules of Professional Conduct or other law; ~~or~~
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law-]; **or**
- (g) engage in conduct related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation or marital status. This paragraph does not limit the ability of the lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16.]**

Ethics Committee Comment

[1. ABA] ~~S[s]~~ection (d) of the ABA Model Rule is deleted. A lawyer's individual right of free speech and assembly should not be infringed by the New Hampshire Rules of Professional Conduct when the lawyer is representing a client. The deletion of section (d) was not intended to permit a lawyer, while representing a client, to disrupt a tribunal or prejudice the administration of justice, no matter how well intentioned nor how noble the purpose may be for the unruly behavior.

[2. ABA] Model Rule section (e) is split into New Hampshire sections (d) and (e).

[3. The substantive state and federal law of anti-discrimination and anti-harassment statutes and related case law is intended to guide the application of subsection (g), however, statutory or regulatory exemptions based upon the number of personnel in a law office, for example, shall not relieve a lawyer of the requirement to comply with this Rule.

4. See ABA Comment 4 related to the intended scope of the phrase “related to the practice of law.”

5. As used in this Rule, discrimination and harassment based upon “sex” and “sexual orientation” are intended to encompass same-sex discrimination and harassment, as well as discrimination and harassment based upon gender identity.

6. This Rule is not intended to infringe on a lawyer’s rights of free speech or a lawyer’s right to advocate for a client in a manner that is consistent with these Rules.]

APPENDIX L

Amend New Hampshire Rule of Professional Conduct 8.4, and update the Ethics Committee Comment as follows (new material is in **brackets**]; deleted material is in ~~strikethrough~~ format):

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) state or imply an ability to influence improperly a government agency or official;

(e) state or imply an ability to achieve results by means that violate the Rules of Professional Conduct or other law; ~~or~~

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law-]; **or**

(g) engage in conduct related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination against a client on the basis of race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation or marital status. This paragraph does not limit the ability of the lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16.]

Ethics Committee Comment

[1.] ABA] ~~§[s]~~ection (d) of the ABA Model Rule is deleted. A lawyer's individual right of free speech and assembly should not be infringed by the New Hampshire Rules of Professional Conduct when the lawyer is representing a client. The deletion of section (d) was not intended to permit a lawyer, while representing a client, to disrupt a tribunal or prejudice the administration of justice, no matter how well intentioned nor how noble the purpose may be for the unruly behavior.

[2. ABA] Model Rule section (e) is split into New Hampshire sections (d) and (e).

[3. The substantive state and federal law of anti-discrimination and anti-harassment statutes and related case law is intended to guide the application of subsection (g), however, statutory or regulatory exemptions based upon the number of personnel in a law office, for example, shall not relieve a lawyer of the requirement to comply with this Rule.

4. See ABA Comment 4 related to the intended scope of the phrase “related to the practice of law.”

5. As used in this Rule, discrimination and harassment based upon “sex” and “sexual orientation” are intended to encompass same-sex discrimination and harassment, as well as discrimination and harassment based upon gender identity.

6. This Rule is not intended to infringe on a lawyer’s rights of free speech or a lawyer’s right to advocate for a client in a manner that is consistent with these Rules.]

APPENDIX M

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Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) state or imply an ability to influence improperly a government agency or official;
- (e) state or imply an ability to achieve results by means that violate the Rules of Professional Conduct or other law; ~~or~~
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law-~~]; or~~
- (g) engage in conduct related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination, as defined by substantive state or federal law, on the basis of race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation or marital status. This paragraph does not limit the ability of the lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16.]**

Ethics Committee Comment

[1.] ABA] S[s]ection (d) of the ABA Model Rule is deleted. A lawyer's individual right of free speech and assembly should not be infringed by the New Hampshire Rules of Professional Conduct when the lawyer is representing a client. The deletion of section (d) was not intended to permit a lawyer, while representing a client, to disrupt a tribunal or prejudice the administration of justice, no matter how well intentioned nor how noble the purpose may be for the unruly behavior.

[2. ABA] Model Rule section (e) is split into New Hampshire sections (d) and (e).

[3. The substantive state and federal law of anti-discrimination and anti-harassment statutes and related case law is intended to guide the application of subsection (g).

4. See ABA Comment 4 related to the intended scope of the phrase “related to the practice of law.”

5. As used in this Rule, discrimination and harassment based upon “sex” and “sexual orientation” are intended to encompass same-sex discrimination and harassment, as well as discrimination and harassment based upon gender identity.

6. This Rule is not intended to infringe on a lawyer’s rights of free speech or a lawyer’s right to advocate for a client in a manner that is consistent with these Rules.]