

**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, December 6, 2019, 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 December 5, 2019 or may be submitted at the hearing on December 6, 2019. Comments may be e-mailed to the Committee on or before December 5, 2019 at:

[rulescomment@courts.state.nh.us](mailto: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. 2019-010. Supreme Court Rule 37A. Attorney Discipline. Electronic Filing of Grievances.**

*(These proposed amendments are designed to facilitate the electronic filing of grievances with the Attorney Discipline Office.)*

1. Amend Supreme Court Rule 37A(I)(c) (“Definitions”), as set forth in Appendix A.
2. Amend Supreme Court Rule 37A(II)(a)(2) (“Initiation of Investigation Process”), as set forth in Appendix B.
3. Amend Supreme Court Rule 37A(II)(a)(3) (“Procedure after Receipt of Grievance”), as set forth in Appendix C.

**II. 2019-011. Supreme Court Rule 55. Public Protection Fund.**

*(This proposed amendment would allow claims to be made against the public protection fund when a lawyer has resigned while under investigation by the Attorney Discipline Office.)*

1. Amend Supreme Court Rule 55 (“Public Protection Fund”) as set forth in Appendix D.

**III. 2019-007. New Hampshire Rule of Criminal Procedure 8(d).**

*(This proposed amendment is designed to increase efficiency in cases in which a defendant fails to appear at arraignment or the court dismisses a felony complaint but misdemeanors remaining pending. The amendment would toll the indictment deadline while the defendant remains at large.)*

1. Amend New Hampshire Rule of Criminal Procedure 8(d) (“The Grand Jury – Indictment”), as set forth in Appendix E.

**IV. 2019-006. New Hampshire Rule of Criminal Procedure 12.**

*(This proposed amendment would change the expert witness disclosure deadlines, placing the burden on the parties to set disclosure deadlines at the dispositional conference.)*

1. Amend Rule of Criminal Procedure 12, as set forth in Appendix F.

New Hampshire Supreme Court  
Advisory Committee on Rules  
By: Patrick E. Donovan, Chairperson  
and Carolyn A. Koegler, Secretary

September 30, 2019

## APPENDIX A

Amend Supreme Court Rule 37A(I)(c) (“Definitions”) as follows (proposed deletions are in ~~strikethrough~~ format; additions are in **[bold and in brackets]**);

(c) *Definitions*: Subject to additional definitions contained in subsequent provisions of this rule which are applicable to specific questions, or other provisions of this rule, the following words and phrases, when used in this rule, shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:

*Answer*: The response filed by, or on behalf of, the respondent to a complaint or a notice of charges.

*Attorney*: Unless otherwise indicated, "Attorney," for purposes of this rule, means any attorney admitted to practice in this State, any attorney specially admitted to practice by a court of this State, any attorney not admitted or specially admitted in this State who provides or offers to provide legal services in this State or any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1.

*Complaint*: A grievance that, after initial review, has been determined by the attorney discipline office to be within the jurisdiction of the attorney discipline system and to meet the prerequisites for docketing as a complaint as set forth in section (II)(a)(3)(B) of this rule, and that is docketed by the attorney discipline office, or a complaint that is drafted and docketed by the attorney discipline office after an inquiry by that office. If after docketing, the attorney discipline office general counsel or the complaint screening committee determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the prerequisites for docketing set forth in sections II(a)(3)(B)(i)-(iv) of this rule, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

**[Conventionally: The filing of a grievance with the attorney discipline office in paper form, delivered to the attorney discipline office in person, by United States mail, or by other means.]**

*Court*: The New Hampshire Supreme Court.

*Disbarment*: The termination of a New Hampshire licensed attorney’s right to practice law in this State and automatic expulsion from membership in the bar of this State. A disbarred attorney may only apply for readmission to the bar of this State upon petition to the court, after having complied with the terms and conditions set forth in the disbarment order promulgated by the court which shall

include all requirements applicable to applications for admission to the bar, including passing the bar examination and a favorable report by the professional conduct committee and the character and fitness committee.

*Disciplinary Counsel:* The attorney responsible for the prosecution of disciplinary proceedings before any hearings committee panel, the professional conduct committee and the supreme court. Disciplinary counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, such part-time attorney or attorneys as may from time to time be deemed necessary, and such other attorneys of the attorney discipline office as may from time to time be designated to assist disciplinary counsel.

*Disciplinary Rule:* Any provision of the rules of the court governing the conduct of attorneys or any rule of professional conduct.

*Discipline:* Any disciplinary action authorized by Rule 37(3)(c), in those cases in which misconduct in violation of a disciplinary rule is found warranting disciplinary action.

*Diversion:* Either a condition attached to discipline imposed by the professional conduct committee; or a referral, voluntary in nature, when conduct does not violate the rules of professional conduct; or non-disciplinary treatment by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee as an alternative to discipline for minor misconduct.

**[Electronically: The filing of a grievance with the attorney discipline office in electronic form through the attorney discipline office website.]**

***Electronic Signature:* A signature, other than an inked signature, as set forth in sections II(3)(B)(iii)(1) and (2).]**

*Formal Proceedings:* Proceedings subject to section (III) of this rule.

*General Counsel:* The attorney responsible for (a) receiving, evaluating, docketing and investigating grievances filed with the attorney discipline office; (b) dismissing or diverting complaints on the grounds set forth in Rule 37(6)(c) or presenting complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason or referral to disciplinary counsel for a hearing; (c) assisting disciplinary counsel in the performance of the duties of disciplinary counsel as needed; (d) performing general legal services as required for the committees of the attorney discipline system; and (e) overseeing and performing administrative functions for the attorney discipline system. General counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, and such part-time

attorney or attorneys as may from time to time be deemed necessary, and such other attorneys of the attorney discipline office as may from time to time be designated to assist general counsel.

*Grievance:* "Grievance" means a ~~written~~ submission filed [**conventionally or electronically**] with the attorney discipline office to call ~~to~~ its attention [**to**] conduct that the grievant believes may constitute misconduct by an attorney. A grievance that is determined, after initial screening, not to be within the jurisdiction of the attorney discipline system and/or not to meet the prerequisites for docketing as a complaint shall not be docketed and shall continue to be referred to as a grievance. A grievance that is determined, after initial screening, to be within the jurisdiction of the attorney discipline system and to meet the prerequisites for docketing as a complaint shall be docketed as a complaint and shall be referred to thereafter as a complaint; provided, however, that if the attorney discipline office general counsel or complaint screening committee later determines that the docketed complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the prerequisites for docketing set forth in sections II(a)(3)(B)(i)-(iv) of this rule, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

*Hearing Panel:* A hearing panel comprised of members of the hearings committee.

*Inquiry:* A preliminary investigation of a matter begun by the attorney discipline office on its own initiative to determine whether a complaint should be docketed.

*Investigation:* Fact gathering by the attorney discipline office with respect to alleged misconduct.

*Minor Misconduct:* Conduct, which if proved, violates the rules of professional conduct but would not warrant discipline greater than a reprimand. Minor misconduct (1) does not involve the misappropriation of client funds or property; (2) does not, nor is likely to, result in actual loss to a client or other person of money, legal rights or valuable property rights; (3) is not committed within five (5) years of a diversion, reprimand, censure, suspension or disbarment of the attorney for prior misconduct of the same nature; (4) does not involve fraud, dishonesty, deceit or misrepresentation; (5) does not constitute the commission of a serious crime as defined in Rule 37(9)(b); and (6) is not part of a pattern of similar misconduct.

*Notice of Charges:* A formal pleading served under section (III)(b)(2) of this rule by disciplinary counsel.

*Public Censure:* The publication by the court or the professional conduct committee, in appropriate New Hampshire publications, including a newspaper of general statewide circulation, and one with general circulation in the area of respondent's primary office, as well as the New Hampshire Bar News, of a summary of its findings and conclusions relating to the discipline of an attorney, as defined in this section.

*Referral:* A grievance received by the attorney discipline office from any New Hampshire state court judge or from any member of the bar of New Hampshire, in which the judge or attorney indicates that he or she does not wish to be treated as a grievant.

*Reprimand:* Discipline administered by the professional conduct committee after notice of charges and after a hearing before a hearings committee panel and the right to request oral argument to the professional conduct committee in those cases in which misconduct in violation of the rules of professional conduct is found. A reprimand is administered by letter issued by the chair of the professional conduct committee, subject to an attorney's right to appeal such discipline to the court.

*Suspension:* The suspension of an attorney's right to practice law in this State, for a period of time specified by the court or by the professional conduct committee. Suspension by the professional conduct committee may not exceed six (6) months. The suspended attorney shall have the right to resume the practice of law, after the expiration of the suspension period, upon compliance with the terms and conditions set forth in the suspension order promulgated by the court or the professional conduct committee and pursuant to the procedure set forth in section (II)(c)(2) regarding reinstatement.

## APPENDIX B

Amend Supreme Court Rule 37A(II)(a)(2) (“Initiation of Investigation Process”)

as follows (proposed deletions are in ~~striketrough~~ format; additions are in **[bold and in brackets]**):

### (2) *Initiation of Investigation Process*

(A) *Grievance*. Any person may file a grievance with the attorney discipline office to call to its attention the conduct of an attorney that he or she believes constitutes misconduct which should be investigated by the attorney discipline office, subject to section II(a)(3)(B)(ii). If necessary, the general counsel or his or her deputy or assistant will assist the grievant in reducing the grievance to writing.

In accordance with a judge’s obligation under canon 3 of the code of judicial conduct to report unprofessional conduct of any attorney of which the judge is aware, a judge of the supreme, superior, district or probate courts of New Hampshire, may refer any matter to the attorney discipline office which he or she believes may constitute misconduct by an attorney that should be investigated by the attorney discipline office. In accordance with an attorney’s obligation under Rule 8.3 of the rules of professional conduct to report unprofessional conduct of an attorney of which he or she has knowledge, a member of the bar of New Hampshire, may refer any matter to the attorney discipline office which he or she believes may constitute misconduct by an attorney that should be investigated by the attorney discipline office. Except as otherwise provided, a referral from a court or attorney shall be treated as a grievance. Upon receipt of a referral, if the attorney discipline office shall determine that the referring judge or attorney does not wish to be treated as a grievant, and, if it is determined after initial screening that the grievance is within the jurisdiction of the attorney discipline office and meets the prerequisites for docketing as a complaint as set forth in section II(a)(3)(B), the attorney discipline office shall process the grievance as an attorney discipline office generated complaint.

(B) *Attorney Discipline Office-Initiated Inquiry*. The attorney discipline office may, upon any reasonable factual basis, undertake and complete an inquiry, on its own initiative, of any other matter within its jurisdiction coming to its attention by any lawful means. Unless the attorney discipline office later docketed a complaint against an attorney in accordance with section II(a)(5)(B), all records of such an inquiry shall be confidential.

(C) *Filing*. A grievance shall be deemed filed when received **[conventionally or electronically]** by the attorney discipline office.

## APPENDIX C

Amend Supreme Court Rule 37A(II)(a)(3) (“Procedure after Receipt of Grievance”) as follows (proposed deletions are in ~~striketrough~~ format; additions are in **[bold and in brackets]**):

### (3) *Procedure after Receipt of Grievance*

(A) *Initial Screening of Grievance.* General counsel shall review each grievance upon receipt to determine whether the grievance is within the jurisdiction of the attorney discipline system and whether the grievance meets the prerequisites for docketing as a complaint.

When necessary, general counsel may request additional information or documents from the grievant. Except for good cause shown, failure of a grievant to provide such additional information and/or documents within twenty (20) days may result in general counsel processing the grievance based on the then existing file, or dismissing the complaint without prejudice.

Upon receipt of the above information, general counsel may allow a respondent up to thirty (30) days to file a voluntary response if it is deemed necessary to assist in the evaluation process.

Extensions of time are not favored.

(B) *Prerequisites for Docketing Grievance as a Complaint.* A grievance shall be docketed as a complaint if it is within the jurisdiction of the attorney discipline system and it meets the following prerequisites:

(i) *Violation Alleged.* It contains: (a) a brief description of the legal matter that gave rise to the grievance; (b) a detailed factual description of the respondent’s conduct; (c) the relevant documents that illustrate the conduct of the respondent, or, if the grievant is unable to provide such documents, an explanation as to why the grievant is unable to do so; and (d) whatever proof is to be provided, including the name and addresses of witnesses to establish a violation of a disciplinary rule.

(ii) *Standing.* With the exception of an attorney discipline office-initiated inquiry or a referral by a judge or attorney, it must be filed by a person who is directly affected by the conduct complained of or who was present when the conduct complained of occurred, and contain a statement establishing these facts.

(iii) *Oath or Affirmation*. It is typed or in legible handwriting and, with the exception of an attorney discipline office-initiated inquiry or a referral by a judge or attorney, **[manually or electronically]** signed by the grievant under oath or affirmation, ~~administered by a notary public or a justice of the peace~~. The following language, or language that is substantially equivalent, must appear above the grievant's signature: "I hereby swear or affirm under the pains and penalties of perjury that the information contained in this grievance is true to the best of my knowledge."

**[An electronically signed Oath or Affirmation shall be considered a signed original if presented by the grievant in either one of two ways: (1) the typed symbol /s/ followed by the typed name of the registered filer submitting the document (example: /s/ John Smith); or (2) a graphic representation of the filer's actual signature.]**

(iv) *Limitation Period*. It was filed with the attorney discipline office within the period of limitation set forth in section (I)(i).

(v) *Sufficiency of Allegations*. The attorney discipline office may decide not to docket a grievance as a complaint if it determines, based on its evaluation of the grievance that there is no reasonable likelihood that a hearing panel would find clear and convincing evidence that the respondent attorney violated the rules of professional conduct.

(C) *Treatment of Grievance Not Within Jurisdiction of Attorney Discipline System or Failing to Meet Complaint Prerequisites*. A grievance that is not within the jurisdiction of the attorney discipline system or that does not meet the prerequisites for docketing as a complaint as set forth in section (II)(a)(3)(B) shall not be docketed and shall be dismissed in accordance with section (II)(a)(4).

Amend Supreme Court Rule 55 as follows (proposed deletions are in ~~strikethrough~~ format; additions are in **[bold and in brackets]**):

**Rule 55. Public Protection Fund.**

(1) **Purpose.** The purposes of the Public Protection Fund are to provide a public service and to promote public confidence in the administration of justice and the integrity of the legal profession by providing some measure of reimbursement to victims who have lost money or property caused by the defalcation of lawyers admitted to practice law in this jurisdiction occurring in New Hampshire and in the course of the client-lawyer or fiduciary relationship between the lawyer and the claimant.

For the purposes of this rule, the term "lawyer" shall include foreign legal consultants licensed pursuant to Rule 42D.

(2) **Establishment of the Fund.** The New Hampshire Bar Association shall provide a Public Protection Fund establishing a reimbursement mechanism for proven losses resulting from embezzlement, conversion, or theft of client funds by lawyers, and for this purpose, the court shall annually assess a sum to be paid by all dues-paying members of the New Hampshire Bar Association, except those members exempted by order of the court. The Public Protection Fund shall be administered by the New Hampshire Bar Association. Subject to the review and approval of the court, the committee established pursuant to paragraph (5) shall determine the terms, conditions, claims procedures, scope of coverage, cost, and funding mechanisms for such Public Protection Fund, consistent with this rule. The Public Protection Fund is provided as a public service to persons utilizing legal services; the establishment, administration and operation of the Public Protection Fund shall not impose or create any obligation on, expectation of recovery from, or liability of the New Hampshire Bar Association, its officers, governors, members, staff, or members of the Public Protection Fund committee. No claimant shall have a legal interest in the fund nor have a right to receive any portion except as awarded pursuant to this rule.

(3) **Claims Against the Fund.** Claims for payment from the fund shall be submitted in writing, under oath, and shall explain specifically the defalcations which led to the losses in question. Such claims must be submitted within three years of the time when the victim discovered or first reasonably should have discovered the defalcations and the resulting losses, but in no event later than one year after the lawyer in question has been suspended or disbarred from practice, **[has resigned while under disciplinary investigation,]** or has died or been judged mentally incompetent before the suspension ~~or~~ **[or resignation]** proceedings have been commenced or concluded.

(4) **Payments from the Fund.** Payments from the fund will be made only after the lawyer in question has been suspended or disbarred from practice; **[has resigned while under disciplinary investigation;]** or if the lawyer has died or been judged mentally incompetent before the suspension,] ~~or~~ disbarment[, **or resignation]** proceedings have been commenced or concluded. As a condition of payment from the fund, the claimant shall execute a subrogation agreement in favor of the fund against the offending lawyer and the offending lawyer's law firm and against third parties to the extent of the amount recovered by claimant from the fund. Payments from the fund shall be made only after exhaustion of all available assets, insurance, and sureties of the offending lawyer and the offending lawyer's law firm. Payments from the fund shall be made only to victims who have lost money or property as the result of the defalcation of the lawyer, and no payments shall be made to any assignee, subrogee, or successor of such victim. The heirs or legatees of deceased victims may be eligible for payment from the fund. Except with respect to claims where the amount determined by the committee to be due the claimant is less than \$2,500, payments from the fund shall be made only at the end of each fund year. Except with respect to claims where the amount determined by the committee to be due the claimant is less than \$2,500, payments from the fund with respect to an individual lawyer shall not be made until all claims have been finalized with respect to that lawyer. The maximum amount of reimbursement to all claimants against the fund in respect to all conduct of any one lawyer shall be \$250,000 in the aggregate. In determining whether the maximum reimbursement described in the immediately preceding sentence (but not the sentence immediately following this sentence) has been reached, claims where the amount determined by the committee to be due the claimant is less than \$2,500 shall be excluded from the calculation. The maximum amount of reimbursement to any one claimant, or all claimants, against the fund in any fund year as defined in paragraph (6) shall be \$250,000 and \$1,000,000, respectively, in the aggregate. The maximum amount which may be paid on a claim shall be the dollar value of the money or property lost by lawyer defalcation and shall not include interest on the amount lost or money spent attempting to collect the loss. If payable claims against a lawyer exceed \$250,000, then all payable claims against that lawyer, except claims where the amount determined by the committee to be due the claimant is less than \$2,500, shall be reduced in proportion to their relative value in order to reduce total payments as a result of that lawyer's conduct to \$250,000. If payable claims in a single fund year exceed \$1,000,000, then all payable claims for that fund year shall be reduced in proportion to their relative value in order to reduce total payments for that year to \$1,000,000. That portion of payable claims excluded from payment by reason of the dollar limitations described in this section shall not be paid in any subsequent fund year.

(5) **Administration of the Fund.** The Public Protection Fund shall be administered by a nine member committee, appointed by the President of the New Hampshire Bar Association with the approval of the association's Board of

Governors, which committee shall include at least two public members. Five members shall constitute a quorum. All decisions of the committee shall be made by a majority of the members present and voting. The committee shall have the power to propose regulations to clarify the intent of this rule, which regulations shall become effective after review and approval by the court. Decisions of the committee as to whether or not to pay claims and the amount of payments shall be within the committee's discretion, subject to the annual limits stated above, and will be reviewable only for unsustainable exercise of discretion. The committee shall give the offending lawyer notice of the claim and an opportunity to be heard regarding the claim, and the findings of fact and rulings of law made by the committee on the claim shall be binding upon the offending lawyer in all subsequent proceedings to which the Public Protection Fund is a party, including, but not limited to, proceedings against the offending lawyer to recover monies paid by the fund to the claimant. Review of a decision of the committee shall be filed with the New Hampshire Supreme Court within thirty days of the date of the committee's decision, by filing a written appeal in accordance with Rule 10, unless otherwise ordered by the court. The appeal shall not be a mandatory appeal. In the event that review of a decision of the committee is sought, a copy of the appeal shall be mailed or hand-delivered to the New Hampshire Bar Association at the same time as the appeal is filed with the supreme court. If the New Hampshire Bar Association wishes to participate in the review of the decision, it shall file an appearance in the matter within thirty (30) days of receipt of the appeal. Decisions of the New Hampshire Supreme Court shall be final. Within 120 days after the end of each fund year, the New Hampshire Bar Association shall report to the court about the claims made, approved and paid, assessments received, income earned, and expenses incurred in the preceding fund year. Such report shall be retained by the court as a matter of public record. Reasonable expenses incurred by the New Hampshire Bar Association in administering the fund, including overhead, staff time, and professional fees, shall be reimbursed by the fund as a cost of operation, subject to the review and approval of the court.

(6) **Effective Date.** This rule shall take effect on June 1, 1998, and payments from the fund shall be made only for defalcations occurring on or after that date. Fund years shall run from June 1 to May 31. Provided, however, that the provisions increasing the maximum amount to \$250,000 and the provisions regarding claims of less than \$2,500 shall apply only for defalcations occurring on or after January 1, 2010.

## APPENDIX E

Amend New Hampshire Rule of Criminal Procedure 8(d) as follows (proposed deletions are in ~~strikethrough~~ format; additions are in **[bold and in brackets]**):

(d) *Indictment.*

(1) Case initiated in Circuit Court-District Division. The superior court will dismiss without prejudice and vacate bail orders in all cases in which an indictment has not been returned ninety days after the matter is bound over, unless, prior to that time, the prosecution files a motion seeking an extension of time and explaining why the extension is necessary.

(2) Case initiated in Superior Court. The superior court will dismiss without prejudice all felony complaints and enhanced misdemeanors in which an indictment has not been returned within 90 days of the complaint being filed, unless, prior to that time, the prosecution files a motion seeking an extension of time and explaining why the extension is necessary or the defendant waives speedy indictment in writing. If no other charges remain pending in the case after dismissal the court shall vacate all bail orders.

**[(3) If a warrant has issued for the defendant's failure to appear at arraignment on complaints filed before indictment, or any other pre-indictment hearing in superior court, the indictment deadline in paragraph (d) is tolled. The superior court will dismiss without prejudice all felony complaints and enhanced misdemeanors if the defendant has not been indicted within 60 days after the defendant has appeared in superior court to answer to the charge. If no other charges remain pending in the case after dismissal the court shall vacate all bail orders.]**

## APPENDIX F

Amend New Hampshire Rule of Criminal Procedure 12(b) (“Discovery – Superior Court”) as follows (proposed deletions are in ~~strikethrough~~ format; additions are in **[bold and in brackets]**):

(b) *Superior Court*. The following discovery and scheduling provisions shall apply to all criminal cases in the superior court unless otherwise ordered by the presiding justice.

(1) *Pretrial Disclosure by the State*. If a case is initiated in superior court, the State shall provide the materials specified in RSA 592-B:6. In addition, within forty-five calendar days after the entry of a not guilty plea by the defendant, the State shall provide the defendant with the materials specified below. If a case is originated in circuit court-district division, within ten calendar days after the entry of a not-guilty plea by the defendant, the State shall provide the defendant with the materials specified below.

(A) A copy of all statements, written or oral, signed or unsigned, made by the defendant to any law enforcement officer or the officer’s agent which are intended for use by the State as evidence at trial or at a pretrial evidentiary hearing.

(B) Copies of all police reports; statements of witnesses; **[and to the extent the State is in possession of such materials,]** results or reports of physical or mental examinations, scientific tests or experiments, or any other reports or statements of experts, as well as a summary of each expert's qualifications, with the exception of drug testing results from the New Hampshire State Forensic Laboratory, which shall be provided within ten court days from the date of indictment**[, or such other date as may be authorized in the dispositional conference order]**.

(C) The defendant's prior criminal record.

(D) Copies of or access to all books, papers, documents, photographs, tangible objects, buildings or places that are intended for use by the State as evidence at trial or at a pretrial evidentiary hearing.

(E) All exculpatory materials required to be disclosed pursuant to the doctrine of *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, including *State v. Laurie*, 139 N.H. 325 (1995).

(F) Notification of the State's intention to offer at trial pursuant to Rule of Evidence 404(b) evidence of other crimes, wrongs, or acts committed by the defendant, as well as copies of or access to all statements, reports or other materials that the State will rely on to prove the commission of such other crimes, wrongs or acts.

(2) *Pretrial Disclosure by the Defendant*

Not less than sixty calendar days prior to jury selection if the case originated in Superior Court or not less than thirty calendar days prior to jury selection if the case originated in Circuit Court-District Division or, in the case of a pretrial

evidentiary hearing, not less than three calendar days prior to such hearing, the defendant shall provide the State with copies of or access to ~~(i) all books, papers, documents, photographs, tangible objects, buildings or places which are intended for use by the defendant as evidence at the trial or hearing[.] and (ii) all results or reports of physical or mental examinations, scientific tests or experiments or other reports or statements prepared or conducted by experts whom the defendant anticipates calling as a witness at the trial or hearing, as well as a summary of each such expert's qualifications.~~

(3) *Dispositional Conferences.* The purpose of the dispositional conference is to facilitate meaningful discussion and early resolution of cases.

(A) Unless the State does not intend to make a plea offer, in which case it shall so advise the defendant within the time limits specified herein, the State shall provide a written offer for a negotiated plea, in compliance with the Victim's Rights statute, RSA 21-M:8-k, to the defense, no less than fourteen (14) days prior to the dispositional conference. The defense shall respond to the State's offer no later than ten (10) days after receipt.

(B) The judge shall have broad discretion in the conduct of the dispositional conference.

(C) The State, defendant, and defendant's counsel, if any, shall appear at the dispositional conference. The State and the defendant shall be represented at the dispositional conference by an attorney who has full knowledge of the facts and the ability to negotiate a resolution of the case. Counsel shall be prepared to discuss the impact of known charges being brought against the defendant in other jurisdictions, if any.

(D) If a plea agreement is not reached at the dispositional conference, the matter shall be set for trial. The court may also schedule hearings on any motions discussed during the dispositional conference. Counsel shall be prepared to discuss their availability for trial or hearing as scheduled by the court.

(E) Evidence of conduct or statements made during the dispositional conference about the facts and/or merits of the case is not admissible as evidence at a hearing or trial.

**[(F) If the case may involve expert testimony from either party, both sides shall be prepared to address disclosure deadlines for: all results or reports of physical or mental examinations, scientific tests or experiments or other reports or statements prepared or conducted by the expert witness; a summary of each such expert's qualifications; rebuttal expert reports and qualifications; and expert depositions. Except for good cause shown, the failure of either party to set expert witness disclosure deadlines at the dispositional conference shall be grounds to exclude the expert from testifying at trial.]**

(4) *Exchange of Information Concerning Trial Witnesses*

(A) Not less than twenty calendar days prior to the final pretrial conference or, in the case of a pretrial evidentiary hearing, not less than three calendar days prior to such hearing, the State shall provide the defendant with a list of the names of the witnesses it anticipates calling at the trial or hearing. Contemporaneously with the furnishing of such witness list and to the extent not

already provided pursuant to paragraph (b)(1) of this rule, the State shall provide the defendant with all statements of witnesses the State anticipates calling at the trial or hearing. At this same time, the State also shall furnish the defendant with the results of New Hampshire criminal record checks for all of the State's trial or hearing witnesses other than those witnesses who are experts or law enforcement officers.

~~For each expert witness included on the list of witnesses, the State shall provide a brief summary of the expert's education and relevant experience, state the subject matter on which the expert is expected to testify, state a summary of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and provide a copy of any expert report relating to such expert.~~

(B) Not later than ten calendar days before the final pretrial conference or, in the case of a pretrial evidentiary hearing, not less than two calendar days prior to such hearing, the defendant shall provide the State with a list of the names of the witnesses the defendant anticipates calling at the trial or hearing. Contemporaneously with the furnishing of such witness list, the defendant shall provide the State with all statements of witnesses the defendant anticipates calling at the trial or hearing. Notwithstanding the preceding sentence, this rule does not require the defendant to provide the State with copies of or access to statements of the defendant.

~~For each expert witness included on the list of witnesses, the defendant shall provide a brief summary of the expert's education and relevant experience, state the subject matter on which the expert is expected to testify, state a summary of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and provide a copy of any expert report relating to such expert.~~

(C) For purposes of this rule, a "statement" of a witness means:

(i) a written statement signed or otherwise adopted or approved by the witness;

(ii) a stenographic, mechanical, electrical or other recording, or a transcript thereof, which is a substantially verbatim recital of an oral statement made by the witness and recorded contemporaneously with the making of such oral statement; and

(iii) the substance of an oral statement made by the witness and memorialized or summarized within any notes, reports, or other writings or recordings, except that, in the case of notes personally prepared by the attorney representing the State or the defendant at trial, such notes do not constitute a "statement" unless they have been adopted or approved by the witness or by a third person who was present when the oral statement memorialized or summarized within the notes was made.

(5) *Protection of Information not Subject to Disclosure.* To the extent either party contends that a particular statement of a witness otherwise subject to discovery under this rule contains information concerning the mental impressions, theories, legal conclusions or trial or hearing strategy of counsel, or contains information that is not pertinent to the anticipated testimony of the witness on direct or cross

examination, that party shall, at or before the time disclosure hereunder is required, submit to the opposing party a proposed redacted copy of the statement deleting the information which the party contends should not be disclosed, together with (A) notification that the statement or report in question has been redacted and (B) (without disclosing the contents of the redacted portions) a general statement of the basis for the redactions. If the opposing party is not satisfied with the redacted version of the statement so provided, the party claiming the right to prevent disclosure of the redacted material shall submit to the court for in camera review a complete copy of the statement at issue as well as the proposed redacted version, along with a memorandum of law detailing the grounds for nondisclosure.

(6) *Motions Seeking Additional Discovery.* Subject to the provisions of paragraph (b)(8), the discovery mandated by paragraphs (b)(1), (b)(2), and (b)(4) of this rule shall be provided as a matter of course and without the need for making formal request or filing a motion for the same. No motion seeking discovery of any of the materials required to be disclosed by paragraphs (b)(1), (b)(2) or (b)(4) of this rule shall be accepted for filing by the clerk of court unless said motion contains a specific recitation of: (A) the particular discovery materials sought by the motion; (B) the efforts which the movant has made to obtain said materials from the opposing party without the need for filing a motion; and (C) the reasons, if any, given by the opposing party for refusing to provide such materials. Nonetheless, this rule does not preclude any party from filing motions to obtain additional discovery. Except with respect to witnesses or information first disclosed pursuant to paragraph (b)(4), all motions seeking additional discovery, including motions for a bill of particulars and for depositions, shall be filed within sixty calendar days if the case originated in Superior Court, or within forty-five calendar days if the case originated in Circuit Court – District Division after the defendant enters a plea of not guilty. Motions for additional discovery or depositions with respect to trial witnesses first disclosed pursuant to paragraph (b)(4) shall be filed no later than seven calendar days after such disclosure occurs.

(7) *Continuing Duty to Disclose.* The parties are under a continuing obligation to supplement their discovery responses on a timely basis as additional materials covered by this rule are generated or as a party learns that discovery previously provided is incomplete, inaccurate, or misleading.

(8) *Protective and Modifying Orders.* Upon a sufficient showing of good cause, the court may at any time order that discovery required hereunder be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing of good cause, in whole or in part, in the form of an ex parte written submission to be reviewed by the court in camera. If the court enters an order granting relief following such an ex parte showing, the written submission made by the party shall be sealed and preserved in the records of the court to be made available to the Supreme Court in the event of an appeal.

(9) *Sanctions for Failure to Comply.* If at any time during the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may take such action as it deems just under the circumstances,

including, but not limited to: (A) ordering the party to provide the discovery not previously provided; (B) granting a continuance of the trial or hearing; (C) prohibiting the party from introducing the evidence not disclosed; and (D) assessing costs and attorney's fees against the party or counsel who has violated the terms of this rule.