

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT OF NEW HAMPSHIRE

O R D E R

R-2022-0003, In re August 1, 2022 Report of the Advisory Committee on Rules

The New Hampshire Supreme Court Advisory Committee on Rules (committee) has reported proposed rule amendments to the New Hampshire Supreme Court with a recommendation that they be adopted. On or before **November 1, 2022**, members of the bench, bar, legislature, executive branch or public may file with the clerk of the supreme court comments on any of the proposed rule amendments.

In accordance with Rules 3 and 4 of the Supplemental Rules of the Supreme Court of New Hampshire for Electronic Filing, comments should be submitted through the supreme court's electronic filing (e-filing) system into existing case no. **R-2022-0003**, using "Rules Docket Entries" as the Filing Type and "Comment on Rule" as the Filing Subtype. The address of the supreme court's e-filing system is: <https://ctefile.nhecourt.us/login>. The e-filing system is also accessible through the Electronic Services page of the New Hampshire Judicial Branch website: <https://www.courts.nh.gov/resources/electronic-services/supreme-court/attorneys-self-represented-parties-and-other-non>. Prior to registering with the e-filing system, attorneys should review the Quick Guide – Registering as an Attorney E-Filer; nonlawyers should review the Quick

Guide – Registering as a Nonlawyer E-Filer. The Quick Guides are available on the Electronic Services page.

Persons who are unable to submit their comments electronically may mail or deliver them to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The language of the proposed rules changes and background regarding the proposals may be found in the August 1, 2022 Advisory Committee on Rules Report, which is available at:

<https://www.courts.nh.gov/resources/committees/advisory-committee-rules/reports-court>.

Copies of the August 1, 2022 Advisory Committee on Rules Report are also available upon request submitted to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The current rules of the New Hampshire state courts are available on the Internet at: <https://www.courts.nh.gov/resources/court-rules>.

The New Hampshire Supreme Court is requesting comment on recommendations to amend the following rules:

**I. New Hampshire Rule of Professional Conduct 1.0**

This proposal would define “primary purpose,” a term that is used in Rule 8.4 of the Rules of Professional Conduct.

The language of the proposed amendment is set forth in Appendix A.

## **II. New Hampshire Rule of Criminal Procedure 12 – Discovery; State’s Obligation to Provide Copies of Defendant’s Criminal Record**

This proposal would require the State to provide a copy of the defendant’s criminal record to the defendant or, if the defendant is represented, to counsel for the defendant, in advance of the initial appearance or bail hearing, if the State intends to rely on the defendant’s criminal record at the initial appearance or bail hearing. The proposal addresses those cases in which the State, for good cause, is unable to provide a copy of the record and also provides that, if the State fails to provide the record without demonstrating good cause, it may be prohibited from referencing the record at the initial appearance or bail hearing. “Good cause” is defined to include “the State’s inability to transmit the criminal record without violating state or federal law.”

The language of the proposed amendment is set forth in Appendix B.

## **III. New Hampshire Rule of Criminal Procedure 12 – Discovery; Evidence of Other Crimes, Wrongs or Acts**

This proposal establishes separate requirements for the introduction of Rule 404(b) evidence in Circuit Court cases and in Superior Court cases.

The proposal would not change the current deadline of 14 days before trial in the Circuit Court for notice of intent to introduce Rule 404(b) evidence. It would establish that notice requirements apply to both parties and that notice must be in writing and must articulate the permitted purpose for which the proponent intends to offer the evidence and the reasoning that supports that purpose. The proponent must provide the opposing party with access to all materials the proponent will rely on to prove the commission of the alleged other crimes, wrongs, or acts.

In the Superior Court, the proposal sets deadlines in relation to jury selection and is structured with the intent to provide sufficient notice so that issues related to Rule 404(b) evidence are resolved prior to the final pretrial conference.

The language of the proposed amendments is set forth in Appendix C.

## **IV. Supreme Court Rule 40- Procedural Rules of Committee on Judicial Conduct: Deferred Discipline**

The proposed amendments would allow the Judicial Conduct Committee to vote to hold a matter in abeyance at any stage of the proceedings for “good cause,” and would add language to include as “good cause” a deferral to

provide an opportunity for the judge to submit to a confidential evaluation under the supervision of the New Hampshire Lawyers Assistance Program.

The language of the proposed amendments is set forth in Appendix D.

**V. Supreme Court Rule 37(8)**

This proposed amendment would give the Attorney Discipline Office reciprocal subpoena power, allowing it to issue a subpoena in this jurisdiction when a subpoena has been duly approved under the law of another disciplinary jurisdiction.

The language of the proposed rule change is set forth in Appendix E.

**VI. Supreme Court Rule 37(14)(b)(2)(B)**

This proposed amendment addresses the procedure to be followed by attorneys who seek reinstatement following a suspension of more than six months and requires that any applicant seeking reinstatement take and pass the Multistate Professional Responsibility Examination (MPRE) within one year of the filing of the petition for reinstatement.

The language of this proposed rule change is set forth in Appendix F.

**VII. Supreme Court Rule 37(20)**

This proposed amendment would clarify which records of the Attorney Discipline Office are public, authorize members of the public to obtain copies of public records at their expense, and permit disclosure of relevant confidential information to the New Hampshire Public Protection Fund.

This language of this proposed amendment is set forth in Appendix G.

**VIII. Supreme Court Rule 37(21)**

This proposal would repeal Rule 37(21) which the Attorney Discipline Office believes is no longer necessary because it applies to matters “initiated on or before April 1, 2000.”

The language of the current rule is set forth in Appendix H.

**IX. Supreme Court Rule 37A(III)(b)(5)(F)**

This proposal would amend Rule 37A(III)(b)(5)(F) to allow the Attorney Discipline Office to move for conditional default against respondents who fail to timely furnish discovery.

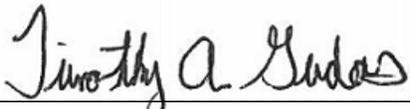
The language of the proposed amendment is set forth in Appendix I.

**X. Supreme Court Rule 37A(V)**

This proposed amendment would allow attorneys to request annulments, not only of reprimands, but also of public censures.

The language of this proposed amendment is set forth in Appendix J.

Date: September 2, 2022

ATTEST:   
\_\_\_\_\_  
Timothy A. Gudas, Clerk  
Supreme Court of New Hampshire

## APPENDIX A

Amend New Hampshire Rule of Professional Conduct 1.0 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

**[(h) "Primary" means the principal, dominant or leading basis for the conduct engaged in, which may be inferred from the circumstances, without regard to any potential or actual secondary purposes for or effects of such conduct. Primary does not mean the sole or only reason for the conduct.]**

~~(h)~~ [(i)] "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

~~(i)~~ [(j)] "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

~~(j)~~ [(k)] "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

~~(k)~~ [(l)] "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

~~(l)~~ [(m)] "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

~~(m)~~ [(n)] "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

~~(n)~~ [(o)] "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

## APPENDIX B

Amend New Hampshire Rule of Criminal Procedure 12 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

### **Rule 12. Discovery**

(a) *Circuit Court – District Division*

#### **[(1) Disclosure of Defendant’s Criminal Record at Initial Appearance or Bail Hearing**

**If the State intends to rely on the defendant’s criminal record at an initial appearance or any bail hearing, the prosecutor shall provide a copy of defendant’s criminal record to defendant or, if defendant is represented, to counsel for the defendant, in advance of the initial appearance or bail hearing. The prosecutor shall exercise due diligence in complying with this disclosure obligation.**

**If the State, for good cause, is unable to provide a copy of the criminal record before the initial appearance or bail hearing, the defendant or his counsel may elect to:**

**(A) Continue the initial appearance or bail hearing to the next available date after disclosure of the criminal record; or**

**(B) Proceed with the initial appearance or bail hearing subject to defendant’s right to a further bail hearing, upon request, after disclosure of the criminal record.**

**If the State fails to provide said criminal record as described herein without showing good cause therefor, the State may be prohibited from referencing any such record at the initial appearance or bail hearing.**

**For purposes of this Rule, a “criminal record” is a written report of defendant’s criminal history generated by a governmental authority obligated to retain and produce such records.**

**“Good cause” under this Rule may include the State’s inability to transmit the criminal record without violating state or federal law.**

**Except for initial appearances and bail hearings, discovery of a defendant’s criminal record shall be governed by subsection (a)(3)(D) of this Rule.]**

~~(1)~~ **[(2)]** At the defendant's first appearance before the court, the court shall inform the defendant of his or her ability to obtain discovery from the State. Upon request, in misdemeanor and violation-level cases, the prosecuting attorney shall furnish the defendant with the following:

(A) A copy of records of statements or confessions, signed or unsigned, by the defendant, to any law enforcement officer or agent;

(B) A list of any tangible objects, papers, documents or books obtained from or belonging to the defendant; and

(C) A statement as to whether or not the foregoing evidence, or any part thereof, will be offered at the trial.

~~(2)~~ **[(3)]** Not less than fourteen days prior to trial, the State shall provide the defendant with:

(A) a list of names of witnesses, including experts and reports, and a list of any lab reports, with copies thereof, it anticipates introducing at trial;

(B) 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); ~~and~~

(C) 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-~~]; and~~

**(D) A copy of the defendant's criminal record.]**

~~(3)~~ **[(4)]** Not less than seven days prior to trial, the defendant shall provide the State with a list of names of witnesses, including experts and reports, and a list of any lab reports, with copies thereof, the defendant anticipates introducing at trial.

(4) **[(5)]** *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;

(D) assessing the costs and attorneys fees against the party or counsel who has violated the terms of this rule.

(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) *Disclosure of Defendant's Criminal Record at Initial Appearance or Bail Hearing***

**If the State intends to rely on the Defendant's criminal record at an initial appearance or any bail hearing, the prosecutor shall provide a copy of Defendant's criminal record to Defendant or, if Defendant is represented, to counsel for the Defendant, in advance of the initial appearance or bail hearing. The prosecutor shall exercise due diligence in complying with this disclosure obligation.**

**If the State, for good cause, is unable to provide a copy of the criminal record before the initial appearance or bail hearing, the Defendant or his counsel may elect to:**

**(A) Continue the initial appearance or bail hearing to the next available date after disclosure of the criminal record; or**

**(B) Proceed with the initial appearance or bail hearing subject to Defendant's right to a further bail hearing, upon request, after disclosure of the criminal record.**

**If the State fails to provide said criminal record as described herein without showing good cause therefor, the State may be prohibited from referencing any such record at the initial appearance or bail hearing.**

**For purposes of this Rule, a "criminal record" is a written report of Defendant's criminal history generated by a governmental authority obligated to retain and produce such records.**

**"Good cause" under this Rule may include the State's inability to transmit the criminal record without violating state or federal law.**

**Except for initial appearances and bail hearings, discovery of a Defendant's criminal record shall be governed by subsection (b)(2)(C) of this Rule.]**

~~(1)~~ **[(2)]** *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)~~ **[(3)]** *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 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.

~~(3)~~ **[(4)]** *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 may be grounds to exclude the expert from testifying at trial.

#### ~~(4)~~ **[(5)]** *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)~~ **[(b)(2)]** 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.

(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.

(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)~~ **[(6)]** *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)~~ **[(7)]** *Motions Seeking Additional Discovery.* Subject to the provisions of paragraph ~~(b)(8)~~ **[(b)(9)]**, the discovery mandated by paragraphs ~~(b)(1), (b)(2), and (b)(4)~~ **[(b)(2), (b)(3), and (b)(5)]** 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)~~ **[(b)(2), (b)(3) or (b)(5)]** 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)~~ **[(b)(5)]**, 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)~~ **[(b)(5)]** shall be filed no later than seven calendar days after such disclosure occurs.

~~(7)~~ **[(8)]** *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)~~ **[(9)]** *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)~~ **[(10)]** *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.

## APPENDIX C

Amend Rule 12 of the New Hampshire Rules of Criminal Procedure as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

### Rule 12. Discovery

#### (a) Circuit Court-District Division

(1) At the defendant's first appearance before the court, the court shall inform the defendant of his or her ability to obtain discovery from the State. Upon request, in misdemeanor and violation-level cases, the prosecuting attorney shall furnish the defendant with the following:

(A) A copy of records of statements or confessions, signed or unsigned, by the defendant, to any law enforcement officer or agent;

(B) A list of any tangible objects, papers, documents or books obtained from or belonging to the defendant; and

(C) A statement as to whether or not the foregoing evidence, or any part thereof, will be offered at the trial.

(2) Not less than fourteen days prior to trial, the State shall provide the defendant with:

(A) a list of names of witnesses, including experts and reports, and a list of any lab reports, with copies thereof, it anticipates introducing at trial; **[and]**

(B) 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)[.]~~;~~ and

~~(C) 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.~~

(3) Not less than seven days prior to trial, the defendant shall provide the State with a list of names of witnesses, including experts and reports, and a list of any lab reports, with copies thereof, the defendant anticipates introducing at trial.

**[(4) Except for good cause shown, not less than fourteen days prior to trial, a party seeking to offer evidence of other crimes, wrongs, or acts**

**pursuant to Rule of Evidence 404(b), must provide the other party written notice of its intent to offer such evidence. The notice must articulate the permitted purpose for which the proponent intends to offer the evidence and the reasoning that supports the purpose. The party shall also provide access to all statements, reports or other materials that the proponent of Rule 404(b) evidence will rely on to prove the commission of such other crimes, wrongs or acts.]**

~~(4)~~ **[(5)]** *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;

(D) assessing the costs and attorneys fees against the party or counsel who has violated the terms of this rule.

(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 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.

(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 may be grounds to exclude the expert from testifying at trial.

(4) *Exchange of Information Concerning Trial Witnesses*

**[(A) Except for good cause shown,**

**(i) not less than 60 days prior to jury selection, a party seeking to offer evidence of other crimes, wrongs, or acts pursuant to Rule of Evidence 404(b), must provide the other party written notice of its intent to offer such evidence. The notice must articulate the permitted purpose for which the proponent intends to offer the evidence and the reasoning that supports the purpose. The party shall also provide access to all statements, reports or other materials that the proponent of Rule 404(b) evidence will rely on to prove the commission of such other crimes, wrongs or acts.**

**(ii) not less than 45 days prior to jury selection, a party seeking to offer evidence of other crimes, wrongs, or acts pursuant to Rule of Evidence 404(b), must file a motion to admit such evidence. The motion must identify the evidence and articulate the permitted purpose for which the proponent intends to offer the evidence and the reasoning that supports the purpose.**

**(iii) not less than 30 days prior to jury selection, a party shall file a motion to exclude evidence it believes constitutes Rule 404(b) evidence if no motion to admit the evidence has been filed by the opposing party. A motion to exclude filed pursuant to this provision must identify with specificity the evidence the party seeks to be excluded under Rule 404(b).]**

~~(A)~~ **[(B)]** 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.

~~(B)~~ **[(C)]** 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.

~~(C)~~ **[(D)]** 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.

## APPENDIX D

Amend New Hampshire Supreme Court Rule 40(5)(c)(6) as follows (new material is in **[bold and brackets]**; deleted material is in ~~striketrough~~ format):

(6) At any stage of the proceedings, the committee may, for good cause, vote to hold in abeyance any matter pending before it for such period of time as it deems appropriate.

**[Under this provision, “good cause” may include as the committee deems appropriate providing an opportunity for the judge to undergo confidential evaluation under the supervision of the New Hampshire Lawyers Assistance Program (NH LAP) and to participate in professional treatment, counseling, after-care, and/or other assistance program recommended in the evaluation, subject to supervision by NH LAP and any other conditions established by the committee.]**

The committee shall provide the Judge and Reporter timely notice of a decision to stay the proceedings, provided that, for good cause, the committee may vote to defer notification to the Judge or Reporter for such a period of time as it deems necessary.

Amend New Hampshire Supreme Court Rule 40(8)(f) as follows (new material is in **[bold and brackets]**; deleted material is in ~~striketrough~~ format):

(f) During the course or upon completion of an investigation, or if the committee determines that no investigation is necessary, the committee may take the following actions:

(1) If the alleged conduct does not constitute a violation of the Code of Judicial Conduct, the complaint shall be dismissed. If the committee believes that the judge acted in a manner which involved behavior requiring attention a caution may also be issued, with or without the consent of the judge.

(2) The matter may be resolved without formal discipline with the consent of the judge. Such resolution may take the form of a written reprimand, the requirement of remedial action, or the imposition of conditions, or any combination thereof. The committee may provide for monitoring or review by an administrative judge or other suitable person

of any remedial action it may require or conditions it may impose in connection with a resolution without formal discipline.

(3) If the matter has not been dismissed or resolved without formal discipline, the committee shall determine whether there is probable cause to warrant formal proceedings. If the committee does not determine that the investigation has disclosed probable cause to warrant formal proceedings, the committee shall dismiss the complaint or terminate the inquiry. If the committee believes that the judge acted in a manner which involved behavior requiring attention a caution may also be issued, with or without the consent of the judge.

(4) The judge and reporter (if any) shall be notified of any action taken. Prior to the issuance of any caution, the judge shall be afforded the opportunity to appear before the committee or file a supplemental response, whichever the judge elects. Upon receipt of a written request from a reporter, a copy of any supplemental response shall be provided to the reporter.

**[(5) (A) If the matter has not been dismissed or resolved without formal discipline and the committee determines that (1) there is probable cause to believe that misconduct, as specified in the complaint, occurred; and (2) that any misconduct was the result of substance misuse or mental health disorder; and (3) that the conduct is not so serious in nature as to warrant formal discipline by the supreme court, the committee and the judge may agree that the judge undergo confidential evaluation under the supervision of the New Hampshire Lawyers Assistance Program (“NH LAP”). Should the evaluation reveal the existence of a condition for which treatment is appropriate, the committee may thereafter defer resolution of the complaint. A deferred resolution would require the judge to participate in professional treatment, counseling, after-care, and/or other assistance program recommended in the evaluation and subject to supervision by NH LAP and any other conditions established by the committee.**

**A deferral agreement must include the contemplated resolution of the complaint if the judge successfully complies with the terms of the agreement. At the end of the deferral period the judge would bear the burden to demonstrate that he or she has successfully complied with the terms of the deferral. Upon successful completion of the deferral agreement, the complaint would be resolved upon the terms set forth in the deferral agreement. If the judge does not successfully complete the terms of the deferral, the committee may proceed upon the complaint. Additionally, the committee may bring forward the complaint at any**

**time prior to successful completion of the terms of deferral upon determining that the judge is not participating in professional treatment, counseling, after-care, and/or other assistance program recommended in the evaluation or failing to comply with other conditions established by the committee. Prior to the complaint being brought forward, however, the judge shall be afforded an opportunity to appear before the committee to demonstrate that he or she has successfully complied with the terms of the deferral. The committee may also initiate an inquiry or complaint based on any new rule violations which may have occurred during the deferral period.**

**Every deferral agreement shall be reduced to writing, shall provide for periodic reporting by NH LAP to the committee regarding the judge's compliance or noncompliance, and shall be signed by the judge and the chair of the committee. A copy of the agreement will be given to the judge; the original shall be maintained in the committee's file.**

**(B) All statements made by or for a judge in the course of discussions or negotiations with the committee regarding referral to NH LAP or in the course of his or her involvement in or assessment supervised by NH LAP, including statements made in connection with any evaluation, treatment, counseling, or after-care, shall be privileged and inadmissible as either substantive evidence or impeachment evidence against the judge.**

**(C) The committee may vote to defer notification to the Reporter of deferred resolution for such period of time as it deems necessary. Notwithstanding any other provisions of Rule 40(3) to the contrary, if the committee resolves a report or complaint by way of a deferral agreement, the committee may enter a protective order pursuant to Rule 40(3)(g) sealing any parts of the record that would otherwise be public.]**

## APPENDIX E

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

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

(a) At any stage prior to the filing of a notice of charges, attorneys from the attorney discipline office 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. Notice of the issuance of any such subpoena shall be served on the opposing party.

**[(c) Whenever a subpoena is sought in this state pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, and where the issuance of a subpoena has been duly approved under the law of the other jurisdiction, attorneys from the attorney discipline office may issue a subpoena as provided in this section to compel the attendance of witnesses and production of documents.]**

### ~~(c)~~ **[(d)] *Access to Court Records***

(1) **General Rule.** At any stage, attorneys from the attorney discipline office may submit a written request seeking access to records relevant to its investigation into a pending disciplinary matter to a clerk of court. If the records requested by the attorney discipline office do not include any confidential documents or confidential information, the clerk shall provide prompt and complete access to the records, and if requested, copies of the relevant documents. If the records requested by the attorney discipline office include any confidential documents or confidential information, the attorney discipline office shall follow the procedures set forth in section (2).

### (2) ***Access to Confidential Documents and Confidential Information.***

(A) If the attorney discipline office seeks access to confidential or sealed records, the attorney discipline office need not file a motion to intervene, but shall:

- (i) file a written request to gain access to the records explaining how the records are relevant in a pending disciplinary action; and
- (ii) file a motion to seal along with the written request.

(B) The court shall promptly provide to all of the parties in the underlying court action notice and copies of the written request and motion to seal.

(C) The parties in the underlying court action shall have 10 days from the date of the notice to file a written objection to the disclosure of the requested materials.

(D) If none of the parties in the underlying court action object to the disclosure of the requested materials within 10 days of the filing of the written request and if the production of records pursuant to this rule does not contravene any statutes governing the production of confidential materials, the court may disclose the materials to the attorney discipline office. If none of the parties object but the court nevertheless is disinclined to release the records to the attorney discipline office, the court shall hold a non-public hearing, at which the attorney discipline office must demonstrate good cause for access to the records.

(E) If one or more parties in the underlying court action object to the disclosure of the requested materials, the court shall promptly schedule a non-public hearing, at which the attorney discipline office must demonstrate good cause for access to the records.

(F) **Protective Orders.** Whenever the court discloses records pursuant to this rule, the court shall issue a protective order governing the disclosure and use of the records. The protective order shall provide that:

(i) the attorney discipline office shall not disclose such records to any person except as necessary in connection with the prosecution or defense of the disciplinary matter;

(ii) any person to whom disclosure is made shall acknowledge in writing prior to the disclosure that he or she has been made aware of and agrees to comply with the protective order;

(iii) at the conclusion of the disciplinary proceeding, each party shall return to the attorney discipline office that party's copy of the records, whereupon the attorney discipline office shall destroy said records; and

(iv) thereafter, the attorney discipline office shall submit an affidavit to the court stating that said records have been destroyed. The Court may modify the foregoing terms of a protective order, or impose such additional terms as may be necessary in a particular case.

(G) Any and all confidential documents and confidential information obtained by the attorney discipline office pursuant to this rule shall be subject to a protective order, as set forth in section (F) of this rule, and shall be available to the respondent in a disciplinary matter, to the adjudicatory bodies of the attorney discipline system, and to the attorney

discipline office's and respondent's potential or actual witnesses, including those witnesses designated as experts, as part of formal and informal disciplinary proceedings. To the extent confidential documents or confidential information obtained pursuant to this rule are utilized during a disciplinary hearing or other proceeding, such hearing or proceeding shall be closed to the public during any disclosure of, testimony or discussion involving the confidential document or confidential information. Such confidential records shall otherwise remain sealed and shall not, absent further court order, become part of the public file maintained by the attorney discipline office.

## APPENDIX F

Amend New Hampshire Supreme Court Rule 37(14)(b)(2)(B) as follows (new material is in **bold and brackets**; deleted material is in strikethrough format):

(B) certify that the petitioner has taken the Multistate Professional Responsibility Examination after entry of the order of suspension **[and within one year of the filing of the petition for reinstatement]**, and has received a passing grade as established by the board of bar examiners.

## APPENDIX G

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

**(20) Confidentiality and Public Access** —~~Matters Initiated On Or After April 1, 2000:~~

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

**[(a) The Attorney Discipline Office shall maintain a public file relating to a grievance. The public file shall not include the work product, internal memoranda, and deliberations of the Attorney Discipline Office, the Hearings Committee or the Professional Conduct Committee. The public file shall consist of:**

**(1) for non-docketed matters, the grievance, voluntary response(s) from the respondent attorney, if any, the non-docket letter, the grievant's request for reconsideration and response(s) thereto, if any, and any written decision of the Complaint Screening Committee;**

**(2) for docketed matters that are not referred to disciplinary counsel for formal proceedings, the complaint, mandatory response(s) from the respondent attorney, complainant's or respondent's request for reconsideration, if any, and any response(s) thereto, and any written decision of the Complaint Screening Committee; and**

**(3) for matters that result in formal proceedings, the documents referenced in the index of record maintained by Clerk of the Hearings and Professional Conduct Committees.]**

~~(a)~~ **[(b)]** *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.

(2) ~~All records and materials~~ **[The public file]** 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 **[and copying at the expense of the member of the public seeking such copies]** ~~(other than work product, internal memoranda, and deliberations)~~ beginning 30 days 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. The records and material shall be maintained at the attorney discipline office for two (2) years from the date of the original filing. After this two-year period, the records shall be destroyed.

(3) *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.

~~(b) [(c)]~~ *Grievance Docketed as Complaint:* ~~All records and proceedings~~ **[The public file]** relating to a complaint docketed by the attorney discipline system shall be available for public inspection **[and copying at the expense of the member of the public seeking such copies]** ~~(other than work product, internal memoranda, and deliberations)~~ 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 **[attorney discipline office or 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) [(d)]~~ *Records may be destroyed after:*

(1) three years of the date of notice of dismissal; or

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

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

~~(d) [(e)]~~ *Proceedings for Reinstatement or Readmission:* When an attorney seeks reinstatement or readmission pursuant to section (14), **[the Attorney Discipline Office shall maintain a public file relating to such reinstatement or readmission. The public file shall not include the work product, internal memoranda, and deliberations of the Attorney Discipline Office, the Hearings Committee or the Professional Conduct Committee. The public file shall consist of the documents referenced in the index of record maintained by Clerk of the Hearings and Professional Conduct Committees.]** ~~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).~~

~~(e)~~ **[(f)]** *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.

~~(f)~~ **[(g)]** *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.

~~(g)~~ **[(h)]** *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, the attorney, or other persons. In order to protect the legitimate privacy interests of such persons, 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.

~~(h)~~ **[(i)]** *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, **[to the New Hampshire Public Protection Fund,]** 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 **[the New Hampshire Public Protection Fund or to]** law enforcement agencies authorized to investigate and prosecute violations of the criminal law.

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

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

~~(l)~~ **[(l)]** *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.

~~(m)~~ **[(m)]** *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.

~~(n)~~ **[(n)]** *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.

~~(o)~~ **[(o)]** With respect to records to be made available for public inspection under this Rule or Rule 37A, final disciplinary decisions of the professional conduct committee and the supreme 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 New Hampshire Supreme Court Rule 37(21) and (22) as follows (new material is in **[bold and brackets]**; deleted material is in strikethrough format):

### ~~(21)~~ **Confidentiality and Public Access—Matters Initiated Before April 1, 2000:**

~~Applicability Note: Section 21 shall apply to records and proceedings in matters initiated before April 1, 2000.~~

~~All records and proceedings involving allegations of misconduct by an attorney shall be confidential and shall not be disclosed except:~~

~~(a) 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~~

~~(b) 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~~

~~(c) 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 (a) and (b); or~~

~~(d) When the respondent attorney, prior to the issuance of a notice of charges as prescribed in subsection (a), 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~~

~~(e) 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.~~

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

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

## APPENDIX I

Amend New Hampshire Supreme Court Rule 37A(III)(b)(5)(F) as follows (new material is in **[bold and brackets]**; deleted material is in strikethrough format):

(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 Attorney Discipline Office may move for conditional default if a Respondent fails to timely furnish discovery or appear at a duly noticed deposition, by complying with the procedure for conditional default as set forth in the Rules for Superior Courts.]** 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.

## APPENDIX J

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

(a) *When Annulment May Be Requested.*

A person who has been issued an admonition (under prior rules), or reprimand may at any time after five (5) years from the date of the admonition or reprimand apply to the professional conduct committee for an order to annul the admonition or reprimand. A person against whom a complaint has been filed which has resulted in a finding of no misconduct, may also apply to the professional conduct committee for an order to annul the record at any time after five (5) years from the date of the finding of no misconduct. **[A person who has been issued a public censure may at any time after ten (10) years from the date of the public censure apply to the professional conduct committee for an order to annul the public censure.]**