

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE
ORDER

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

I. Supreme Court Rule 53.1

(This amendment allows active status members of the New Hampshire Bar Association who volunteer for assigned pro bono cases through 603 Legal Aid, NH Legal Assistance, and the Disabilities Rights Center to earn up to 360 general minutes of CLE credit annually at a rate of sixty CLE credit minutes for every 300 billable-equivalent minutes of pro bono representation provided to a client. CLE Ethics credits cannot be earned from pro bono service.)

1. Amend Supreme Court Rule 53.1 as set forth in Appendix A.

II. Supreme Court Rule 53.2(A)(2)

(This amendment exempts from CLE requirements any lawyer who holds the position of judicial referee, and limits the existing exemption for lawyers who occupy the positions of full-time judge, full-time magistrate, full-time marital master, judicial referee, state reporter, full-time supreme, superior and circuit court clerks and deputy clerks to those who occupy those positions in the State of New Hampshire Judicial System for any time during the reporting year.)

1. Amend Supreme Court Rule 53.2(A)(2) as set forth in Appendix A.

III. Supreme Court Rule 53.2(A)(3)

(This amendment exempts from CLE requirements any lawyer who holds the position of part-time judge, part-time magistrate, part-time marital master, part-time judicial referee, part-time supreme, superior and circuit court clerks and deputy clerks who occupy those positions in the State of New Hampshire Judicial

System for any time during the reporting year, unless such individual was in the active practice of law at any time during the reporting year.)

1. Amend Supreme Court Rule 53.2(A)(3) as set forth in Appendix A.

IV. Supreme Court Rule 53.2(A)(4)

(This amendment exempts from the CLE certification requirement NHBA Limited Active Status lawyers.)

1. Amend Supreme Court Rule 53.2(A)(4) as set forth in Appendix A.

V. Supreme Court Rule 53.2(A)(5)

(This amendment exempts from the certification requirement those lawyers who were first admitted to New Hampshire practice after December 1. Prior to this amendment, newly-admitted lawyers have been exempt from the CLE requirement only.)

1. Amend Supreme Court Rule 53.2(A)(5) as set forth in Appendix A.

VI. Supreme Court Rule 53.2(A)(6)

(This amendment exempts from the CLE certification requirement those lawyers who are on active duty for the United States Armed Forces for more than three months of the reporting year. Prior to this amendment, such lawyers have been exempt from the CLE requirement but not the certification requirement.)

1. Amend Supreme Court Rule 53.2(A)(6) as set forth in Appendix A.

VII. Supreme Court Rule 53.2(A)(7)

(This amendment exempts from the certification requirement those lawyers who change from any NHBA active membership status to any inactive membership status before December 1 of the reporting year. Prior to this amendment, such lawyers have been exempt from the CLE requirement but not the certification requirement.)

1. Amend Supreme Court Rule 53.2(A)(7) as set forth in Appendix A.

VIII. Supreme Court Rule 53.2(A)(8)

(This amendment exempts lawyers from the certification requirement who are elected State or Federal officials not engaged in the practice of law during a reporting year. Prior to this amendment, such lawyers have been exempt from the CLE requirement but not the certification requirement.)

1. Amend Supreme Court Rule 53.2(A)(8) as set forth in Appendix A.

IX. Supreme Court Rule 53.2(B)(1)

(This amendment updates the exemptions for meeting the minimum CLE requirements to be consistent with the amendments to Supreme Court Rule 53.2(A).)

1. Amend Supreme Court Rule 53.2(B)(1) as set forth in Appendix A.

X. Supreme Court Rule 53.2(B)(2); 53.2(B)(3); 53.2(B)(4); 53.2(B)(5)

(This amendment deletes these portions of the Rule, which exempt certain lawyers from the CLE requirement, because the deleted language is unnecessary as a result of the amendments to Supreme Court Rule 53.2(A).)

1. Amend Supreme Court Rule 53.2(B)(2); 53.2(B)(3); 53.2(B)(4); 53.2(B)(5) as set forth in Appendix A.

XI. Supreme Court Rule 53.3(A)

(This amendment updates the exemptions for filing a certification to be consistent with the amendments to Supreme Court Rule 53.2(A).)

1. Amend Supreme Court Rule 53.3(A) as set forth in Appendix A.

XII. Supreme Court Rule 53.4

(This amendment formalizes and aligns the NHMCLE waiver process for annual NHMCLE requirements with the current waiver process for annual Supreme Court fees and Trust Account Compliance filing.)

1. Amend Supreme Court Rule 53.4 as set forth in Appendix B.

XIII. Supreme Court Rule 48

(This technical amendment makes Supreme Court 48 consistent with Supreme Court Rule 48-A with respect to the compensability of travel time for meetings with an incapacitated or juvenile client.)

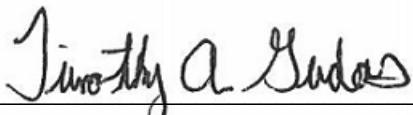
1. Amend Supreme Court Rule 48 as set forth in Appendix C.

Effective Date

The amendment to Supreme Court Rule 53.1 shall take effect on June 1, 2023, and shall apply to the 2023-2024 reporting year and subsequent reporting years, but not to the 2022-2023 reporting year. The amendments to Supreme Court Rules 53.2 and 53.3 shall take effect on June 1, 2023, and shall apply to the 2022-2023 reporting year and subsequent reporting years. The amendment to Supreme Court Rule 53.4 shall take effect on June 1, 2023. The amendment to Supreme Court Rule 48 shall take effect on June 1, 2023, for travel time occurring on or after that date.

Date: March 30, 2023

ATTEST:



Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

APPENDIX A

Amend New Hampshire Supreme Court Rules 53.1, 53.2, and 53.3 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

RULE 53. New Hampshire Minimum Continuing Legal Education Requirement

RULE 53.1—NHMCLE REQUIREMENT

A. *Purpose.* Continuing legal education CLE improves the administration of justice and benefits the public interest. Regular participation in CLE programs strengthens the professional skills of practicing lawyers, affords them periodic opportunities for professional self-evaluation and enhances the quality of legal services rendered to the public. This Rule requires active members of the New Hampshire Bar to participate in additional legal study throughout their careers.

B. Amounts Required

1. *In General* — Every ~~person~~ **[lawyer]** covered by this rule shall complete 720 minutes (twelve hours) of CLE in each reporting year. At least 120 minutes (two hours) of CLE shall be in the area of legal ethics, professionalism or the prevention of malpractice, substance abuse or attorney-client disputes.

[2. *Active Status Lawyers Volunteering for Pro Bono Cases* — Active Membership Status lawyers who volunteer for assigned, pro bono cases for the purpose of representing indigent parties through 603 Legal Aid, NH Legal Assistance, and the Disability Rights Center may claim up to three hundred and sixty (360) general minutes of continuing legal education credit per reporting period at the rate of sixty (60) CLE minutes for every 300 billable-equivalent minutes of pro bono representation provided to a client. CLE ethics minutes cannot be earned from pro bono service. Pro bono minutes approved for CLE minutes will be reported to the NHMCLE Coordinator by the directors of the above-named entities on or before April 1 of each year. CLE minutes performed after April 1 will be applied to the following reporting year.]

~~2.~~ **[3.]** *Return to Active Membership Status* — Lawyers who are suspended or have selected inactive membership status with the New Hampshire Bar Association for more than two (2) consecutive reporting years

are required to complete 360 minutes of additional CLE upon returning to active membership status. Lawyers may complete the additional credits during the reporting year in which they return to active membership status or in the reporting year immediately preceding. Lawyers shall report completion of these credits by such method as the NHMCLE Board shall prescribe.

C. *Reporting Year* — The reporting year shall be the period from June 1 to May 31. The annual NHMCLE affidavit filing period shall be June 1 to July 1 following the end of the reporting year, and reporting shall be done in the manner specified in Rule 53.3.

D. *Carry Over of Excess Minutes* — If a lawyer has completed more than 720 minutes of CLE in a reporting year commencing after the effective date of this rule, the excess minutes may be used to fulfill the requirement of Rule 53.1 (B) for the reporting year next following only. Ethics credits may be brought forward to meet the ethics requirement only when not utilized to meet any minimum requirement in the year earned.

E. *Qualifying Activities* — To satisfy the requirements of Rule 53, every person covered by this rule shall seek out educational activity of significant intellectual and practical content reasonably directed at maintaining or enhancing his or her professional knowledge, skills and values.

RULE 53.2.—LAWYERS SUBJECT TO OR EXEMPT FROM CERTIFICATION AND FULFILLMENT REQUIREMENTS

A. Annual Certification Requirement.

1. All lawyers in any New Hampshire Bar Association active membership status at any time during the reporting year must make an annual certification as prescribed in Rule 53.3. Such certification may, if applicable, indicate an exemption from the minimum credit requirements for the reporting period under provisions of Rule 53.2(B).

2. The certification requirement of this rule shall not apply to any full-time judge, full-time magistrate, **[judicial referee,]** full-time marital master, judicial referee, the state reporter appointed pursuant to RSA 505:1, or any full-time supreme, superior, and circuit court clerk or deputy clerk who occupies such position at any time during the reporting year **[in the State of New Hampshire]**.

3. The certification requirement of this rule shall not apply to any part-time judge, part-time magistrate, part-time marital master, **[part-time judicial referee]** or any part-time supreme, superior and circuit court clerk or

deputy clerk; unless such individual was in the active practice of law at any time during the reporting year **[in the State of New Hampshire]**.

4. The certification requirement of this rule shall not apply to any attorney who has elected New Hampshire Bar Association Limited Active Status membership as certified by the directors of 603 Legal Aid, NH Legal Assistance, or the Disability Rights Center.

5. The certification requirement of this rule shall not apply to lawyers first admitted to New Hampshire practice on or after December 1 of that reporting year but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.

6. The certification requirement of this rule shall not apply to lawyers on active duty for the United States Armed Forces for more than three (3) months of the reporting year.

7. The certification requirement of this rule shall not apply to lawyers who change from any New Hampshire Bar Association active membership status to any inactive membership status before December 1 of any reporting year, and who maintain inactive membership status for the remainder of that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.

8. The certification requirement of this rule shall not apply to lawyers who are elected State or Federal officials not engaged in the practice of law during a reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.]

B. Exemptions From the Minimum CLE Requirement.

1. Those exempt from annual certification requirements under Rule 53.2(A)(2)[,] ~~or 53.2(A)(3)[~~, **53.2(A)(4), 53.2(A)(5), 53.2(A)(6), 53.2(A)(7) or 53.2(A)(8)]** are not required to meet the minimum CLE requirements of Rule 53.1(B)[**(1)**] for that reporting year.

~~2. Lawyers first admitted to New Hampshire practice on or after December 1 of the reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar~~

~~Association active membership status for an aggregated total of more than six (6) months during the reporting year.~~

~~3. Lawyers on active duty for the United States Armed Forces for more than three (3) months of the reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year.~~

~~4. Lawyers who change from any New Hampshire Bar Association active membership status to any inactive membership status before December 1 of any reporting period, and who maintain inactive membership status for the remainder of that reporting period are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.~~

~~5. Lawyers who are elected State or Federal officials not engaged in the practice of law during a reporting year are not required to meet the minimum CLE requirements of Rule 53.1(B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.~~

~~6.[2.]~~ Lawyers may be exempted from meeting the minimum CLE requirements of Rule 53.1~~[(B)(1)]~~, in whole or in part, by the NHMCLE Board, upon petition, for compelling reasons. Such reasons may include, but are not limited to, financial, physical, or other hardship which prevents compliance with this rule during the period of such hardship.

RULE 53.3—REPORTING AND AFFIDAVIT OF COMPLIANCE WITH RULE 53

A. On or before July 1 of each year, every lawyer having been in any New Hampshire Bar Association active membership status at any time during the immediately preceding June 1 - May 31 reporting year and not exempt pursuant to Rule 53.2(A)(2)[,] ~~or 53.2(A)(3)[,~~ **53.2(A)(4), 53.2(A)(5), 53.2(A)(6), 53.2(A)(7) or 53.2(A)(8)]** shall file an Affidavit of Compliance with the NHMCLE Board, in such form as the NHMCLE Board shall prescribe, concerning either his or her completion of CLE during the previous reporting year, or the basis for his or her claim of exemption under Rule 53.2(B). A lawyer who has inadvertently neglected to report in their initial Affidavit of Compliance all credits earned in the immediately preceding reporting year can reopen the initial Affidavit of Compliance once within thirty days of the initial filing, but not later than July 31.

Lawyers may engage in and report CLE performed after the close of the reporting year and prior to the filing of an Affidavit of Compliance, provided that such CLE may not also be used to satisfy the requirement for the reporting year in which it is performed.

B. Each such lawyer shall maintain such records or certificates of attendance as may be required to substantiate his or her compliance or exemption for a period of two (2) years following the close of a reporting year.

C. The court shall assess each lawyer in New Hampshire Bar Association active membership status as of the assessment date an annual sum to support the administration of Rule 53.

D. Lawyers exempt under Rule 53.2(B) who wish to claim NHMCLE credit for activities completed during a reporting year for which such exemption applies (e.g., for purposes of carrying over such credits pursuant to Rule 53.1(D)) may do so by either (1) filing an Affidavit of Compliance for the reporting year in which the activity was completed, or (2) reporting such activities on the Affidavit of Compliance filed for the following reporting year if no exemption is then available.

E. The NHMCLE Board shall from time to time audit the Affidavits of Compliance filed by lawyers in accordance with this rule to determine whether the information reported is accurate and/or to determine whether the activities reported are qualifying activities. The NHMCLE Board may select Affidavits of Compliance for audit based on apparent deficiencies in the Affidavits, or based on any other factor that the NHMCLE Board, in its discretion, deems appropriate. Affidavits may also be selected for audit on a random basis. The NHMCLE Board shall notify a lawyer whose Affidavit of Compliance has been selected for audit of the reporting period or periods to be audited. The NHMCLE Board shall request that, within thirty (30) days of the notification, the lawyer provide information about the CLE activities reported and/or evidence to substantiate that the lawyer completed the CLE activities reported. If the information provided by the lawyer is insufficient to establish that the Affidavit of Compliance is accurate and/or that the activities reported are qualifying activities, the NHMCLE Board shall notify the lawyer of the issue(s) involved and invite the lawyer to submit a written response. If, upon consideration of the lawyer's response and any other facts and circumstances that the NHMCLE Board considers pertinent, the NHMCLE Board determines that a lawyer's Affidavit of Compliance is inaccurate and/or deficient, it shall determine whether the lawyer should be required to take remedial action, and if so, the remedial action required. The decision of the NHMCLE Board as to the remedial action required shall be final.

APPENDIX B

Amend New Hampshire Supreme Court Rule 53.4 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strike through~~ format):

RULE 53.4—SANCTIONS AND APPEAL

A. *Delinquency* —

1. *Notice of Delinquency* — On August 2, following the annual reporting date, any lawyer not in compliance with this rule shall be assessed a delinquency fee by the NHMCLE Board. Thereafter, the Board shall send a notice to the lawyer notifying the lawyer of the delinquency fee and directing the lawyer to comply with this rule for the prior reporting period.

2. On or before September 15 following the annual reporting date, the NHMCLE Board shall report to the Supreme Court the name of any lawyer who still has not complied with the requirements of the rule, or who has failed to certify that the lawyer is exempt from the requirements and/or has not paid any outstanding delinquency fee. Upon receiving this report, the court shall initiate a proceeding to suspend the lawyer from the practice of law.

B. *Reinstatement* —

1. Upon correction of the delinquency and payment to the NHMCLE Board of the delinquency fee, the delinquent lawyer shall be recorded as in compliance by the NHMCLE Board. However, if the lawyer shall have been suspended due to such delinquency, the suspended lawyer must also submit a petition to the Supreme Court for reinstatement. The petition for reinstatement shall be accompanied by the required filing fee.

2. If reinstatement is requested more than one year after the date of the order suspending the person from the practice of law in this State, then the request shall be accompanied by evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness. Said evidence shall be attached to the petition for reinstatement. If the evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness, are satisfactory to the court, the court may order reinstatement upon such conditions as it deems appropriate.

If the evidence of continuing competence and learning in the law is not satisfactory to the court, the court shall refer the petition for reinstatement to the professional conduct committee for review. The professional conduct committee shall review the petition and conduct such proceedings as it deems

necessary to make a recommendation to the court as to whether the petition should be granted. The professional conduct committee shall file its recommendation and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument, if any, the court shall enter a final order.

If the evidence of continuing moral character and fitness is not satisfactory to the court, the court shall order the applicant to file with the committee on character and fitness and with the clerk of the supreme court the petition and questionnaire referred to in Supreme Court Rule 42 VI(c). Further proceedings shall be governed by Rule 42.

[C. *Waivers* — The NHMCLE Board may in any case in which to do otherwise would result in hardship or injustice, waive the CLE requirement in whole or in part, waive affidavit filing and waive delinquency fees assessed for non-filing of the affidavit, provided the request is made before delinquent payor’s names have been forwarded to the NH Supreme Court as mandated by NH Supreme Court Rule 42A. The NHCLE Waiver Committee (Committee), a subcommittee of the NHMCLE Board, will consider the waiver requests. Such decisions by the Committee are deemed representative of the NHMCLE Board as a whole. Any lawyer whose waiver request is denied by the Committee may submit a written request for review of the denied request to the NHMCLE Board. Such requests must be made in writing and sent to the attention of the NHMCLE Program Coordinator within 30 days from the date of the waiver committee decision. Waivers are considered for the reporting period in which the waiver is requested by the lawyer. No more than three (3) waivers, in a five (5) year period, will be considered unless otherwise waived by the NHMCLE Board.]

~~€~~[D.] *False Statements* — Should the NHMCLE Board have reasonable grounds to believe that a lawyer has knowingly misrepresented his or her CLE activity, the Board shall notify the Attorney Discipline Office of the New Hampshire Supreme Court forthwith.

APPENDIX C

Amend Supreme Court Rule 48 as follows (new material is in **[bold and brackets]**):

RULE 48. Counsel Fees and Expenses—Other Indigent Cases and Parental Notification Cases

The provisions of this rule shall apply only to preparation for and proceedings in all courts in which counsel is appointed to represent indigent persons, other than criminal defendants, indigent witnesses in appropriate circumstances, and minors (whether or not indigent) in parental notification cases under RSA 132:34. This rule refers to, but is not limited to, juvenile cases in the circuit court, guardianships under RSA chapter 464-A, termination of parental rights (TPR) under RSA chapter 170-C, and involuntary admissions under RSA chapter 135-C in the circuit court.

(1) *Itemization of Bills.* All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment of Counsel order on appointment or other supporting document must be attached to the bill with each submission.

(2) *Fees.* Maximum compensation is limited as follows:

(a) Time properly chargeable to case: \$90 per hour.

The paralegal hourly rate shall not exceed \$40 and shall be included with fees of counsel for the purposes of determining the maximum fee on any case.

(b) Maximum fee for all juvenile cases pursuant to RSA chapters 169-B, C, and D: \$2,550.

(c) Maximum fee for guardianships under RSA chapters 463 or 464-A:

(i) RSA chapter 463: \$1,800;

(ii) RSA chapter 464-A: \$1,350.

(d) Maximum fee for annual review hearings for guardianships: \$450.

(e) Maximum fee for TPR cases pursuant to RSA chapter 170-C: \$2,550.

(f) Maximum fee for involuntary admissions under RSA chapter 135-C: \$600.

(g) Appeals to the supreme court, other than parental notification cases, in all juvenile cases and any matters within the subject matter jurisdiction of the circuit court: \$3000.

(h) Maximum fee for court review hearings of juvenile cases pursuant to RSA 169-B, C and D: \$450.

(i) Maximum fee for parental notification cases pursuant to RSA 132:34, excluding any appeal to the supreme court: \$1,500.

(j) Maximum fee for appeals to the supreme court in parental notification cases pursuant to RSA 132:34: \$750.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized.

A petition to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires.

In any such case, fees in excess of the maximum compensation in this rule will be paid only if the administrative judge of the circuit court or the chief justice of the superior court, as the case may be, certifies the good cause and exceptional circumstances justifying the excess fees.

Travel time to and from court hearings and to and from meetings with an **[incapacitated,]** incarcerated **[or juvenile]** client shall be compensable; otherwise travel is not a compensable event unless expressly authorized by the court. Travel time shall not count toward the maximum fees set forth above.

When counsel represents more than one client on any particular day, the hours spent shall be allocated accordingly, including travel time. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) *Expenses—Reimbursable.* In addition to the fees and fee caps listed in Section (2), above, investigative, expert, or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for stenographers and deposition services shall be established by the supreme court. The cost of copies of depositions and transcripts shall be fifty cents (.50) per page.

(c) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(d) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(e) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(f) Attorneys shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(g) The expense of telephone calls shall not be reimbursed.

(h) In cases appealed to the supreme court, attorneys shall be reimbursed for the actual reasonable costs (not including labor) of reproducing and binding the notice of appeal or other appeal document, any appendix and briefs, whether done in-house or by an outside printer.

(i) No reimbursement will be paid for overhead expenses including photocopies (other than as provided in subdivision (3)(h) of this rule), postage, fax and secretarial services.

(4) *Deadline for Filing Bills with Court.* All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.