

NEW HAMPSHIRE SUPREME COURT ADVISORY COMMITTEE ON RULES

PUBLIC HEARING NOTICE

The New Hampshire Supreme Court Advisory Committee on Rules will hold a PUBLIC HEARING at 12:30 p.m. on Friday, June 3, 2022 at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar as the Committee considers whether to recommend that the Supreme Court adopt several proposed amendments to Supreme Court Rules 37 and 37A that have been recommended by the Attorney Discipline Office.

Comments on any of the proposed amendments which the Committee is considering for possible recommendation to the Supreme Court may be submitted in writing to the secretary of the Committee at any time on or before May 26, 2022 or may be submitted at the hearing on June 3, 2022. Comments may be emailed to the Committee on or before May 26, 2022 at:

rulescomment@courts.state.nh.us

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

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

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

The changes being considered concern the following rules:

I. 2022-001 Supreme Court Rule 37(8)

(This proposal would give the Attorney Discipline Office (ADO) “reciprocal” subpoena power, which would allow the ADO to issue a subpoena in this jurisdiction where the issuance of a subpoena has been duly approved under the law of another jurisdiction.)

1. Amend Supreme Court Rule 37(8) as set forth in Appendix A.

II. 2022-001 Supreme Court Rule 37(14)

(This proposal addresses the procedure for attorneys who seek reinstatement and requires that any applicant seeking reinstatement have taken and passed the Multistate Professional Responsibility Examination (MPRE) within one year of the filing of the petition for reinstatement.)

1. Amend Supreme Court Rule 37(14) as set forth in Appendix B.

III. 2022-001. Supreme Court Rule 37(20)

(This proposal would clarify what records of the ADO 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.)

1. Amend Supreme Court Rule 37(20) as set forth in Appendix C.

IV. 2022-001. Supreme Court Rule 37(21)

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

1. Amend Supreme Court Rule 37(21) as set forth in Appendix D.

V. 2022-001. Supreme Court Rule 37A(III)(b)(5)(F)

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

1. Amend New Hampshire Supreme Court Rule 37A(III)(b)(5)(F) as set forth in Appendix E.

VI. 2022-001. Supreme Court Rule 37A(V)

(This proposal would allow attorneys to request annulments not only of reprimands but also of public censures.)

1. Amend Supreme Court Rule 37A(V) as set forth in Appendix F.

New Hampshire Supreme Court
Advisory Committee on Rules

By: Patrick E. Donovan, Chairperson
and Lorrie Platt, Secretary

May 3, 2022

Amend Supreme Court Rule 37(8) as follows (deletions are in ~~strikethrough~~-format; additions are in **bold**)

APPENDIX A

Supreme Court Rule 37(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.]**

(ed) 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.

Amend Supreme Court Rule 37(14)(b)(2)(B) as follows (deletions are in ~~strikethrough~~-format; additions are in **bold**)

APPENDIX B

(14) Reinstatement and Readmission:

(a) Reinstatement Following Suspension of Six Months or Less. An attorney who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated by the professional conduct committee following the end of the period of suspension upon the filing of a motion for reinstatement. The motion for reinstatement shall be filed with the professional conduct committee and served upon disciplinary counsel and shall be accompanied by:

- (1) an affidavit stating that he or she has fully complied with the requirements of the suspension order and has paid any required fees and costs; and
- (2) evidence that he or she has satisfactorily completed the Multistate Professional Responsibility Examination since his or her suspension.

(b) Reinstatement Following Suspension of More Than Six Months.

(1) An attorney suspended by the court for misconduct, other than for disability, for more than six months shall be reinstated only upon order of the court. No attorney may petition for reinstatement until the period of suspension has expired.

(2) Petition. An attorney who seeks reinstatement following suspension of more than six months shall file a petition for reinstatement with the court. The petition shall be accompanied by a completed reinstatement form and the requisite filing fee. The petition shall be under oath and shall:

(A) specify with particularity the manner in which the petitioner has fully complied with the terms and conditions set forth in all prior disciplinary orders; and

(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.

(3) Initial Review of Petition and Reinstatement Form. The court will review the petition and reinstatement form to determine whether the certifications required by subsection (2) of this rule have been provided and whether the reinstatement form is complete. If so, the court shall refer the petition and reinstatement form to the professional conduct committee, and shall provide a copy of the petition and reinstatement form to the attorney discipline office.

(4) Publication of Notice of Petition. If the court refers the petition to the professional conduct committee, the professional conduct committee shall cause a notice to be published in a newspaper with statewide circulation, a newspaper with circulation in the area of the petitioner's former primary office, and in the New Hampshire Bar News, that the petitioner has moved for reinstatement. The notice shall also be posted on the judicial branch website. The notice shall invite anyone to comment on the petition by submitting said comments in writing to the professional conduct committee within twenty (20) days of publication. All comments shall be made available to the petitioner. Where feasible, the professional conduct committee shall give notice to the original complainant.

(5) Hearing. Upon receipt of the petition, the professional conduct committee may either recommend reinstatement or refer the petition to the hearings committee for prompt appointment of a hearing panel.

(A) The hearing panel chair shall conduct and hold a prehearing conference within thirty (30) days of the appointment of the hearing panel.

(B) The hearings committee shall conduct a hearing within 120 days of the appointment of the hearing panel.

(C) The petitioner shall bear the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competence, and learning in the law required for admission to practice law in this State and that the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive to the public interest.

(D) Attorneys from the attorney discipline office may participate in the hearing to present evidence and to cross-examine the petitioner and any witnesses.

(E) At the conclusion of the hearing, the hearing panel shall promptly file with the professional conduct committee a report containing its findings and recommendations and the record of the proceedings.

(6) Review by the Professional Conduct Committee. Following receipt of the report, the professional conduct committee shall:

(A) review the report of the hearing panel and the record;

(B) allow the filing of written memoranda by disciplinary counsel and the petitioner;

(C) review the hearing transcript;

(D) hold oral argument if requested by a party or ordered by the Committee;
and

(E) file its own findings and recommendations with the court, together with the record, and provide a copy of the recommendations and findings to the petitioner.

(7) Final Order by the Court. Following receipt of the recommendation and the record from the professional conduct committee:

(A) the court shall notify the petitioner and disciplinary counsel that they must, within 30 days of the court's order, identify any legal or factual issues the parties wish the court to review;

(B) if neither party identifies an issue for review, the court may act upon the recommendations without further proceedings;

(C) if either party identifies an issue for review, the court may issue a scheduling order setting forth a briefing schedule;

(D) the court shall, after filing of any briefs and oral arguments, make such order as justice may require.

(c) Readmission Following Disbarment or Resignation While Under Disciplinary Investigation.

(1) Timing and Other Restrictions. The following restrictions apply to any New Hampshire licensed attorney who has been disbarred by the court or who has resigned while under disciplinary investigation and who wishes to apply for readmission:

(A) the attorney may not apply for readmission until the expiration of seven years from the effective date of the disbarment or resignation.

(B) If the attorney has been disbarred in New Hampshire as a result of having been disbarred in another jurisdiction, see Supreme Court Rule 37(12) ("Reciprocal Discipline"), he or she must be readmitted to practice law in the other jurisdiction prior to applying for readmission in New Hampshire.

(C) An attorney applying for readmission following disbarment may not apply for admission by motion pursuant to New Hampshire Supreme Court Rule 42(XI).

(2) Petition. An attorney who seeks readmission following disbarment or resignation while under disciplinary investigation shall file a petition for readmission with the court. The petition shall be under oath and shall:

(A) specify with particularity the manner in which the petitioner has fully complied with all of the terms and conditions set forth in all prior disciplinary orders;

(B) certify, if the attorney was disbarred in New Hampshire as a result of having been disbarred in another jurisdiction, that he or she has been readmitted to practice law in the other jurisdiction prior to applying for readmission in New Hampshire;

(C) certify that the petitioner has taken the New Hampshire Bar Examination within one year of the filing of the petition and has received a passing grade as established by the Board of Bar Examiners; and

(D) certify that the petitioner has taken the Multistate Professional Responsibility Examination after entry of the order of disbarment, and has received a passing grade as established by the Board of Bar Examiners.

(3) Initial Review of Petition. The court will review the petition to determine whether the certifications required by subsection (2) of this rule have been provided. If so, the court shall refer the petition to the professional conduct committee and the office of bar admissions character and fitness committee for the formation of a special committee on readmission to consider the petition and to make a recommendation to the court. The court shall provide a copy of the petition for readmission to the attorney discipline office.

(4) The petitioner's application to take the bar examination, including the petition and questionnaire for admission to the New Hampshire Bar, and all non-privileged documents on file with the office of bar admissions relating to the petition and questionnaire, shall be provided to the attorney discipline office. All documents on file with the office of bar admissions relating to the petition and questionnaire for admission to the New Hampshire Bar shall remain confidential and not available for public inspection, subject to the exceptions listed in Supreme Court Rule 42(IV)(g), until they are submitted as exhibits at the hearing before the special committee on readmission.

(5) The Special Committee on Readmission. Upon receipt of the petition, the chair of the professional conduct committee and the chair of the character and fitness committee shall promptly select members of each committee to serve on the special committee on readmission. Three members of the professional conduct committee and three members of the character and fitness committee shall serve on the special committee. One of the six members of the special committee shall be a layperson. The special committee shall select a chair.

(6) Publication of Notice of Petition. The special committee on readmission shall cause a notice to be published in a newspaper with statewide circulation, a newspaper with circulation in the area of the petitioner's former primary office, and in the New Hampshire Bar News, that the petitioner has moved for readmission. The notice shall also be posted on the judicial branch website. The notice shall invite anyone to comment on the petition by submitting said comments in writing to the professional conduct committee within twenty (20) days of publication. All comments shall be made available to the petitioner. Where feasible, the special committee on readmission shall give notice to the original complainant.

(7) Hearing Before Special Committee on Readmission.

(A) The special committee chair shall conduct and hold a prehearing conference within thirty (30) days of the appointment of the special committee on readmission.

(B) The special committee on readmission shall conduct a hearing within 120 days of the formation of the special committee.

(C) The petitioner shall bear the burden of demonstrating by clear and convincing evidence that he or she has the competence and learning in the law required for admission to practice law in this State and that the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive to the public interest.

(D) The petitioner shall also bear the burden of demonstrating by clear and convincing evidence that he or she has good moral character and fitness. See Supreme Court Rule 42B.

(E) The special committee on readmission shall hold a hearing on the record and, for good cause, may order that the hearing or portions of the hearing be closed to the public, and, for good cause, may order that exhibits be sealed.

(F) Attorneys from the attorney discipline office and/or the office of bar admissions may participate in the hearing to present evidence and to cross-examine the petitioner and any witnesses.

(G) At the conclusion of the hearing, the special committee shall provide a copy of its written findings and recommendation to the petitioner. Unless the petitioner withdraws the petition within thirty days of the date of the written findings and recommendations, the report together with the record, shall be filed with the court.

(8) Final Order by the Court. Following receipt of the recommendation and the record from the special committee on readmission:

(A) the court shall notify the petitioner and disciplinary counsel that they must, within 30 days of the court's order, identify any legal or factual issues the parties wish the court to review;

(B) if neither party identifies issues for review, the court may act upon the recommendations without further proceedings;

(C) if either party identifies an issue for review, the court may issue a scheduling order setting forth a briefing schedule and any other matters as shall be deemed desirable or necessary;

(D) the court shall, after filing of any briefs and oral arguments, make such order as justice may require.

APPENDIX C

Amend Supreme Court Rule 37(20) as follows (deletions are in ~~strikethrough-format~~; additions are in **bold**)

(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.

(ab) 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.

~~(bc)~~ 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.

~~(ed)~~ 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.

~~(de)~~ 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).~~

~~(ef)~~ 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.

(fg) 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.

(gh) 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.

(hi) 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.

(~~ij~~) 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.

(~~jk~~) 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.

(~~kl~~) 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.

(~~lm~~) 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.

(~~mn~~) 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.

(~~no~~) 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 D

Amend Supreme Court Rule 37(21) as follows (deletions are in strikethrough format; additions are in **bold**)

~~(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.~~

APPENDIX E

Amend Supreme Court Rule 37A(III)(b)(5)(F) as follows (deletions are in ~~striketrough~~ format; additions are in **bold**)

(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 F

Amend Supreme Court Rule 37A(V) as follows (deletions are in ~~strikethrough~~ format; additions are in **bold**)

(V) Annulment

(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.**

(b) Matters Which May Not Be Annulled.

Notwithstanding the foregoing, an order of annulment will not be granted except upon order of the supreme court if respondent's misconduct included conduct which constitutes an element of a felony or which included as a material element fraud, fraudulent misrepresentation, dishonesty, deceit, or breach of fiduciary duty.

(c) Consideration of Other Complaints.

When application has been made under subsection (a), the professional conduct committee may consider any other complaints filed against the respondent and any other relevant facts.

(d) Effect of Annulment.

Upon entry of the order, the respondent shall be treated in all respects as if any admonition or reprimand had not been rendered, except that, upon conviction of any other violation of the rules of professional conduct after the order of annulment has been entered, the previous admonition, or reprimand may be considered by the professional conduct committee or the supreme court in determining the discipline to be imposed.

(e) Sealing of Records of Annulment.

Upon issuance of an order of annulment, all records or other evidence of the existence of the complaint shall be sealed, except that the attorney discipline office may keep the docket or card index showing the names of each

respondent and complainant, the final disposition, and the date that the records relating to the matter were sealed.

(f) Disclosure of Annulled Matter.

Upon issuance of an order of annulment, the component parts of the attorney discipline systems shall not thereafter disclose the record of the complaint which resulted in a finding of no misconduct, admonition, or reprimand, except as permitted by section (V)(d) of this rule, and the respondent shall be under no obligation thereafter to disclose the admonition or reprimand.

(g) Denial of Request for Annulment.

Upon denial of an order of annulment, the respondent may appeal to the supreme court within thirty (30) days of the date of receipt of the denial. The appeal shall not be a mandatory appeal. Upon such appeal, the burden shall be upon the respondent to show that the professional conduct committee's exercise of its discretion in denying the order of annulment is unsustainable.