

**The State of New Hampshire**  
**ADMINISTRATIVE OFFICE OF THE COURTS**

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March 3, 2022

Honorable Patrick E. Donovan, Chair  
Advisory Committee on Rules  
New Hampshire Supreme Court  
1 Charles Doe Drive  
Concord, New Hampshire 03301

Re: Proposed Amendment to Supreme Court Rule 37

Dear Justice Donovan:

Enclosed is a copy of Supreme Court Rule 37, showing proposed changes to the rule that are intended to fully integrate the Attorney Discipline Office (ADO) into the judicial branch and streamline its operations. At present, the ADO operates under the supervision of the Professional Conduct Committee (PCC). Brian Moushegian, the ADO's General Counsel, reports directly to the PCC. If the proposed changes are adopted, the ADO would become a division within the New Hampshire Judicial Branch's Administrative Office of the Courts (AOC). The AOC, which provides administrative support to all New Hampshire state courts, would provide administrative support to the ADO, including support for payroll, human resources, accounting, and information technology. Relieving the ADO of administrative functions will enable its staff, the PCC, and the other committees involved in the attorney discipline process, to focus their efforts on the substantive work of reviewing and deciding complaints about attorney conduct. The proposed changes would not affect the policies or the procedures governing the attorney discipline process, or the independent decision-making authority of the PCC and other committees. This restructuring is consistent with the attorney discipline structure in other states.

To effectuate this change, this proposal includes the following changes to Rule 37:

1. As set forth in paragraph 1 and 6(a), the ADO would become a division within the AOC;

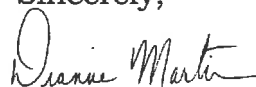
2. As provided in paragraph 6(a), employees of the ADO would become judicial branch employees and subject to the rules and policies of the judicial branch;
3. As set forth in paragraph 6(b), the Director of the AOC would appoint the ADO's General Counsel after consultation with the chair of the PCC and the Supreme Court;
4. As provided in paragraph 6(e), the Director of the AOC, after consultation with the PCC, would appoint deputy general counsel, disciplinary counsel, and deputy disciplinary counsel;
5. As provided in paragraph 3(c)(2), the PCC would direct the actions and performance of general counsel and ADO staff in the performance of its adjudicatory functions;
6. As provided in 6(g)(9), the ADO General Counsel would report to the Director of the AOC on administrative matters;
7. As provided in (6)(c), the Director of the AOC would consult with the chair of the PCC regarding the performance of general counsel;
8. Paragraph (19) would provide for the issuance of an order by the Supreme Court assessing attorneys for the support of the attorney discipline system.

As provided in Supreme Court Rule 51, proposed deletions to the present rule are shown in ~~strikethrough~~ and proposed added text in **[bold and brackets]**.

The Supreme Court hopes to implement this structural change on July 1, 2022. For this reason, expedited consideration of the proposed changes is requested. I would be happy to answer any questions about the proposed changes that the Advisory Committee on Rules or the Supreme Court may have.

Thank you for your consideration.

Sincerely,

  
Dianne Martin

Cc: Loretta S. Platt, Secretary

3/3/22

ADDITIONS SHOWN IN **[BOLD]**

DELETIONS IN ~~STRIKETHROUGH~~

## **Rule 37. ATTORNEY DISCIPLINE SYSTEM**

### **(1) Attorney Discipline in General:**

**[The attorney discipline system has been established by the supreme court to fulfill its constitutional responsibility to supervise New Hampshire attorneys. The committees constituting the attorney discipline system act independently to investigate and evaluate grievances against attorneys. As set forth in this rule, the decisions of these committees are subject to judicial review by the supreme court. The attorney discipline office is a division within the administrative office of the courts.]**

(a) *Components:* The attorney discipline system consists of the following component parts:

- (1) professional conduct committee;
- (2) hearings committee;
- (3) complaint screening committee;
- (4) attorney discipline office.

(b) *Jurisdiction:* Any attorney admitted to practice law in this State, and any attorney specially admitted by a court of this State for a particular proceeding, and any attorney not admitted in this State who practices law or renders or offers to render any legal services in this State, and any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1, is subject to the disciplinary jurisdiction of this court and the attorney discipline system.

Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt. Suspension or disbarment of an individual subject to the attorney discipline system shall not terminate jurisdiction of this court.

(c) *Grounds for Discipline:* The right to practice law in this State is predicated upon the assumption that the holder is fit to be entrusted with professional matters and to aid in the administration of justice as an attorney and as an officer of the court. The conduct of every recipient of that right shall be at all times in conformity with the standards imposed upon members of the bar as conditions for the right to practice law.

Acts or omissions by an attorney individually or in concert with any other person or persons which violate the standards of professional responsibility that have been and any that may be from time to time hereafter

approved or adopted by this court, shall constitute misconduct and shall be grounds for discipline whether or not the act or omission occurred in the course of an attorney-client relationship.

(d) *Priority of Discipline Matters:* Matters relating to discipline of an attorney shall take precedence over all other civil cases in this court.

(e) *Professional Continuity Committee and New Hampshire Lawyers Assistance Program Exemption:* For the purposes of Rule 8.3 of the rules of professional conduct, information received by members of the New Hampshire Bar Association during the course of their work on behalf of the professional continuity committee or the New Hampshire Lawyers Assistance Program which is indicative of a violation of the rules of professional conduct shall be deemed privileged to the same extent allowed by the attorney-client privilege.

(f) Disciplinary matters may be handled by attorneys of the ~~A~~**a**ttorney ~~D~~**d**iscipline ~~O~~**o**ffice fulfilling functions of either general counsel or disciplinary counsel, as the general counsel may from time to time assign.

## **(2) Definitions:**

(a) *Appeal:* "Appeal" means an appeal to this court by a respondent or disciplinary counsel of a decision of the professional conduct committee imposing a reprimand, public censure or a suspension of six (6) months or less. An appeal shall not be a mandatory appeal. See Rule 3. An appeal shall be based on the record before the professional conduct committee and shall be limited to issues of errors of law and unsustainable exercises of discretion.

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

(c) *Complaint:* "Complaint" means a grievance that, after initial review, has been determined by the attorney discipline office to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint as set forth in Supreme Court Rule 37A, and that is docketed by the attorney discipline office, or a complaint that is drafted and docketed by the attorney discipline office after an inquiry by that office. If after docketing, the attorney discipline office or the complaint screening committee determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

(d) *Disbarment:* "Disbarment" means the termination of a New Hampshire licensed attorney's right to practice law in this State and automatic expulsion from membership in the bar of this State. A disbarred attorney may only apply for readmission to the bar of this State upon petition to this court, after having complied with the terms and conditions set forth in the disbarment order

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

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

(f) *Grievance*: "Grievance" means a written submission filed with the attorney discipline office to call to its attention conduct that the grievant believes may constitute misconduct by an attorney. A grievance that is determined, after initial screening, not to be within the jurisdiction of the attorney discipline system and/or not to meet the requirements for docketing as a complaint shall not be docketed and shall continue to be referred to as a grievance. A grievance that is determined, after initial screening, to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint shall be docketed as a complaint and shall be referred to thereafter as a complaint; provided, however, that if the attorney discipline office or the complaint screening committee later determines that the docketed complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

(g) *Public Censure*: "Public Censure" means the publication by the court or the professional conduct committee, in appropriate New Hampshire publications including a newspaper of general statewide circulation, and one with general circulation in the area of respondent's primary office, as well as the New Hampshire Bar News, of a summary of its findings and conclusions relating to the discipline of an attorney, as defined in section (2)(b) of this rule.

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

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

(j) *Suspension*: "Suspension" means the suspension of an attorney's right to practice law in this State, for a period of time specified by the court or by the professional conduct committee. Suspension by the professional conduct committee may not exceed six (6) months. The suspended attorney shall have the right to resume the practice of law, after the expiration of the suspension period, upon compliance with the terms and conditions set forth in the suspension order promulgated by the court or the professional conduct committee and pursuant to the procedure set forth in section 14 regarding reinstatement.

**(3) Professional Conduct Committee:**

(a) The court shall appoint a committee to be known as the professional conduct committee which shall consist of twelve members, one of whom shall be designated by the court as the chair. Two members of the professional conduct committee shall be designated by the court as vice chairs, to act in the absence or disability of the chair. One of the vice chairs must be an attorney, and the other must be a non-attorney. At least four of the members of the professional conduct committee shall be non-attorneys. The court shall attempt to appoint members of the professional conduct committee from as many counties in the State as is practicable; and one of the members shall be designated pursuant to section (3)(d), and shall have both the special term of office and the additional special responsibilities set forth therein.

In the event that any member of the professional conduct committee has a conflict of interest or is otherwise disqualified from acting with respect to any proceeding before the professional conduct committee, the court may, upon request or upon its own motion, appoint another person to sit on such proceeding and such temporary replacement, rather than the disqualified member, shall be considered a professional conduct committee member for quorum and voting purposes in connection with such investigation or proceeding.

(b) Initial appointments shall be for staggered terms: four members for three years; four members for two years; and four members, including the member designated pursuant to section (3)(d), for one year. Thereafter the regular term of each member, except the member designated pursuant to section (3)(d), shall be three years. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor. A member shall not serve for more than three consecutive full terms but may be reappointed after a lapse of one year. The committee shall act only with the concurrence of a majority of its members present and voting, provided however, that six members shall constitute a quorum. The chair of the committee, or any member performing the duties of the chair, shall only vote on matters relating to specific complaints in the event of a tie among the members present and voting. No professional conduct committee member shall serve concurrently as a member of the hearings committee or the complaint screening committee.

(c) The professional conduct committee shall have the power and duty:

(1) To appoint **[recommend, after consultation with the supreme court, to the director of the administrative office of the courts, the appointment of]** ~~a disciplinary counsel and a [attorney discipline office]~~ general counsel and ~~such deputy and assistant disciplinary counsel and general counsel as may from time to time be required to properly perform the functions hereinafter prescribed[, and to recommend to the director of the administrative office of the courts the retention of independent bar counsel if needed].~~ To appoint other professional staff, including auditors, and clerical staff whether full-time or part-time. To appoint independent bar counsel if needed.

(2) **[To direct the actions and performance of general counsel and other staff in the performance of its adjudicatory functions hereinafter prescribed.]**

(2[3]) To consider hearing panel reports and written memoranda of disciplinary counsel and respondents. To conduct oral arguments in which disciplinary counsel and each respondent are given ten (10) minutes to address the findings and rulings contained in the hearing panel reports. After consideration of oral arguments, hearing panel reports, transcripts of hearings before hearing panels and memoranda, to determine whether there is clear and convincing evidence of violations of the rules of professional conduct. To remand complaints to hearing panels for further evidentiary proceedings. To dismiss grievances or complaints, administer a reprimand, public censure or a suspension not to exceed six (6) months.

(3[4]) To attach such conditions as may be appropriate to any discipline it imposes.

(4[5]) To divert attorneys out of the attorney discipline system as appropriate and on such terms and conditions as is warranted.

(5[6]) To institute proceedings in this court in all matters which the professional conduct committee has determined warrant the imposition of disbarment or of suspension for a period in excess of six (6) months.

(6[7]) To consider and act upon requests by disciplinary counsel or respondents to review a decision by the complaint screening committee to refer a complaint to disciplinary counsel for the scheduling of a hearing.

(7[8]) To consider and act upon requests from disciplinary counsel to dismiss a matter prior to a hearing if disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing.

(8[9]) To consider and act upon requests for reconsideration of its own decisions.

(9[10]) To consider and act upon requests for protective orders.

(10[11]) To propose rules of procedure not inconsistent with the rules promulgated by this court.

~~(11) To be responsible for overseeing all administrative matters of the attorney discipline system.~~

(12) To require a person who has been subject to discipline imposed by the professional conduct committee to produce evidence of satisfactory completion of the multistate professional responsibility examination, in appropriate cases.

(13) To educate the public on the general functions and procedures of the attorney discipline system.

(14) Upon its approval of the annual report prepared by the attorney discipline office, to file a copy of the report with the chief justice of the supreme court and to make copies of the report available to the public.

(15) To issue discretionary monetary sanctions against a disciplined attorney in the form of the assessment of costs and expenses pursuant to Rule 37(19).

Any attorney aggrieved by a finding of professional misconduct or by a sanction imposed by the professional conduct committee shall have the right to appeal such finding and sanction to this court; disciplinary counsel shall have the right to appeal a sanction. Such appeals shall not be mandatory appeals. Such rights must be exercised within thirty (30) days from the date on the notice of the finding and sanction. In the event that a timely request for reconsideration pursuant to Supreme Court Rule 37A(VI) is filed, the right to appeal the finding of professional misconduct and/or the sanction shall be exercised within thirty (30) days from the date of the letter notifying the attorney of the professional conduct committee's decision on the request for reconsideration. Successive requests for reconsideration shall not stay the running of the appeal period. The manner of the appeal shall be based on the record before the professional conduct committee. The findings of the professional conduct committee may be affirmed, modified or reversed.

(d) *Board of Governor's Representative:* The vice president of the New Hampshire Bar Association, upon appointment by the court, shall represent the board of governors of the association as a member of the professional conduct committee for a one-year term commencing on August 1st following the election as such vice president and he or she shall have the following additional responsibilities:

~~(1) To render such assistance as the professional conduct committee directs in the preparation and review of the attorney discipline system budget.~~

~~(2) To assist in monitoring the financial affairs and budgetary process of the attorney discipline system during the fiscal year.~~

~~(3) To coordinate the assessment and collection of expenses to be reimbursed by disciplined attorneys.~~

(4[1]) Consistent with the rule of confidentiality applicable to the work of the attorney discipline system, to serve as liaison between the



professional conduct committee and the board of governors of the New Hampshire Bar Association.

(5[2]) To assist in the communication to members of the New Hampshire Bar Association of a general understanding of the work of the professional conduct committee, consistent with the rule of confidentiality applicable to attorney discipline system proceedings.

If the vice president of the New Hampshire Bar Association has a conflict preventing his or her appointment to the professional conduct committee, the court shall appoint another member of the board of governors in his or her stead.

**(4) Hearings Committee:**

(a) The court shall appoint an appropriate number of attorneys and non-attorneys to a committee known as the hearings committee of the attorney discipline system. One member of the committee shall be designated by the court as the chair and one member shall be designated as vice chair to act in the absence or disability of the chair.

(b) Initial appointments shall be for staggered terms: one third of the members for three years; one third of the members for two years and one third of the members for one year. Thereafter, the regular term of each member shall be three years. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor. A member shall not serve more than three consecutive full terms but may be reappointed after a lapse of one year. No hearings committee member shall serve concurrently as a member of the professional conduct committee or the complaint screening committee.

(c) The hearings committee shall have the power and duty:

(1) To be appointed as necessary by the hearings committee chair to individual hearing panels to rule on pre-hearing motions, conduct hearings on formal charges and make findings of fact, conclusions and recommendations in written reports to the professional conduct committee for findings of misconduct and sanctions or for dismissal of the complaint with findings of no misconduct. The individual hearing panels shall consist of a maximum of five (5) persons and a minimum of three (3) persons. There shall be no less than one public non-attorney member on each hearing panel.

(2) To conduct hearings in conformance with standards set forth in Rule 37A.

(3) To make all findings by clear and convincing evidence.

(4) To submit all written reports to the professional conduct committee no more than sixty (60) days after the close of each hearing.

(d) Appointment to each individual hearing panel shall be made by the chair of the hearings committee. Each panel shall consist of a maximum of five (5) hearings committee members and a minimum of three (3) members. Each hearing panel shall have at least one (1) non-attorney member. The chair of the hearings committee shall designate one member of each panel as the chair and

a separate member of the panel as the reporter responsible for preparation of the report to the professional conduct committee.

**(5) Complaint Screening Committee:**

(a) The court shall appoint a committee to be known as the complaint screening committee which shall consist of nine members, one of whom shall be designated by the court as chair and one of whom shall be designated by the court as vice chair to act in the absence or disability of the chair. Five of the members shall be attorneys and four of them shall be non-attorneys. The complaint screening committee shall act only with the consensus of a majority of its members present and voting provided, however, that three attorney members and two non-attorney members shall constitute a quorum. The chair of the committee, or any member performing the duties of the chair, shall only vote on matters relating to specific complaints in the event of a tie among the members present and voting. Initial appointments shall be for staggered terms: three members for three years; three members for two years; and three members for one year. Thereafter, the regular term of each member shall be three years. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor. A member shall not serve more than three consecutive full terms but may be reappointed after a lapse of one year. No member of the complaint screening committee shall serve concurrently as a member of the professional conduct committee or the hearings committee.

(b) The complaint screening committee shall have the power and duty:

(1) To consider and act on requests for reconsideration filed by grievants following a decision by general counsel not to docket a matter, to divert attorneys out of the system, or to dismiss a complaint after investigation.

(2) To consider and act on reports by staff members of the attorney discipline office with respect to docketed complaints.

(3) To remove complaints from the docket if it determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing.

(4) To dismiss complaints with a finding of no professional misconduct.

(5) To dismiss complaints for any other reason. If the committee determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.

(6) To divert attorneys out of the attorney discipline system when appropriate and subject to the attorney complying with the terms of diversion. All diversion would be public unless the complaint screening committee determined that a given matter should remain non-public based on one or more of the following issues: health, finances, family considerations or highly personal matters. If a respondent declines to accept diversion or violates the terms of a written diversion agreement,

the complaint in such cases shall be acted upon as if diversion did not exist.

(7) To refer complaints to disciplinary counsel for the scheduling of a hearing only where there is a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence.

(8) To consider and act upon requests for reconsideration of its own decisions, subject to the further right of disciplinary counsel or respondents to request that the professional conduct committee review a decision to refer a complaint to disciplinary counsel for the scheduling of a hearing.

(c) Meetings of the complaint screening committee shall be in the nature of deliberations and shall not be open to the public, respondents, respondents' counsel, or the complainant. Records and reports of recommendations made shall in all respects be treated as work product and shall not be made public or be discoverable. However, the decision of the committee shall be public.

**(6) Attorney Discipline Office:**

~~(a) The professional conduct committee shall appoint:~~

~~(1) a disciplinary counsel and such deputy and assistants as may be deemed necessary whether full-time or part-time;~~

~~(2) a general counsel and such deputy and assistants as may be deemed necessary whether full-time or part-time; and~~

~~(3) other professional staff, including auditors, and clerical staff as may be necessary whether full-time or part-time.~~

**[(a) The attorney discipline office is a division within the administrative office of the courts. The attorney discipline office is managed by general counsel of the attorney discipline office. Employees of the attorney discipline office are judicial branch employees and are subject to all rules and policies of the judicial branch.**

**(b) The director of the administrative office of the courts, after consultation with the chair of the professional conduct committee and the supreme court, shall appoint the attorney discipline office general counsel.**

**(c) The director of the administrative office of the courts shall consult with the chair of the professional conduct committee regarding the performance of attorney discipline office general counsel and may provide information to the chair related to the performance of attorney discipline office general counsel.**

**(d) The director of the administrative office of the courts, after consultation with the chair of the professional conduct committee, shall appoint the attorney discipline office deputy general counsel, disciplinary counsel and deputy disciplinary counsel.**

**(e) The director of the administrative office of the courts shall:**

**(1) employ assistants as may be deemed necessary whether full-time or part-time; and**

**(2) retain independent bar counsel if needed.]**

(b[f]) Disciplinary counsel shall perform prosecutorial functions and shall have the power and duty:

(1) To review complaints referred by the complaint screening committee for hearings.

(2) To contact witnesses, conduct discovery and prepare the complaints for hearings before a panel of the hearings committee.

(3) To try cases before panels of the hearings committee.

(4) To present memoranda to and appear before the professional conduct committee for oral argument.

(5) To represent the attorney discipline office and, in appropriate cases, the professional conduct committee in matters filed with the supreme court.

(6) To assist general counsel in performing the duties of general counsel as needed.

(e[g]) General counsel shall perform a variety of legal services and functions and shall have the power and duty:

(1) To receive, evaluate, docket and investigate professional conduct complaints.

(2) To remove complaints from the docket if it determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing.

(3) To dismiss complaints with a finding of no professional misconduct.

(4) To dismiss complaints for other good cause. If the general counsel determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.

(5) To divert attorneys out of the attorney discipline system when appropriate and subject to the attorney complying with the terms of diversion. All diversion would be public unless the general counsel determined that a given matter should remain non-public based on one or more of the following issues: health, finances, family considerations or highly personal matters. If a respondent declines to accept diversion or violates the terms of a written diversion agreement, the complaint in such cases shall be acted upon as if diversion did not exist.

(6) To present complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason or referral to disciplinary counsel for a hearing.

(7) To assist disciplinary counsel in performing the duties of disciplinary counsel as needed.

(8) To perform legal services as required for the committees of the attorney discipline system.

(9) ~~To oversee and/or perform administrative functions for~~ **[With respect to the administrative functions of the attorney discipline office, to report to the director of the administrative office of the courts and to manage]** the attorney discipline system including but not

limited to maintaining permanent records of the operation of the system, **[assisting with]** preparation of the annual budget, and preparation of an annual report summarizing the activities of the attorney discipline system during the preceding year.

**[(10) After consultation with disciplinary counsel, to retain experts or other professional assistance to prosecute disciplinary matters from funds appropriated for such purposes.]**

**(7) Immunity:**

Each person shall be immune from civil liability for all statements made in good faith to any committee of the attorney discipline system, the attorney discipline office, the attorney general's office, or to this court given in connection with any investigation or proceedings under this rule pertaining to alleged misconduct of an attorney. The protection of this immunity does not exist as to: (a) any statements not made in good faith; or (b) any statements made to others. See section (20)(k). The committees' members, staff, counsel and all others carrying out the tasks and duties of the attorney discipline system shall be immune from civil liability for any conduct arising out of the performance of their duties.

**(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) 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.

**(9) Attorneys Convicted of Serious Crime:**

(a) Upon the filing with the court of a certified copy of any court record establishing that an attorney has been convicted of a serious crime as hereinafter defined, the court may enter an order suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. Any order of suspension entered pursuant to this provision shall be effective immediately.

(b) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(c) A certified copy of any court record establishing the conviction of an attorney for any "serious crime" shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction. The certified copy shall constitute evidence sufficient to issue an order of immediate suspension under subparagraph (a) without further hearing.

(d) Upon the receipt of a certificate of conviction of an attorney for a "serious crime," the court may, and shall if suspension has been ordered pursuant to subsection (a) above, institute a formal disciplinary proceeding by issuing an order to the attorney to show cause why the attorney should not be disbarred as a result of the conviction. If the court determines that no such good cause has been shown, the court shall issue an order of disbarment, or

such other discipline as the court shall deem appropriate. If the court determines that the attorney has shown cause why disbarment may not be appropriate, the court shall refer the matter to the professional conduct committee, in which the sole issue to be determined shall be the extent of the final discipline to be imposed. Provided, however, that final discipline will not be imposed until all appeals from the conviction are concluded.

(e) Upon receipt of a certificate of conviction of an attorney for a crime not constituting a "serious crime," the court shall refer the matter to the attorney discipline office for such action as it deems appropriate. Referral to the attorney discipline office hereunder does not preclude the court from taking whatever further action it deems appropriate.

(f) An attorney suspended under the provisions of subsection (a) above may be reinstated upon the filing of a certificate demonstrating that the underlying conviction for a serious crime has been reversed but the reinstatement will not terminate any proceeding then pending against the attorney.

(g) Any attorney who has been convicted of a crime in this state or in any other state shall notify the court, in writing, within ten (10) days of sentencing on said conviction. The notice shall inform the court of the crime, the criminal statute violated, the court of conviction, the date of conviction, and the sentence imposed. The clerk of any court within the State in which an attorney is convicted of any crime shall, within ten (10) days of said conviction, transmit a certificate thereof to this court.

(h) Upon being advised that an attorney has been convicted of a crime within this State, the attorney discipline office shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate to this court in accordance with the provisions of subsection (g) above. If the certificate has not been forwarded by the clerk or if the conviction occurred in another jurisdiction, it shall be the responsibility of the attorney discipline office to obtain a certificate of conviction and to transmit it to this court.

(i) Whenever an attorney is indicted or bound over for any felony, the court shall take such actions as it deems necessary, including but not limited to the suspension of the attorney.

**(9-A) Proceedings Where an Attorney is Alleged to have Engaged in Conduct that Poses a Substantial Threat of Serious Harm.**

(a) The attorney discipline office may file a petition for interim suspension or other relief in this court alleging that an attorney has engaged in conduct that poses a substantial threat of serious harm to the public.

(b) The term "substantial threat of serious harm" encompasses any non-serious crime, conduct, or course of conduct that substantially impairs the attorney's ability to continue to practice in conformity with the Rules of Professional Conduct and Rule 50, or creates a substantial risk of harm to the public if the attorney is not suspended on an interim basis.

(c) The petition must state with particularity the conduct alleged as well as why the interim suspension is necessary to prevent a threat of serious harm



to the public. The attorney discipline office shall serve the petition on the attorney by first-class mail, and service shall be deemed complete upon mailing. Service upon the respondent attorney at the latest address provided to the New Hampshire Bar Association shall be deemed to be sufficient. The attorney shall have twenty (20) days from the date of mailing to respond. If the attorney contests the interim suspension, the court will convene a hearing before a judicial referee or a hearing panel of the professional conduct committee. If the attorney consents to the interim suspension, the court may issue an order of interim suspension which will be effective immediately. If the attorney fails to respond to the petition, the allegations of the petition shall be deemed to be admitted, and no hearing shall be required.

(d) The hearing on the petition shall be recorded. The parties shall have thirty (30) days to prepare for the hearing, but no continuance of the hearing shall be granted absent extraordinary circumstances. The attorney discipline office shall have the burden to prove the need for interim suspension by clear and convincing evidence. The referee or panel may consider whether measures short of interim suspension adequately safeguard the public against the threat of substantial harm.

(e) After the hearing, the referee or panel shall issue a recommendation with regard to the need for interim suspension within ten (10) days, and shall forward that recommendation, with the record of the hearing, to the court. The court shall review the recommendation and the record. It may enter an order of interim suspension, dismiss the petition for interim suspension, issue an order directing the attorney to abide by specific conditions in lieu of interim suspension, or remand the matter for further proceedings. Any order issued by the court shall be effective immediately, and shall remain in effect unless it is modified by the court, or it is superseded by an order stemming from disciplinary proceedings arising out of the same or related conduct.

#### **(9-B) Summary Suspension Procedure.**

(a) In cases alleging serious misconduct, failure of an attorney under investigation to comply with a subpoena validly issued under Rule 37(8) or failure of an attorney under investigation to respond to requests for information by attorneys from the attorney discipline office made in the course of investigating a docketed matter may be grounds for summary suspension as set forth herein.

(b) "Serious misconduct," for purposes of this Rule, is any misconduct involving (1) mishandling or misappropriation of client or third party property or funds or (2) any other misconduct which by itself could result in a suspension or disbarment.

(c) The attorney discipline office may file a petition for summary suspension with this court, with copies to the subject attorney, which sets forth the violation of this section, supported by an affidavit of the attorney discipline office affirming the facts set forth in subsection (d). Upon such filing, this court may enter an order of summary suspension and may order such emergency relief as this court deems necessary to protect the public.

(d) The affidavit in support of the petition for summary suspension shall affirm:

(1) that the lawyer was served with the subpoena or was mailed the request(s) for information at the latest address provided to the New Hampshire Bar Association;

(2) that the lawyer was afforded a reasonable period of time for compliance with the request for information or the subpoena, and has failed to comply, to answer, or to appear; and

(3) that the subpoena or request for information was accompanied by a statement advising the attorney that failure to comply with the subpoena or request for information may result in summary suspension without further hearing.

(4) Notice of intent to seek summary suspension was both sent by certified mail and was provided in hand to the attorney or attempted in hand without success, despite reasonable efforts.

(e) Any suspension under the provisions of subsection (c) above shall be immediately effective upon entry of the suspension order and shall be subject to the provisions of Rule 37(16)(g).

(f) An attorney suspended under the provisions of subsection (c) above may request a hearing by the deadline set forth in the order of suspension. The hearing shall be conducted by a judicial referee or a hearing panel, and shall occur within ten (10) days of the effective date of the suspension. The judicial referee or hearing panel shall issue a report within ten (10) days of the hearing recommending whether the suspension should be lifted.

(g) If an attorney cures the failure to comply with the subpoena or other request for information, the attorney may file a petition for reinstatement with this court. The petition shall be accompanied by an affidavit of compliance stating the extent to which he or she has complied with the subpoena or request for information. A copy of the petition and affidavit shall be sent to the attorney discipline office, which may file a response to the petition and affidavit within 10 days. The court may take such action on the petition as it deems appropriate.

(h) If not reinstated pursuant to Rule 37(9-B)(f) or (g), the attorney shall become subject to the provisions of Rule 37(17).

(i) A lawyer suspended in another jurisdiction pursuant to a procedure similar to that set forth herein may be suspended in this jurisdiction on a reciprocal basis as provided in Rule 37(12).

**(10) Proceedings Where An Attorney Is Declared To Be Incompetent Or Is Alleged To Be Incapacitated:**

(a) Whenever an attorney has been judicially declared incompetent or voluntarily or involuntarily committed to a mental health facility, the court, upon proper proof of the fact, may enter an order suspending such attorney from the practice of law until the further order of the court. A copy of such order shall be served upon such attorney, the attorney's guardian and such other persons and in such manner as the court may direct.

(b) Whenever any committee of the attorney discipline system or the attorney discipline office shall petition the court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental or physical infirmity or illness or because of addiction to drugs or intoxicants, the court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the court shall designate. If, upon due consideration of the matter, the court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending the attorney on the ground of such disability for an indefinite period and until the further order of the court, and any pending disciplinary proceeding against the attorney may be held in abeyance.

The court shall provide for such notice to the respondent attorney of proceedings in the matter as it deems proper and advisable and shall appoint an attorney to represent the respondent if he or she is without adequate representation.

(c) If, during the course of a disciplinary proceeding, the respondent attorney contends that he or she is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent attorney to adequately defend himself or herself, the court thereupon shall enter an order immediately suspending the respondent attorney from continuing to practice law until a determination is made of the respondent attorney's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of subsection (b) of this section.

If, in the course of a proceeding under this section or in a disciplinary proceeding, the court shall determine that the respondent attorney is not so incapacitated, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent attorney.

(d) Any attorney suspended under the provisions of this section may apply for reinstatement following the expiration of one year from the date of suspension or at such other time as the court may direct in the order of suspension or any modification thereof. Such application shall be granted by the court upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fit to resume the practice of law. Upon such application, the court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the court shall designate. At its discretion, the court may direct that the expense of such an examination shall be paid by the attorney.

Whenever an attorney has been suspended by an order in accordance with the provisions of subsection (a) of this section and, thereafter, in proceedings duly taken, the attorney has been judicially declared to be competent, the court may dispense with further evidence that the disability has

been removed and may direct reinstatement upon such terms as it deems proper and advisable.

(e) In a proceeding seeking an order of suspension under this section, the burden of proof shall rest with the moving party. In a proceeding seeking an order terminating a suspension under this section, the burden of proof shall rest with the suspended attorney.

(f) The filing of an application for reinstatement by an attorney suspended for disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which the attorney has been examined or treated since the suspension and shall furnish to the court written consent to each to divulge such information and records as requested by the attorney discipline system or the court appointed medical experts.

**(11) Resignation By Attorney Under Disciplinary Investigation:**

(a) An attorney who is the subject of an investigation into allegations of misconduct may file a request to resign by delivering to the professional conduct committee an affidavit stating that he or she desires to resign and that:

(1) the resignation is freely and voluntarily rendered; he or she is not being subjected to coercion or duress; he or she is fully aware of the implications of submitting the resignation;

(2) he or she is aware that there is presently pending an investigation into allegations that he or she has been guilty of misconduct the nature of which shall be specifically set forth;

(3) he or she acknowledges that the material facts upon which the complaint is predicated are true; and

(4) he or she submits the resignation because he or she knows that if charges were predicated upon the misconduct under investigation they could not be successfully defended.

(b) Upon receipt of the required affidavit, the professional conduct committee shall file it with the court, along with its recommendation, and the court may take such action as it deems necessary.

(c) The contents of affidavit of an attorney filed in support of his or her resignation from the bar shall not be disclosed publicly or made available for use in any other proceeding except on order of the court.

**(12) Reciprocal Discipline:**

(a) Upon being disciplined in another jurisdiction, an attorney admitted to practice in this State shall immediately notify the attorney discipline office of the discipline. Upon notification from any source that an attorney admitted to practice in this State has been disciplined in another jurisdiction, the attorney discipline office shall obtain a certified copy of the disciplinary order and shall file it with the court.

(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this State has been disciplined in another jurisdiction, the court may enter a temporary order imposing the identical or substantially similar discipline or, in its discretion, suspending the attorney pending the imposition of final discipline. The court shall forthwith issue a notice directed to the attorney and to the attorney discipline office containing:

(1) A copy of the order from the other jurisdiction; and

(2) An order directing that the attorney or attorney discipline office inform the court within thirty (30) days from service of the notice, of any claim by the lawyer or professional conduct committee predicated upon the grounds set forth in subparagraph (d), that the imposition of the identical or substantially similar discipline in this State would be unwarranted and the reasons for that claim.

(c) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this State shall be deferred until the stay expires.

(d) Upon the expiration of thirty (30) days from service of the notice pursuant to subparagraph (b), the court shall issue an order of final discipline imposing the identical or substantially similar discipline unless the attorney or attorney discipline office demonstrates, or the court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) The imposition of the same or substantially similar discipline by the court would result in grave injustice; or

(3) The misconduct established warrants substantially different discipline in this State.

(e) If the court determines that one of the factors set forth in paragraph (d) is present, the court shall refer the matter to the professional conduct committee for its recommendation regarding the discipline to be imposed.

### **(13) Disbarred or Suspended Attorney:**

(a) A disbarred or suspended attorney may be ordered by the court, or by the professional conduct committee when an attorney is suspended by it for a period not to exceed six (6) months, to notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of the disbarment or suspension and consequent inability to act as an attorney after the effective date of the disbarment or suspension and shall advise said clients to seek other legal counsel.

(b) A disbarred or suspended attorney may be ordered by the court, or by the professional conduct committee when an attorney is suspended by it for a period not to exceed six (6) months, to notify, by registered or certified mail, return receipt requested, each client who is involved in litigated matters or administrative proceedings, and the attorney or attorneys for each adverse

party in such matter or proceeding, of the disbarment or suspension and consequent inability to act as an attorney after the effective date of the disbarment or suspension. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move pro se in the court or agency in which the proceeding is pending, for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

(c) The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period between the entry date of the order and its effective date, the disbarred or suspended attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(d) In addition, the court, or the professional conduct committee in cases where it issued a suspension order, may order that within thirty (30) days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with the court an affidavit showing: (1) that he or she has fully complied with the provision of the order and with this section; and (2) that he or she has served a copy of such affidavit upon the professional conduct committee. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed, as well as a list of all other jurisdictions in which the disbarred or suspended attorney is a member of the bar.

(e) A disbarred or suspended attorney shall keep and maintain records of the various steps taken under this section so that, upon any subsequent proceeding instituted by or against him or her, proof of compliance with this rule and with the disbarment or suspension order will be available.

**(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 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[, **and** **the** 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.

**(15) Readmission after Resignation:**

(a) A New Hampshire licensed attorney who has resigned, and who was not the subject of an investigation into allegations of misconduct at or subsequent to the time of resignation, may file a motion for readmission with the supreme court accompanied by evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness. 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 readmission effective upon payment by the applicant of all bar dues and other fees, including public protection fund fees, that the applicant would have been responsible for paying had the applicant remained an active member of the bar from the date of resignation until the date of readmission. In addition, the court may condition readmission upon completion of such continuing legal education as the court may order.

(b) If the evidence of continuing competence and learning in the law is not satisfactory to the court, the court shall refer the motion for readmission to the professional conduct committee for referral to a panel of the hearings committee. The hearing panel shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competency and learning in law required for readmission. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the professional conduct committee. The professional conduct committee shall review the report of the hearings committee panel, the record and the hearing transcript and shall file its own recommendations 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. No order of the court granting readmission shall

be effective prior to payment by the applicant of all bar dues and other fees, including public protection fund fees, that the applicant would have been responsible for paying had the applicant remained an active member of the bar from the date of resignation until the date of readmission. In addition, the court may condition readmission upon completion of such continuing legal education as the court may order.

(c) 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(5)(e). Further proceedings shall be governed by Rule 42. No order of the court granting readmission shall be effective prior to payment by the applicant of all bar dues and other fees, including public protection fund fees, that the applicant would have been responsible for paying had the applicant remained an active member of the bar from the date of resignation until the date of readmission. In addition, the court may condition readmission upon completion of such continuing legal education as the court may order.

**(16) Procedure:**

(a) Either a respondent attorney or disciplinary counsel may appeal findings of the professional conduct committee and the imposition of a reprimand, public censure or a suspension of six (6) months or less by filing a notice of appeal with the supreme court. The appeal shall not be a mandatory appeal. If the appeal is accepted by the court, the court may affirm, reverse or modify the findings of the professional conduct committee.

The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.

(b) The professional conduct committee shall initiate disciplinary proceedings requesting a discipline of greater than six (6) months in this court by filing the professional conduct committee's recommendation and the record of the proceedings with this court.

(c) Following receipt of the recommendation and the record, this court shall serve the respondent attorney with the recommendation at the latest address provided to the New Hampshire Bar Association. Simultaneously, the court shall notify the parties that the parties must, within 30 days of this court's order thereon, identify any legal or factual issues the parties wish this court to review. Thereafter, this court may issue a scheduling order setting forth a briefing schedule and any other matters as shall be deemed desirable or necessary. There shall not be a de novo evidentiary hearing. In matters resolved by dispositive stipulation, this paragraph shall not apply, though the court retains discretion to reject any dispositive stipulation in whole or in part, or to identify legal or factual issues it wishes the parties to address.

(d) The court may make such temporary orders as justice may require either with or without a hearing. Respondent attorney shall be entitled to be heard after any ex parte order.

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

(f) The court may suspend attorneys or disbar New Hampshire licensed attorneys or publicly censure attorneys upon such terms and conditions as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession. The court may remand the matter to the professional conduct committee for such other discipline as the court may deem appropriate.

(g) In the event of suspension or disbarment, a copy of the court's order or the professional conduct committee's order, shall be sent to the clerk of every court in the State and to each State in which the respondent attorney is admitted to practice. The professional conduct committee shall continue to be responsible to insure respondent attorney's compliance with the order of suspension or disbarment, in the case of a New Hampshire licensed attorney, and to notify the court as to any violations for such action as the court deems necessary.

(h) In addition to the procedure described herein, the court may take such action on its own motion as it deems necessary.

(i) Appeals to the court shall be in the form prescribed by Rule 10, unless otherwise ordered by the court. Such appeals shall be based on the record and there shall not be a de novo evidentiary hearing.

**(17) Appointment of Counsel to Protect Clients' Interests:**

(a) Whenever an attorney is suspended, disbarred, dies or whose whereabouts are unknown, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the court, upon proper proof of the fact, may appoint an attorney or attorneys to make an inventory of the files of said attorney and to take such action as seems indicated to protect the interests of clients of said attorney as well as the interest of said attorney.

(b) Any attorney so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order appointing the attorney to make such inventory.

(c) Any attorney so appointed shall be entitled to reasonable compensation and reimbursement for expenses incurred.

**(18) Refusal of Grievant or Complainant to Proceed, Compromise, Etc.:**

Neither unwillingness nor neglect of the grievant or complainant to sign a grievance or complaint or to prosecute a charge, nor settlement, compromise or restitution shall by itself justify abatement of an investigation into the conduct of an attorney.

**(19) [Expenses of Attorney Discipline System;] Monetary Sanctions:  
Expenses Relating to Discipline Enforcement:**

**[(a) The court shall issue an order, as may be necessary, assessing attorneys a fee to support the attorney discipline system.]**

(a[b]) All expenses incurred by the attorney discipline system in the investigation and enforcement of discipline may, in whole or in part, be assessed to a disciplined attorney to the extent appropriate.

(b[c]) Following any assessment, the professional conduct committee shall send a written statement of the nature and amount of each such expense to the disciplined attorney, together with a formal demand for payment. The assessment shall become final after 30 days unless the disciplined attorney responds in writing, listing each disputed expense and explaining the reasons for disagreement. If the parties are unable to agree on an amount, the professional conduct committee may resolve and enforce the assessment by petition to the superior court in any county in the state.

(e[d]) A final assessment shall have the force and effect of a civil judgment against the disciplined attorney. The professional conduct committee may file a copy of the final assessment with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures.

(d[e]) The superior court may increase the assessment to include any taxable costs or other expenses incurred in the resolution or enforcement of any assessment. Such expenses may include reasonable attorney's fees payable to counsel retained by the committee to resolve or recover the assessment.

(e[f]) Any monetary assessment made against a disciplined attorney shall be deemed to be monetary sanctions asserted by the professional conduct committee or the applicable court against such attorney.

**(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) *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 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 (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) *Grievance Docketed as Complaint:* All records and proceedings relating to a complaint docketed by the attorney discipline system shall be available for public inspection (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 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) *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) *Proceedings for Reinstatement or Readmission:* When an attorney seeks reinstatement or readmission pursuant to section (14), 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) *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) *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) *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) *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, 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 law enforcement agencies authorized to investigate and prosecute violations of the criminal law.

(i) *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.

(j) *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.

(k) *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.

(l) *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.

(m) *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.

(n) 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.

**(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) Copy of Rule:**

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

# The State of New Hampshire

## ADMINISTRATIVE OFFICE OF THE COURTS

Dianne Martin  
Director

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March 3, 2022

Honorable Patrick E. Donovan, Chair  
Advisory Committee on Rules  
New Hampshire Supreme Court  
1 Charles Doe Drive  
Concord, New Hampshire 03301

Re: Proposed Amendment to Supreme Court Rule 42

Dear Justice Donovan:

Enclosed is a copy of Supreme Court Rule 42, showing proposed changes to the rule that are intended to fully integrate the Office of Bar Admissions (OBA) into the judicial branch and streamline its operations. At present, the OBA operates under the supervision of the Board of Bar Examiners (BBE) and the Character and Fitness Committee (C&F). Sherry Hieber, the OBA's General Counsel, reports directly to these committees. If the proposed changes are adopted, the OBA would become a division within the New Hampshire Judicial Branch's Administrative Office of the Courts (AOC). The AOC, which provides administrative support to all New Hampshire state courts, would provide administrative support to the OBA, including support for payroll, human resources, accounting, and information technology. This restructuring is consistent with the bar admissions structure in other states. Relieving the OBA of administrative functions will enable OBA staff and committee members to focus their efforts on the work of overseeing the bar admissions process. The proposed changes will not affect the policies or the procedures governing admission to the bar, or the independent decision-making authority of the BBE and C&F.

To effectuate this change, this proposal includes the following changes to Rule 42:

1. As set forth in a new introductory paragraph, the OBA would become a division of the AOC;
2. As provided in paragraph III(a), OBA employees would become employees of the judicial branch who would be subject to the rules and policies of the judicial branch;

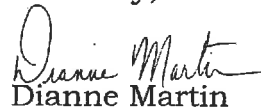
3. As provided in paragraph III(b), the Director of the AOC would be authorized to appoint the OBA's General Counsel after consultation with the chairs of the BBE, C&F, and the Supreme Court;
4. As provided in paragraph III(d), the OBA General Counsel would report to the Director of the AOC on administrative matters;
5. As provided in paragraph I(b)(8), the BBE and C&F would direct the actions and performance of General Counsel and OBA staff in the performance of its non-administrative functions;
6. As provided in paragraph III(a), the Director of the AOC would be required to consult with the chairs of the BBE and C&G regarding the performance of general counsel;
7. As provided in paragraph VIII, bar admission fees would be paid to the State of New Hampshire.

As provided in Supreme Court Rule 51, proposed deletions to the present rule are shown in ~~striketrough~~ and proposed added text in **[bold and brackets]**.

The Supreme Court hopes to implement this structural change on July 1, 2022. For this reason, expedited consideration of the proposed changes is requested. I would be happy to answer any questions about the proposed changes that the Advisory Committee on Rules or the Supreme Court may have.

Thank you for your consideration.

Sincerely,

  
Dianne Martin

Cc: Loretta S. Platt, Secretary

3/3/22

ACR format

ADDITIONS SHOWN IN **[BOLD]**  
DELETIONS IN ~~STRIKETHROUGH~~

## **Rule 42. Admission To The Bar; Board of Bar Examiners; Character And Fitness Committee**

### **[Introduction**

**The office of bar admissions is responsible for administering the bar admission process and supporting the functions of the board of bar examiners and character and fitness committee as set forth below. The office of bar admissions is a division within the administrative office of the courts.]**

### **I. Board of Bar Examiners**

(a) **Board of Bar Examiners Established.** A board of bar examiners (board) will be appointed by the court to examine persons desiring to be admitted to the bar of New Hampshire. The board shall consist of no fewer than thirteen members of the New Hampshire bar. Appointments to the board shall be for terms of three years, and members shall be eligible for reappointment. The court shall designate one member of the board to serve as chair and one member to serve as vice-chair.

~~(b) **Expenses of the Board.** All appropriate expenses for operations, staff, equipment and other expenses shall be paid from fees received by the board. Funds previously paid to the Character and Fitness Committee and in the possession of the committee on September 1, 2012 shall be transferred to the board.~~

(e**[(b)]**) **Duties of Board.** The board is charged with the duty and vested with the power and authority:

- (1) to determine eligibility of applicants for admission to the bar of New Hampshire;
- (2) to determine reciprocal jurisdictions for purposes of admission by motion without examination under Rule 42(XI)(a);
- (3) to provide for and administer the bar examination, and to provide for the conduct and security of the bar examination;
- (4) with the approval of the court, to set the scores that will be considered passing on the bar examination and the Multistate Professional Responsibility Examination;
- (5) to establish a fee schedule, with the approval of the court, for applications for admission to the New Hampshire bar, and for other services;
- (6) to establish subcommittees, as appropriate, to perform its duties;

(7) to delegate to any of its members, subcommittees or administrator **[office of bar admissions general counsel]**, all or any part of its duties and responsibilities under this section;

(8) ~~to establish a budget, expend funds, enter into contracts and retain the assistance of experts and other personnel when deemed necessary for the efficient discharge of its duties;~~**[to direct the actions of the office of bar admission general counsel and other staff in the performance of the non-administrative functions prescribed in this rule;]**

(9) ~~to oversee the Office of Bar Admissions;~~

(10**[9]**) to promulgate, amend and revise regulations relevant to the above duties to implement this rule. The regulations of the board shall be consistent with the provisions of this rule and shall not be effective until approved by the court, but once approved, shall have the same force and effect as this rule.

## **II. Character and Fitness Committee**

(a) **Committee on Character and Fitness Established.** A Supreme Court committee on character and fitness (committee) is established to examine the character and fitness of applicants desiring to be admitted to the bar of New Hampshire. The committee shall consist of two non-attorney members and seven members of the New Hampshire Bar Association as follows: (i) one member of the board of bar examiners; (ii) one member who is a member of the committee on professional conduct; (iii) the attorney general of New Hampshire or his or her designee; (iv) the clerk of the supreme court or his or her designee; and (v) three other members of the New Hampshire Bar Association, one of whom shall be designated chair of the committee. The terms of the attorney general and of the clerk of the supreme court as members of the committee shall be coterminous with their terms of office; and, in the absence of either the attorney general or the clerk of the supreme court, his or her designee is authorized to act as an alternate, exercising all the powers of an appointed member of the committee. Each other member of the committee shall be appointed for a term of three years and shall be eligible for reappointment.

(b) **Expenses of Committee.** ~~All appropriate expenses for operations, staff, and other expenses shall be paid from the fees received by the board. Funds previously paid to the committee and in the possession of the committee on September 1, 2012 shall be transferred to the board.~~ Members of the committee shall receive no compensation for their services, but ~~their reasonable expenses shall be paid by the board~~ **[shall be reimbursed for their reasonable expenses incurred in the performance of their duties under this rule].**

(c) **Duties of Committee.** The committee is charged with the duty and vested with the power and authority:

(1) to investigate the character and fitness of applicants to the New Hampshire bar;

(2) to conduct interviews and evidentiary hearings with regard to an applicant's character and fitness;

~~(3) to retain the assistance of experts and other personnel when deemed necessary for the efficient discharge of its duties;~~

(4[3]) to make recommendations to the New Hampshire Supreme Court regarding and applicant's good moral character and fitness to practice law in New Hampshire;

(5[4]) to establish subcommittees, as appropriate, to perform its duties;

(6[5]) to delegate to any of its members, subcommittees or administrator **[office of bar admissions general counsel]**, all or any part of its duties and responsibilities under this section;

(7[6]) to promulgate, amend and revise regulations relevant to the above duties to implement this rule. The regulations of the committee shall be consistent with the provisions of this rule and shall not be effective until approved by the court, but once approved, shall have the same force and effect as this rule.

### III. Office of Bar Admissions

(a) An Office of Bar Admissions shall be established to administer and support the functions of the board and the committee. ~~The court may appoint a bar admission administrator and general counsel (hereinafter "administrator") who will serve at the pleasure of the court.~~ **[The office of bar admissions is a division within the administrative office of the courts. The office of bar admissions is managed by office of bar admissions general counsel. Employees of the office of bar admissions are judicial branch employees and are subject to all rules and policies of the judicial branch.]**

(b) **The director of the administrative office of the courts, after consultation with the supreme court, and the chairs of the board of bar examiners and the committee on character and fitness, shall appoint an office of bar admissions general counsel. The director of the administrative office of the courts shall consult with the chairs of the board of bar examiners and the committee on character and fitness regarding the performance of office of bar admissions general counsel and may provide information to the chairs related to the performance of office of bar admissions general counsel.]** ~~The administrator may exercise authority delegated to him or her by the board, the committee, or their chairs.~~

~~(c) The board shall have the authority to share, loan, or borrow employees, equipment, and office space with other court entities as may be necessary for efficient operation of the Office of Bar Admissions.~~

**[(c) The office of bar admissions general counsel may exercise authority delegated to him or her by the director of the administrative office of the courts, the board, the committee, or their chairs.]**

(d) With respect to administrative functions of the office of bar admissions, the office of bar admissions general counsel shall report to

**the director of the administrative office of the courts and shall manage the office of bar admissions as a division within the judicial branch, including but not limited to maintaining permanent records of the operation of the office, and assisting with the preparation of the annual budget.**

**(e) The office of bar admissions general counsel shall have the authority to retain the assistance of experts and other professionals when deemed necessary for the efficient discharge of its duties or the duties of the board of bar examiners or the committee on character and fitness from funds appropriated for this purpose.**

**(f) The director of the administrative office of the courts shall:**

**(1) employ assistants as may be deemed necessary whether full-time or part-time; and**

**(2) retain independent counsel if needed.]**

#### **IV. General Requirements for Admission to Bar**

**(a) Eligibility.** Every applicant for admission to the New Hampshire bar shall be required:

(1) to comply with all provisions of this rule;

(2) to file all application forms prescribed by the board, respond to all requests of the board, the committee, their designees, and the staff of the Office of Bar Admissions, for information deemed relevant to the application for admission, and to pay all prescribed fees related to the application for admission;

(3) to meet one of the following requirements:

(A) to pass the bar examination; or

(B) to satisfy the requirements for admission by transferred UBE score set forth in paragraph X; or

(C) to satisfy the requirements for admission without examination set forth in Rule 42(XI); or

(D) to satisfy the requirements for admission after successful completion of the Daniel Webster Scholar Honors Program set forth in Rule 42(XII);

(4) to pass the Multistate Professional Responsibility Examination;

(5) to be at least 18 years of age;

(6) to satisfy the educational requirements set forth in Rule 42(V);

and

(7) to establish his or her character and fitness to practice law to the committee and to the court.

**(b) Determination of eligibility.** An applicant's eligibility to take the bar examination, to be admitted by transferred UBE score, or to be admitted by motion without examination, shall be determined in the first instance by the ~~bar admissions administrator~~ **[office of bar admissions general counsel]** or a member of the board. If the ~~bar admissions administrator~~ **[office of bar admissions general counsel]** or board member determines that the applicant is ineligible for admission, the applicant may seek reconsideration from the



board or a subcommittee thereof, in accordance with procedures established by the board.

(c) **Petition for Review.**

(1) If the board or subcommittee determines that an applicant is ineligible for admission, the applicant may seek review by the supreme court of the board or subcommittee's final decision by filing ~~an original and eight copies of~~ a petition with the supreme court for review within twenty days of the date of the notice of final decision. If no such petition is filed within the twenty-day period, the board or subcommittee's determination shall not be subject to review. The petition for review shall:

(A) specify the name and address of the person seeking review of the final decision and of counsel, including counsel's bar identification number;

(B) contain a copy of the final decision sought to be reviewed, a copy of a motion for reconsideration, if any, and a copy of any order on the motion for reconsideration;

(C) specify the questions presented for review;

(D) specify the provisions of the constitutions, statutes, rules, regulations or other law involved in the matter, setting them out verbatim, and giving their citation. If the provisions to be set out verbatim are lengthy, their pertinent text shall be annexed to the petition for review;

(E) set forth a concise statement of the case containing the facts material to the consideration of the questions presented, with appropriate references to the transcript, if any;

(F) set forth all claims of error and reasons for challenging the board or subcommittee's determination;

(G) include a statement that every issue raised has been presented to the board or subcommittee below; and

(H) contain a certification that a copy of the complete petition for review has been delivered, mailed, or served on the Office of Bar Admissions.

(2) Upon notification that a petition for review has been filed, the board shall transmit to the supreme court the complete record in the case, including a transcript of any hearing before the board or subcommittee of the board. The petitioner, and not the board, is responsible for paying the cost of preparing the transcript.

(3) Unless the court orders otherwise, no response to the petition for review will be required and the petition shall be deemed submitted for the court's review based upon the record. The court shall review the petition for review in the normal course and, after consideration of the petition for review and the record, the court shall make such order as justice may require.

(d) **Time Limitation.** If an applicant does not satisfy the requirements for admission to the bar set forth in Rule 42 (IV)(a) above and take the oath of admission within two years of the date of the notice of successfully passing the bar examination, or within two years of the date of the notice that his or her motion for admission without examination, or motion for admission by transferred UBE score has been granted, the applicant's application or motion for admission to the bar shall be denied, and he or she shall be required to retake and pass the bar examination, or file a new motion for admission without examination, or a new motion for admission by transferred UBE score, unless the board grants a request for an extension of the deadline for good cause shown. Any such applicant shall be required to once again establish his or her good moral character and fitness to the satisfaction of the committee and the supreme court.

(e) **Readmission to the bar.** The application process for a person seeking readmission to the bar is governed by Rule 37.

(f) **Applicant's duty to cooperate.** An applicant for admission to the New Hampshire bar has a duty to cooperate with the board, the committee, their designees, and the staff of the Office of Bar Admissions. Any person who seeks admission to the New Hampshire bar agrees to waive all rights of privacy with reference to any and all documentary material filed or secured in connection with his or her application or motion for admission. The applicant also agrees that any documentation submitted by the applicant may be offered into evidence, without objection, by the board or committee, in any proceeding relating to the applicant's admission to the practice of law.

(g) **Confidentiality.** All documents submitted by an applicant for admission to the New Hampshire bar, all information relating to an applicant gathered by the board, committee, or staff of the Office of Bar Admissions, and all minutes and records circulated to members of the board or committee, shall be confidential and shall not be disclosed or open to the public for inspection except for the following permitted disclosures. The board, committee and staff of the Office of Bar Admissions are authorized to:

1. disclose the names and addresses of applicants to the New Hampshire bar;

2. publish the names of applicants who have passed the bar examination;

3. publish statistical information about bar examination results;

4. provide name-specific pass-fail results to any law school regarding graduates of that law school, which may include an applicant's prior names, date of birth, the date that the applicant's law degree was conferred, and whether the applicant was a first-time or repeat taker. The information will be released to the law schools on condition that no information other than the names of those who passed the exam will be further disseminated.

5. upon receipt of a request and duly executed release from an applicant, provide copies of material in an applicant's file to admissions authorities from other jurisdictions;

6. investigate the character and fitness of an applicant, and disclose any information necessary to the investigation, pursuant to an authorization and release signed by the applicant as part of the petition and questionnaire for admission;
7. disclose relevant information that is otherwise confidential to agencies authorized to investigate complaints of attorney misconduct, or to law enforcement agencies authorized to investigate and prosecute violations of the criminal law;
8. release information regarding an applicant pursuant to a court order;
9. release name and score information to the National Conference of Bar Examiners;
10. release a copy of an applicant's bar admission application upon a written request executed by the applicant and submission of the appropriate fee;
11. publish an applicant's answer to a question on the bar examination as a representative sample of an answer, provided that the identity of the applicant is not disclosed.

## **V. Educational Requirements for Admission**

(a) **Undergraduate Education.** Every applicant for admission to the bar must furnish satisfactory proof that the applicant successfully completed at least three (3) years of work required for a bachelor's degree in an accredited college before beginning the study of law, or that the applicant received an equivalent education. An applicant who has not successfully completed at least three (3) years of work required for a bachelor's degree in an accredited college shall have the burden of proving educational equivalency. In addition to filing the petition and questionnaire for admission, any such applicant must submit information sufficient for the board to determine that the requirements of this paragraph have been met.

(b) **Law School Education.** Except as provided in Rule 42(XI)(b), every applicant must have graduated from a law school approved by the American Bar Association having a three year course and requiring students to devote substantially all their working time to study, called a full-time law school, or from a law school approved by the American Bar Association having a course of not less than four school years equivalent in the number of working hours to a three year course in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school. A combination of study in full-time and part-time law schools will be accepted only if such law schools meet the above requirements, and the applicant has graduated from one of the law schools. Study in any law school which does not require attendance of its students at its lectures or classes or which conducts its courses by distance education (i.e. by technological transmission, including the internet; open broadcast; closed circuit, cable, microwave, or satellite transmission; audio or computer conferencing; video cassettes or discs; or correspondence) shall not constitute compliance with the rule, except that

distance education in an ABA-approved law school, in compliance with Standard 306 of the ABA Standards and Rules of Procedure for Approval of Law Schools, shall constitute compliance.

(c) **Foreign Law School Graduate.** Notwithstanding the foregoing paragraph, an applicant who has graduated from a law school in a foreign country and who is a member in good standing of the bar of that country or a member of the bar of one of the States of the United States who was admitted after examination and is in good standing, may qualify to sit for the New Hampshire Bar Examination or may apply for admission upon motion by providing to the board satisfactory proof of his or her educational sufficiency. Any person who seeks admission to practice law in the State of New Hampshire who is a graduate of a law school in a foreign country shall have the burden of proving that the requirements of this section have been met. In addition to filing the petition and questionnaire for admission, any foreign law school graduate seeking admission must file an affidavit, signed under oath, attesting that the requirements of this section have been met, and submitting information sufficient for the board to determine that the requirements have been met. To prove educational sufficiency, an applicant must prove:

(1) that he or she successfully completed a period of law study in a law school or law schools each of which, throughout the period of the applicant's study therein, was recognized by the competent accrediting agency of the government of such other country, or a political subdivision thereof, as qualified and approved (distance study, correspondence study and on-line programs are not acceptable); and

(2) that such other country is one whose jurisprudence is based upon the principles of English Common law; and

(3) that the program and course of law study successfully completed by the applicant were substantially equivalent in substance to the legal education provided by a law school accredited by the American Bar Association. An applicant will be deemed to have a legal education equivalent in substance to that provided by law schools accredited by the American Bar Association if the applicant successfully completed, at a law school accredited by the American Bar Association, at least 24 semester credit hours of coursework dealing with either the law of the United States or the law of one of the States of the United States, including a course in basic constitutional law and professional responsibility. Distance study, correspondence study and on-line programs are not acceptable. At least sixteen (16) of the semester credit hours must have been from among at least five of the following categories:

- (A) Evidence
- (B) Taxation
- (C) Civil or Criminal Procedure
- (D) Contracts
- (E) Decedents' Estates
- (F) Real Property

- (G) Corporations or business organizations
- (H) Torts
- (I) Criminal Law

(4) If the applicant has met the requirements of paragraphs (1) and (2), but the applicant's program and course of law study do not meet the requirements of paragraph (3), the board may nevertheless determine that the applicant has proved educational sufficiency based upon the board's consideration of the following factors:

(A) The course of study that was completed as compared to that offered in a law school approved by the American Bar Association;

(B) The attorney's pre-legal education as compared to that offered in a U.S. high school and college or university;

(C) The length and nature of prior legal practice or teaching, if any;

(D) The applicant's familiarity with the American constitutional, common-law and statutory legal systems;

(E) The applicant's successful completion of additional legal studies.

## **VI. Proof of Character and Fitness**

(a) Any person who applies for admission to the bar shall be required to establish his or her moral character and fitness to the satisfaction of the committee and the court before admission to the bar. In determining the moral character and fitness of applicants, the committee shall consider the Character and Fitness Standards set forth in New Hampshire Supreme Court Rule 42B.

(b) Any person who seeks admission to the bar shall at all times have the burden of proving his or her good moral character to the committee and the court. The failure of an applicant to answer any question on the petition and questionnaire for admission, or any question propounded by any member of the committee, a designee of the committee, or by the staff of the Office of Bar Admissions, or to supply any documentary material requested by any of them, shall justify a finding that the applicant has not met the burden of proving good moral character.

(c) Any person who seeks admission to the practice of law shall file with the committee the prescribed petition and questionnaire for admission, which shall contain a certificate signed by two persons certifying the applicant's good moral character. The petition and questionnaire for admission shall be executed by the applicant under oath.

(d) Upon receiving the petition and questionnaire for admission, the committee shall promptly: (1) review the facts stated in the petition, communicate with the references, and make such further investigation as it may deem desirable or necessary; (2) if it deems necessary, arrange for a personal interview with the applicant; (3) consider the character and fitness of the applicant to be admitted to the practice of law; and (4) transmit to the

supreme court a report of its investigation and its recommendation in regard to the character and fitness of the applicant for admission to the practice of law.

(e) If the recommendation of the committee is in favor of admission, the court may accept the recommendation and grant the application for admission or decline to accept the recommendation. If the court determines that the recommendation of the committee should not be accepted, it shall either remand the matter to the committee for further investigation and consideration or refer the matter to a referee for an evidentiary hearing during which the applicant shall have the burden of proving his or her good moral character and fitness. If the recommendation of the committee is against admission, the report of the committee shall set forth the facts upon which the adverse recommendation is based and its reasons for rendering an adverse recommendation. The committee shall promptly notify the applicant about the adverse recommendation and shall give the applicant an opportunity to appear at a hearing before it and to be fully informed of the matters reported to the court by the committee, and to answer or explain such matters. Testimony at such hearings shall be given under oath and shall be recorded. Counsel for the committee, counsel for the applicant, and the ~~bar admissions administrator~~ **[office of bar admissions general counsel]**, may issue subpoenas and subpoenas duces tecum to summon witnesses with or without documents for attendance at hearings. Upon the request of an applicant who is not represented by counsel, counsel for the committee, or the ~~bar admissions administrator~~ **[office of bar admissions general counsel]**, may issue such subpoenas to summon witnesses.

(f) If, following an applicant's appearance before it, the committee is still of the opinion that an adverse report should be made on the application, it shall first give the applicant the privilege of withdrawing the application. If the applicant elects not to withdraw the application, and the second report and recommendation of the committee to the court is against approval of the application, the court, upon receipt of the report with the adverse recommendation by the committee, may grant the application or shall require the applicant to show cause why the application should not be denied.

## **VII. Bar Examination**

(a) The New Hampshire bar examination shall be the Uniform Bar Examination prepared by the National Conference of Bar Examiners. It shall be administered at a time and place determined by the board on the last Wednesday of February and the preceding day, and the last Wednesday of July and the preceding day.

(b) The board's determination of an applicant's score on the bar examination is final and is not subject to review.

(c) If an applicant is aggrieved by a final decision of the board, or a subcommittee thereof, with respect to an issue arising from the applicant's conduct during, or related to, the bar examination, the applicant may seek review of the board or subcommittee's final decision by the supreme court by filing with the supreme court a petition for review within 20 days of the mailing

of the notice of final decision. The applicant shall follow the procedures set forth in Supreme Court Rule 42 (IV)(c).

#### **VIII. Application to take Bar Examination**

(a) A person seeking to take the bar examination shall file with the board an application to take the New Hampshire bar examination and a completed petition and questionnaire for admission by the deadlines established by the board. The application and petition and questionnaire for admission must be accompanied by the bar examination application fee which shall be paid to the ~~the New Hampshire Board of Bar Examiners~~ **[State of New Hampshire]**. The fee shall be nonrefundable.

(b) If an applicant to take the bar examination notifies the board at least thirty days before the date of the bar examination that he or she will not take the bar examination for which he or she applied, and wishes to take the immediately subsequent administration of the bar examination, the applicant shall be required to pay an administrative fee in an amount set by the board, but shall not be required to pay an additional bar examination application fee or submit a new application. The applicant is also required to notify the board in writing on or before the application deadline for the subsequent examination of any changes to the applicant's petition and questionnaire for admission.

(c) A person who has failed the New Hampshire bar examination four times will not be permitted to retake the examination. For purposes of Rule 42, attempts to pass the examination shall count toward the limit of four regardless of whether the examination was taken in New Hampshire or taken in another jurisdiction administering the Uniform Bar Examination prepared and coordinated by the National Conference of Bar Examiners.

#### **IX. Bar Examination Testing Accommodation**

(a) In accordance with the testing accommodation policy most recently approved by the court, an applicant whose disability requires testing accommodations shall submit a written request to the board at the time that the applicant files the application and petition and questionnaire for admission. No request for testing accommodations shall be accepted if received after the application deadline for the July or February examination as established by the board. The written request shall describe:

- (1) the type of accommodation requested; and
- (2) the reasons for the requested accommodation, including medical documentation in a format set forth in the testing accommodation policy.

(b) The request for accommodation shall be ruled on in the first instance by the chair of the board or his or her designee, and the applicant shall be notified of the decision. A denial or modification of a request for testing accommodations by the chair or his or her designee may be appealed to the board of bar examiners, or a subcommittee thereof, in accordance with procedures established by the board. The board or subcommittee's decision on appeal constitutes a final decision of the board. The applicant may seek review of the board or subcommittee's final decision by the supreme court by filing

with the supreme court a petition for review within 20 days of the mailing of the notice of final decision. The applicant shall follow the procedures set forth in Supreme Court Rule 42(IV)(c).

**X. Admission by Transferred Uniform Bar Examination Score**

(a) An applicant who meets the Eligibility Requirements set forth in paragraphs 42 (IV)(a), (V), and (VI), and the following additional requirements may, upon motion to the board, be admitted by transferred UBE score. The applicant shall:

(1) Have earned a UBE score that meets or exceeds the minimum score required by the board on the date that the motion is filed; and

(2) Have either:

(A) earned the UBE score in an administration of the UBE which occurred within three years immediately preceding the date on which the motion for admission by transferred UBE score was filed; or

(B) earned the UBE score more than three years but less than five years prior to the date of filing of the motion for admission by transferred UBE score, and establish that he or she has been primarily engaged in the active practice of law, as defined by Rule 42 (XI)(d), for at least two years in another state, territory, or the District of Columbia in which the applicant was a member in good standing and authorized to practice law throughout the entire two-year period.

(b) To qualify for admission under this Rule 42 (X), the applicant must have earned the minimum score required by the board within no more than four attempts on the UBE. For purposes of this Rule, attempts to earn the minimum score are counted regardless of whether the applicant tested in New Hampshire or in another jurisdiction administering the UBE.

(c) A person seeking admission by transferred UBE score shall file with the board the required motion form, a completed petition, and supporting documents, in accordance with procedures established by the board, accompanied by the motion fee, which shall be paid to the board. The fee shall be nonrefundable, provided, however, that if a motion for admission by transferred UBE score is denied prior to the commencement of the character and fitness investigation by the committee, then one-half of the character and fitness investigation fee shall be refunded.

**XI. Admission by Motion Without Examination**

**(a) Applicant from Reciprocal Jurisdiction.**

(1) An applicant who meets the Eligibility Requirements set forth in Rule 42(IV)(a), (V), and (VI), and the following additional requirements may, upon motion to the board, be admitted to the bar without examination. The applicant shall:

(A) have been admitted by bar examination to practice law in another state, territory, or the District of Columbia; and



(B) have been primarily engaged in the active practice of law in one or more states, territories, or the District of Columbia for five of the seven years immediately preceding the date upon which the motion is filed; and

(C) have either:

i. taken and passed the bar examination in a reciprocal jurisdiction, provided that the applicant is currently a member in good standing of said jurisdiction and authorized to practice law therein; or

ii. been primarily engaged in the active practice of law, for five of the seven years immediately preceding the date upon which the motion is filed, in reciprocal jurisdictions, provided that the applicant was a member in good standing of said jurisdictions and authorized to practice law therein throughout the aforesaid five-year period and is currently a member in good standing of said jurisdictions and authorized to practice law therein; and

(D) establish that the applicant is currently a member in good standing in all jurisdictions where admitted; and

(E) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction; and

(F) designate the clerk of the New Hampshire Supreme Court as agent for service of process; and

(G) file with the board the required motion form, a completed petition and questionnaire for admission, and supporting documents, accompanied by the motion fee.

(2) For purposes of this rule, "reciprocal jurisdiction" is defined as another state, territory, or the District of Columbia that allows admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule.

(b) **Vermont Applicant.** An applicant who is licensed to practice law in Vermont may, upon motion, be admitted to the bar without examination, provided that the State of Vermont allows admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule. Such an applicant shall meet the Eligibility Requirements set forth in Rule 42(IV)(a), (V)(a), and (VI), and the following additional requirements. The applicant shall:

(1) be licensed to practice law in the State of Vermont and be an active member of the Vermont bar; and

(2) have been primarily engaged in the active practice of law in Vermont for no less than three years immediately preceding the date upon which the motion is filed; and

(3) establish that the applicant is currently a member in good standing in all jurisdictions where admitted; and

(4) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction; and

(5) have completed at least 900 minutes of continuing legal education on New Hampshire practice and procedure within one year immediately preceding the date upon which the motion is filed and be certified by the NHMCLE Board as satisfying this requirement; and

(6) designate the clerk of the New Hampshire Supreme Court as agent for service of process; and

(7) file with the board the required motion form, a completed petition and questionnaire for admission, and supporting documents, accompanied by the motion fee.

(c) **Maine Applicant.** An applicant who is licensed to practice law in Maine may, upon motion, be admitted to the bar without examination, provided that the State of Maine allows admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule. Such an applicant shall meet the Eligibility Requirements set forth in Rule 42(IV)(a), (V), and (VI), and the following additional requirements. The applicant shall:

(1) be licensed to practice law in the State of Maine and be an active member of the Maine bar;

(2) have been primarily engaged in the active practice of law in Maine for no less than three years immediately preceding the date upon which the motion is filed;

(3) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

(4) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;

(5) have completed at least 900 minutes of continuing legal education on New Hampshire practice and procedure within one year immediately preceding the date upon which the motion is filed and be certified by the NHMCLE Board as satisfying this requirement; and

(6) designate the clerk of the New Hampshire Supreme Court as agent for service of process; and

(7) file with the board the required motion form, a completed petition and questionnaire for admission, and supporting documents, accompanied by the motion fee.

(8) Nothing in Rule 42(X)(c) shall preclude an attorney who is licensed to practice law in the State of Maine from applying under Rule 42(XI)(a) if the applicant meets the requirements of that section.

(d) For the purposes of this rule, the "active practice of law" shall include the following activities:

(1) Representation of one or more clients in the private practice of law;

(2) Service as a lawyer with a local, state, or federal agency, including military service;

(3) Teaching law at a law school approved by the American Bar Association;

(4) Service as a judge in a federal, state, or local court of record;

(5) Service as a judicial law clerk; or

(6) Service as corporate counsel.

(e) For the purposes of this rule, the "active practice of law" shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located. For the purposes of this rule, an applicant's service as corporate counsel shall not constitute the unauthorized practice of law in New Hampshire provided that the applicant submits an affidavit certifying that:

(1) while serving as counsel, the applicant performed legal services solely for a corporation, association or other business entity, including its subsidiaries and affiliates; and

(2) while serving as counsel, the applicant received his or her entire compensation from said corporation, association or business entity; and

(3) said corporation, association or business entity is not engaged in the practice of law or provision of legal services.

(f) An applicant who has failed the New Hampshire bar examination within five years of the date of filing a motion for admission without examination shall not be eligible for admission by motion. An applicant who is not permitted to retake the New Hampshire bar examination pursuant to Rule 42(VIII)(c) shall not be eligible for admission by motion. An applicant who has resigned from the New Hampshire bar shall not be eligible for admission by motion, but may be eligible for readmission upon compliance with the requirements of Rule 37(15).

(g) The motion fee paid by an applicant under Rule 42(XI) shall be nonrefundable, provided, however, that if a motion for admission pursuant to Rule 42(XI) is denied prior to the commencement of the character and fitness investigation by the committee, then a portion of the fee may be refunded to the applicant, in the discretion of the board.

## **XII. Daniel Webster Scholar Honors Program**

(a) An applicant who has met the Eligibility Requirements set forth in Rule 42(IV)(a), (V), and (VI) who successfully completed the Daniel Webster Scholar Honors Program offered at the University of New Hampshire School of Law in Concord, New Hampshire, and who meets the following requirements may be admitted to the bar. The applicant shall:

(1) prior to admission, and within one year of the date upon which the application for admission is filed, have successfully completed; to the satisfaction of the board, the Daniel Webster Scholar Honors Program, after successfully completing taking and passing a variant of the New

Hampshire bar examination to consist of rigorous, repeated and comprehensive evaluation of legal skills and abilities, the criteria for which will be established by this court, and which will amount to more than the twelve hours of testing required for the conventional bar examination.

(2) establish that the applicant is currently a member in good standing in all jurisdictions where admitted, if any;

(3) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction; and

(4) designate the clerk of the supreme court for service of process.

(b) An applicant seeking admission to the bar in accordance with this provision shall, by the deadline established by the board, file with the board an application for admission pursuant to New Hampshire Supreme Court Rule 42(XII), and the petition and questionnaire for admission, which shall contain a certificate signed by two persons certifying the applicant's good moral character, and shall be executed under oath. The board may waive the filing deadline requirement for good cause shown. The application shall be accompanied by the application fee. The fee shall be nonrefundable.

### **XIII. Practical Skills Course Requirement**

(a) Within two years of admission, each person admitted to practice law in New Hampshire must attend a practical skills course presented by the New Hampshire Bar Association, unless the admittee satisfies the requirements of paragraph (b) or, in exceptional instances, a longer period is approved in writing by the court. A failure to comply with the requirements of this rule will result in the suspension of the attorney's license. The course will assist new admittees in developing basic lawyering skills and in gaining practical knowledge of New Hampshire practice and procedures. Attendance is required and each new admittee will be required to execute an affidavit stating that he or she has attended each session of the course unless otherwise excused by the supreme court, but no test will be required.

(b) If a new admittee leaves New Hampshire on military or other government service assignment for more than a brief period within two years after being admitted to the bar and before completing the practical skills course, the new admittee's license shall not be suspended if he or she promptly so notifies the court in writing of his or her departure from the state and his or her intention to complete the course at a later date. Such a new admittee shall be required to attend a practical skills course given within three years of the date of departure, and further provided that, if he or she shall have completed the assignment and returned to New Hampshire within the three-year period, the course taken shall be the first available course given after his or her return. The admittee shall notify the court promptly of his or her return within the three-year period. Upon written request in exceptional instances, the court may extend the three-year period following the date of departure within which the admittee must attend a practical skills course.

(c) Attendance at the practical skills course means, for all new admittees, personal attendance at all sessions of the course.

(d) Exemptions from the practical skills course requirements, or any portion thereof, shall be granted only upon written application filed with the court, setting forth the exceptional circumstances believed to justify the requested exemption.

(e) Reinstatement of a license suspended under this paragraph shall be only by order, upon petition to the court following completion of the practical skills course, and upon such conditions as the court deems appropriate. If the petition to this court is filed more than one year after the date of the order suspending the person from the practice of law in this State, then the petition shall be accompanied by evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness. 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 motion for reinstatement to the board. A subcommittee of the board shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competence and learning in law required for reinstatement. At the conclusion of the hearing, the subcommittee shall promptly file with the court the record and a report containing its findings and recommendations. The court shall consider the matter in the normal course and following the submission of briefs, if found necessary by the court, and any oral argument ordered by 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 board and with the clerk of the supreme court the petition and questionnaire for admission referred to in Supreme Court Rule 42(VI)(c). Further proceedings shall be governed by Rule 42(VI).

#### **XIV. Duty to Update Information**

An applicant for admission to the New Hampshire bar has a continuing obligation to update any information submitted as a part of the application process by providing the new information in writing to the Office of Bar Admissions. The duty to update information exists during the entire pendency of the application or motion for admission. All persons admitted to the bar have a continuing obligation to notify the New Hampshire Bar Association immediately and in writing of all changes of residence address and address of principal office.

#### **XV. Immunity**

(a) The board members, committee members, the administrator of the office of bar admissions, and their staff, counsel, investigators, proctors, agents, and members of any hearing panels, in performing their duties under

this rule, are regarded as acting as officers of the court and shall be immune from civil liability for any conduct arising out of the performance of their duties.

(b) A person shall be immune from civil liability for all of his or her statements made in good faith to the board, committee, office of bar admissions, office of the attorney general, or the court, given in any investigation or proceedings pertaining to an application for admission. The protection of this immunity does not apply to statements made to others.