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**NEW HAMPSHIRE
BAR ASSOCIATION**

Equal Justice Under Law



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August 10, 2022

Justice Patrick E. Donovan
Attorney Lorrie Platt, Rules Committee Secretary
NH Supreme Court
1 Charles Doe Dr
Concord, NH 03301

Dear Justice Donovan:

Upon receipt of the Limited Active Status Order, dated August 10, 2022, may I suggest the following update to NH Supreme Court Rule 50-A, Trust Accounting Certification Requirement. In addition to the update for Limited Active status lawyers, I took the opportunity to suggest an additional amendment to the Rule regarding Military Active status lawyers. We find that during license renewal season our Military Active lawyers can have a challenging time gaining access to file the Trust Account Compliance (TAC) form, which for the most part is an exempt TAC, as they do not have trust accounts themselves in the positions they hold. NHBA spends hours of outreach to these lawyers to remind them to file their TAC form where each year we have some who receive the \$300 delinquency fee for not filing their exempt form. Understanding that most Military Active lawyers do not hold trust accounts, the thought is to exempt Military Active lawyers from the TAC filing requirement.

Thank you for considering the edits as shown in the enclosed document.

Sincerely,

Paula D. Lewis
Associate Director for Operations

Enclosure

Rule 50-A. Trust Accounting Certification Requirement.

(1) (A) In order to assure compliance with the requirements of Rule 50 and in order to ascertain that the records and accounts described in Rule 50 are properly maintained, all attorneys and foreign legal consultants licensed to practice in the State of New Hampshire, whether in private practice or not, other than those in Limited Active Membership status, Military Active Membership status or any inactive Membership statuses, shall individually or through their firm organizations complete an annual Trust Accounting Compliance Certification in such form as the court shall prescribe. The Compliance Certification shall be completed on or before July 1st of each year and shall certify compliance with the requirements of Rule 50 for the reporting period beginning on June 1 of the preceding year and ending on May 31 of the reporting year.

Commented [PL1]: Update for Limited Active Lawyers is driven by NH Supreme Court Order dated August 10, 2022. Update to exclude Military Active Lawyers is a result of difficulties of such members to file the TAC form when they are mostly filing an exempt form.

The New Hampshire Bar Association shall make the Compliance Certification form available to attorneys and foreign legal consultants annually with the annual dues and court fees assessments.

For purposes of this rule, an attorney shall not be considered to be "in inactive status" if the attorney's New Hampshire Bar Association membership status was active at any time during the one-year reporting period, excluding Limited Active and Military Active statuses. The certification requirements of this rule shall not apply to any full-time judge, full-time marital master or full-time supreme, superior, or circuit court clerk or deputy clerk, except that the certification requirement shall apply where such judge, marital master, clerk or deputy clerk was in the active practice of law at any time during the reporting period.

(B) The Trust Accounting Compliance Certification shall certify to one of two things:

(1) That the attorney or foreign legal consultant does not maintain a trust account and does not possess any assets or funds of clients; or

(2) That client funds maintained by the attorney or foreign legal consultant are held in accounts in full compliance with the requirements of Rule 50.

The certification may be completed by the attorney or foreign legal consultant or by a private accountant employed for this purpose by the attorney or foreign legal consultant. The completed Trust Accounting Compliance Certification shall be filed through the New Hampshire Bar Association by July 1st of each year.

(C) The certification procedure shall be supplemented by annual compliance checks by an accountant selected by the Supreme Court. The accountant's purpose in conducting a compliance check will be to determine whether the minimum standards set forth in Rule 50 are being maintained. All information obtained by the accountant shall remain confidential except for purposes of transmitting notice of violations to the Professional Conduct Committee or the Supreme Court. The information derived from such compliance checks shall not be disclosed by anyone in such a way as to violate the attorney-client privilege except by express order from the Supreme Court.

(2) An attorney or foreign legal consultant who fails to comply with the requirements of Rule 50 with respect to the maintenance, availability, and preservation of accounts and records, who fails to file the required annual Trust Accounting Compliance Certification, or who fails to produce trust account records as required shall be deemed to be in violation of Rule 1.15 of the Rules of Professional Conduct and the applicable Supreme Court Rule. Unless upon petition to the Supreme Court an extension has been granted, failure to file the required annual Trust Accounting Compliance Certification by July 1st shall, in addition, subject the attorney or foreign legal consultant to one or more of the following penalties and procedures:

A. On August 2, attorneys and foreign legal consultants who have not filed their Trust Accounting Compliance Certifications shall be assessed a delinquency fee of \$300.00, or as subsequently amended by order of the Supreme Court.

B. On or after September 1, the New Hampshire Bar Association shall provide the Supreme Court with the names of attorneys and foreign legal consultants who have not filed their Trust Accounting Compliance Certifications. The court shall initiate proceedings to suspend the attorneys from the practice of law or to suspend the licenses of the foreign legal consultants.

C. An audit of the attorney's or foreign legal consultant's trust accounts and other financial records, at the expense of the attorney or foreign legal consultant, may be required.

Delinquency fees provided for by this rule shall be collected by the New Hampshire Bar Association for the benefit of the Attorney Discipline Office. The delinquency fee may be used by the Attorney Discipline Office to pay for audits of the trust accounts of attorneys or foreign legal consultants, or for other purposes related to trust accounting compliance upon approval of the Supreme Court.

Reinstatement following a suspension ordered pursuant to Rule 50-A(2)(B) above shall be only by order of the Supreme Court, upon petition to the court following the filing of the Trust Accounting Compliance Certification and payment of all fees. A petition for reinstatement shall be accompanied by the required filing fee. If the petition is filed more than one year after the date of the order suspending the person from the practice of law in this State, the petition shall be accompanied by evidence of continuing competence and learning in the law or evidence that the foreign legal consultant meets the eligibility requirements of Rule 42D(1), and evidence of continuing moral character and fitness. If the evidence of continuing competence and learning in the law or evidence of continued eligibility to serve as a foreign legal consultant, 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 or evidence of continued eligibility to serve as a foreign legal consultant is not satisfactory to the court, the court shall refer the petition for reinstatement to the Professional Conduct Committee for review. The Professional Conduct Committee shall review the petition and conduct such proceedings as it deems necessary to make a recommendation to the court as to whether the petition should be granted. The Professional Conduct Committee shall file its recommendation and findings,

together with the record, with the court. Following the submission of briefs, if necessary, and oral argument, if any, the court shall enter a final order.

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

(3) Except for requirements of Rule 50, subparagraph (2)A, requiring the inclusion of probate accounts in the index of trust accounts, the provisions of Rule 50, paragraph (2), and of this Rule 50-A shall not apply to probate accounts (including estate, testamentary trusts, guardian, and conservator accounts).

(4) The Supreme Court may at any time order an audit of such financial records or trust accounts of an attorney or foreign legal consultant, and take such other action as it deems necessary to protect the public.

APPENDIX TO RULE 50-A [Repealed eff. March 1, 2011]

[Repealed eff. March 1, 2011]