

2022-011

## Report of Subcommittee

Please find attached proposed changes to NH Supreme Court Rules 53.1, 53.2 and 53.3 for which I am submitting on behalf of the subcommittee to consider continuing legal education (CLE) credit for Pro Bono work performed by Active Status lawyers. The subcommittee members include Justice Patrick E. Donovan, Judge William Delker, Attorney Susan A. Lowry, and me. As the subcommittee reviewed the Rules, several additional proposed changes were made in addition to CLE credit. The proposed changes are as follows:

1. Rule 53.1 – Change proposed to allow Active New Hampshire Bar Association (NHBA) Membership Status lawyers who volunteer for assigned pro bono cases through 603 Legal Aid, NH Legal Assistance, and Disabilities Rights Center to earn up to 360 general minutes of CLE credit annually provided they meet certain criteria as listed in the proposed change.
2. Rule 53.2(A)(2) – Change proposed to include as exempt from the certification requirement any lawyer who occupies the position of judicial referee and limit the exemption from the certification requirement to only those lawyers who occupy the positions of full-time judge, full-time magistrate, full-time marital master, judicial referee, state reporter, full-time supreme, superior and circuit court clerks or deputy clerks who occupy such positions in the State of New Hampshire Judicial System for any time during the reporting year.
3. Rule 53.2(A)(3) - Include as exempt from the certification requirement of the rule any lawyer who occupies the position of part-time judicial referee and limit the exemption from the certification requirement to only those lawyers who occupy the positions of part-time judge, part-time magistrate, part-time marital master, part-time judicial referee, part-time supreme, superior and circuit court clerks or deputy clerks who occupy such positions in the State of New Hampshire Judicial System, unless such individual was in the active practice of law at any time during the reporting year.
4. Rule 53.2(A)(4) – Change proposed to exempt from the certification requirement NHBA Limited Active Status lawyers.
5. Rule 53.2(A)(5) – Change proposed to exempt lawyers from the certification requirement who were first admitted to New Hampshire practice on or after December 1. Currently, newly admitted lawyers are exempted only from the CLE requirement.
6. Rule 53.2(A)(6) – Change proposed to exempt lawyers from the certification requirement who are on active duty for the United States Armed Forces for more than three (3) months of the reporting year. Currently, these active-duty lawyers are exempted only from the CLE requirement.
7. Rule 53.2(A)(7) - Change proposed to exempt lawyers from the certification requirement who change from any NHBA active membership status to any inactive membership status before December 1 of the reporting year. Currently, such lawyers are exempted only from the CLE requirement.
8. Rule 53.2(A)(8) – Change proposed to exempt lawyers from the certification requirement who are elected State or Federal officials not engaged in the practice of law during a reporting year. Currently, such lawyers are exempted only from the CLE requirement.
9. Rule 53.2(B)(1) – Change proposed to update exempt conditions as proposed in Rule 53.2(A).
10. Rules 53.2(B)(2), 53.2(B)(3), 53.2(B)(4), 53.2(B)(5) – Change proposed to delete this portion of Rule, exempting certain lawyers from the CLE requirement, and updating such lawyers to be exempt from the overall filing requirement as per proposed changes in Rule 53.2(A).
11. Rule 53.3(A) – Change proposed to update exempt conditions as proposed in Rule 53.2(A).

Firstly, it is the hope of the subcommittee that these proposed changes will increase lawyer volunteerism for pro bono cases. Secondly, the subcommittee wishes to remove the burden of filing an "exempt" NHCLE affidavit for those lawyers who are exempt from the CLE requirement as such position is currently recorded and verified within the NH Bar Association's membership database, causing the "exempt" NHCLE affidavit filing to be potentially unnecessary.

Submitted by

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New Hampshire Bar Association

## **N.H. Sup. Ct. RULE 53.1**

Rules current with amendments received through July 20, 2022

### **NH - New Hampshire State & Federal Court Rules > RULES OF THE SUPREME COURT OF NEW HAMPSHIRE > RULE 53. New Hampshire Minimum Continuing Legal Education Requirement**

#### **RULE 53.1-- NHMCLE Requirement**

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

#### **B.Amounts Required**

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

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

**23.Return to Active Membership Status --** Lawyers who are suspended or have selected inactive membership status with the New Hampshire Bar Association for more than two (2) consecutive reporting years are required to complete 360 minutes of additional CLE upon returning to active membership status. Lawyers may complete the additional credits during the reporting year in which they return to active membership status or in the reporting year immediately preceding. Lawyers shall report completion of these credits by such method as the NHMCLE Board shall prescribe.

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

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

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



his or her professional knowledge, skills and values.--Amended May 28, 1997; April 24, 2006, eff. July 1, 2006; May 2, 2016, eff. July 1, 2016; February 26, 2021.

Annotations

## Notes

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### History

#### Amendments

##### --2021.

The 2021 amendment, in C, substituted "June 1 to May 31" for "July 1 to June 30" in the first sentence, and substituted "NHMCLE affidavit filing period shall be June 1 to July 1 following the end of the reporting year" for "reporting date shall be July 1" in the second sentence.

##### --2016.

The 2016 amendment rewrote the section.

##### --2006.

Added new subdivision A.; redesignated existing subdivision A. as B.1. and added new paragraph B.2. Amended existing subdivisions B. and C. and redesignated them as C. and D.

##### --1997.

Substituted "NHMCLE" for "NHCLE" in the rule heading.

NEW HAMPSHIRE COURT RULES ANNOTATED

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## [N.H. Sup. Ct. RULE 53.2](#)

Rules current with amendments received through July 20, 2022

**NH - New Hampshire State & Federal Court Rules > RULES OF THE SUPREME COURT OF NEW HAMPSHIRE > RULE 53. New Hampshire Minimum Continuing Legal Education Requirement**

### **RULE 53.2.-- Lawyers Subject To or Exempt from Certification and Fulfillment Requirements**

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#### **A. Annual Certification Requirement.**

1. All lawyers in any New Hampshire Bar Association active membership status at any time during the reporting year must make an annual certification as prescribed in Rule 53.3. Such certification may, if applicable, indicate an exemption from the minimum credit requirements for the reporting period under provisions of Rule 53.2 (B).
2. The certification requirement of this rule shall not apply to any full-time judge, full-time magistrate, full-time marital master, [judicial referee](#), the state reporter appointed pursuant to [RSA 505:1](#), or any full-time supreme, superior, and circuit court clerk or deputy clerk who occupies such position at any time during the reporting year [in the State of New Hampshire](#)[\[PL1\]](#).
3. The certification requirement of this rule shall not apply to any part-time judge, part-time magistrate, part-time marital master, [part-time judicial referee](#) or any part-time supreme, superior and circuit court clerk or deputy clerk; unless such individual was in the active practice of law at any time during the reporting year [in the State of New Hampshire](#).
4. The certification requirement of this rule shall not apply to any attorney who has elected New Hampshire Bar Association Limited Active Status membership as certified by the directors of 603 Legal Aid, NH Legal Assistance, or the Disability Rights Center.
5. The certification requirement of this rule shall not apply to lawyers first admitted to New Hampshire practice on or after December 1 of that reporting year but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.
6. The certification requirement of this rule shall not apply to lawyers on active duty for the United States Armed Forces for more than three (3) months of the reporting year.
7. The certification requirement of this rule shall not apply to lawyers who change from any New Hampshire Bar Association active membership status to any inactive membership status before December 1 of any reporting year, and who maintain inactive membership status for the remainder of that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.
8. The certification requirement of this rule shall not apply to lawyers who are elected State or Federal officials not engaged in the practice of law during a reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.

#### **B. Exemptions From the Minimum CLE Requirement.**



## N.H. Sup. Ct. RULE 53.2

1. Those exempt from annual certification requirements under Rule 53.2 (A)(2), ~~or 53.2 (A)(3), 53.2 (A)(4), 53.2(A)(5), 53.2(A)(6), 53.2(A)(7) or 53.2(A)(8)~~ are not required to meet the minimum CLE requirements of Rule 53.1 (B)(1) for that reporting year.
- ~~2. Lawyers first admitted to New Hampshire practice on or after December 1 of the reporting year are not required to meet the minimum CLE requirements of Rule 53.1 (B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.~~
- ~~3. Lawyers on active duty for the United States Armed Forces for more than three (3) months of the reporting year are not required to meet the minimum CLE requirements of Rule 53.1 (B) for that reporting year.~~
- ~~4. Lawyers who change from any New Hampshire Bar Association active membership status to any inactive membership status before December 1 of any reporting period, and who maintain inactive membership status for the remainder of that reporting period are not required to meet the minimum CLE requirements of Rule 53.1 (B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.~~
- ~~5. Lawyers who are elected State or Federal officials not engaged in the practice of law during a reporting year are not required to meet the minimum CLE requirements of Rule 53.1 (B) for that reporting year, but must do so in any subsequent reporting year during which they hold any New Hampshire Bar Association active membership status for an aggregated total of more than six (6) months during the reporting year.~~
- 26.** Lawyers may be exempted from meeting the minimum CLE requirements of Rule 53.1 (B)(1), in whole or in part, by the NHMCLE Board, upon petition, for compelling reasons. Such reasons may include, but are not limited to, financial, physical, or other hardship which prevents compliance with this rule during the period of such hardship.

## History

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--Amended May 4, 1992, eff. July 1, 1992; May 26, 1995; April 23, 1996; May 28, 1997; April 10, 2002; December 27, 2004, eff. March 1, 2005; April 24, 2006, eff. July 1, 2006; July 6, 2011; November 15, 2012, eff. January 1, 2013; January 2, 2013, eff. March 1, 2013; May 2, 2016, eff. July 1, 2016; amended February 26, 2021, eff. June 1, 2021.

Annotations

## Notes

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### History

#### Amendments

##### --2021.

The 2021 amendment, in B, substituted "December" for "January" in 2 and 4, and substituted "financial, physical, or other hardship which prevents compliance with this rule during the period of such hardship" for "physical or other disability which prevents compliance with this rule during the period of such disability" in the last sentence of 6; and made a stylistic and related change.

##### --2016.

## N.H. Sup. Ct. RULE 53.2

The 2016 amendment rewrote the section.

**--2013.**

Adopted without change on a permanent basis.

**--2012.**

Subdivision (B)(4): Inserted "the deputy state reporter" following "[RSA 505:1](#)." See "Temporary provisions" note set out below.

**--2011.**

Subdivision (B)(4): Inserted "State part-time judges," "part-time marital masters" and "with respect to all of the foregoing, that." See "Temporary provisions" note set out below.

**--2006.**

Subdivision A: substituted "must" for "shall" and "53.1(B)(1) and, as applicable, 53.1(B)(2)" for "53.1(A)."

Subdivision B and B (1): substituted "53.1(B)" for "53.1(A)."

Subdivision B(6): Amended generally.

**--2004.**

Subdivision 2: Added paragraph 2; redesignated former paragraphs 2-5 as present paragraphs 3-5; and rewrote the second sentence in present paragraph 6. See "Temporary provisions" note set out below.

**--2002.**

Subdivision B(3): Inserted "the state reporter appointed pursuant to [RSA 505:1](#)" following "marital masters."

**--1997.**

Subdivision B: Substituted "NHMCLE" for "NHCLE" in the first sentence of paragraph 5.

**--1996.**

Subdivision B: Inserted "and, except as provided below, Rule 53.6" following "Rule 53.1(A)" in the introductory paragraph, inserted "and deputy clerks of court" preceding "provided" in paragraph 3, inserted "and provided that such lawyers must nonetheless file a certificate of compliance pursuant to Rule 53.6 for each reporting year for which the lawyer is so exempted" following "law" in paragraph 4, and added the last sentence of paragraph 5.

**--1995.**

Subdivision B: Added a new paragraph 4 and redesignated former paragraph 4 as paragraph 5.

**--1992.**

Subdivision B3: Amended generally.

**Temporary provisions.**

Pursuant to Supreme Court Order dated December 27, 2004, effective March 1, 2005, the amendment to this rule by that order was approved on a temporary basis. However, Supreme Court Order dated April 24, 2006, adopted the amendment to subdiv. 2 on a permanent basis.

Pursuant to Supreme Court Order dated July 6, 2011, the amendment to this rule by that court order was approved on a temporary basis. However, Supreme Court Order dated January 1, 2013, adopted the amendment to subdiv. (B)(4) on a permanent basis.

N.H. Sup. Ct. RULE 53.2

Pursuant to Supreme Court Order dated November 15, 2012, the amendment to this rule by that court order was approved on a temporary basis.

NEW HAMPSHIRE COURT RULES ANNOTATED

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### 53.3. Reporting And Affidavit of Compliance with Rule 53

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

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

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

C. The court shall assess each lawyer in New Hampshire Bar Association active membership status as of the assessment date an annual sum to support the administration of Rule 53<sup>[PL1]</sup>.

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

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

Compliance is inaccurate and/or deficient, it shall determine whether the lawyer should be required to take remedial action, and if so, the remedial action required. The decision of the NHMCLE Board as to the remedial action required shall be final.