

NEW HAMPSHIRE BAR ASSOCIATION

Equal Justice Under Law



2022-012
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September 12, 2022

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

Re: Proposed Amendment to NH Supreme Court Rule 53.4

Dear Justice Donovan:

Attached with this letter is a copy of Supreme Court Rule 53.4, showing a proposed update to the Rule that is intended to formalize and align the NHMCLE waiver process for annual NHMCLE requirements with the current waiver process for annual NH Supreme Court fees and Trust Account Compliance filing.

Thank you for your consideration.

Sincerely,

Paula D. Lewis
Associate Executive Director for Operations

cc: Lorrie S. Platt, Advisory Committee on Rules Secretary
Corey Belobrow, NHMCLE Board Chair

53.4. Sanctions, ~~And Appeal~~ And Waiver

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A. Delinquency -

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

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

B. Reinstatement -

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

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

If the evidence of continuing competence and learning in the law is not satisfactory to the court, the court shall refer the petition for reinstatement to the professional conduct committee for review. The professional conduct committee shall review the petition and conduct such proceedings as it deems necessary to make a recommendation to the court as to whether the petition should be granted. The professional conduct committee shall file its recommendation and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument, if any, the court shall enter a final order.

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

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

D. False Statements - Should the NHCLE Board have reasonable grounds to believe that a lawyer has knowingly misrepresented his or her CLE activity, the Board shall notify the Attorney Discipline Office of the New Hampshire Supreme Court forthwith.