

NEW HAMPSHIRE SUPREME COURT ADVISORY COMMITTEE ON RULES
PUBLIC HEARING NOTICE

The New Hampshire Supreme Court Advisory Committee on Rules will hold a PUBLIC HEARING at **12:30 p.m. on Friday, June 14, 2024**, at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar as the Committee considers whether to recommend that the Supreme Court adopt proposed amendments to several court rules.

Written comments on any of the proposed amendments must be submitted to the Secretary of the Committee on or before May 20, 2024.

Comments may be emailed to the Committee at:

rulescomment@courts.state.nh.us. Comments may also be mailed or delivered to the Committee for receipt on or before May 20, 2024, at the following address:

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

Time-limited oral comments may also be provided on any of the proposals at the public hearing on June 14, 2024.

**ANY PERSON WHO WISHES TO ATTEND THE JUNE 14, 2024
PUBLIC HEARING REMOTELY SHOULD NOTIFY THE CLERK OF
COURT AS FAR IN ADVANCE AS POSSIBLE SO THAT THE
REQUIRED EQUIPMENT CAN BE AVAILABLE.**

Any suggestions for rule amendments other than those set forth below may be submitted in writing to the Secretary of the Committee for consideration by the Committee in the future.

The amendments being considered by the Committee concern the following rules:

I. 2023-018 Supreme Court Rule 37(20)(l)

(This proposed amendment addresses the duty of participants in attorney discipline system proceedings to maintain confidentiality.)

Proposed Action: Amend Supreme Court Rule 37(20)(l) as set forth in Appendix A.

II. 2024-002 Supreme Court Rule 55(4)

(This proposed amendment increases from \$250,000 to \$500,000 the maximum amount of aggregate reimbursement from the Public Protection Fund with respect to payable claims against any one attorney.)

Proposed Action: Amend Supreme Court Rule 55(4) as set forth in Appendix B.

New Hampshire Supreme Court
Advisory Committee on Rules

By: Patrick E. Donovan, Chairperson
and Timothy A. Gudas, Secretary

March 19, 2024

APPENDIX A

Amend Supreme Court Rule 37(20)(1) as follows (deletions are in ~~strikethrough~~ format; additions are in **[bold and brackets]**):

RULE 37. ATTORNEY DISCIPLINE SYSTEM

...

(20) Confidentiality and Public Access Matters Initiated On Or After April 1, 2000:

...

(1) *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 **[participants]** a grievant from disclosing publicly **[the fact that a grievance, referral, or complaint has been filed,]** the underlying conduct of an attorney which **[forms the basis of the grievance, referral, or complaint]** he or she believes violates the rules of professional conduct or is otherwise inappropriate, **[or the attorney's response to the allegations in the grievance, referral, or complaint, except for those portions of such filings otherwise confidential pursuant to Rule 37(20)].** 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.~~

...

APPENDIX B

Amend Supreme Court Rule 55(4) as follows (deletions are in ~~strikethrough~~ format; additions are in **[bold and brackets]**):

RULE 55. Public Protection Fund

...

(4) **Payments from the Fund.** Payments from the fund will be made only after the lawyer in question has been suspended or disbarred from practice; has resigned while under disciplinary investigation; or if the lawyer has died or been judged mentally incompetent before the suspension, disbarment, or resignation proceedings have been commenced or concluded. As a condition of payment from the fund, the claimant shall execute a subrogation agreement in favor of the fund against the offending lawyer and the offending lawyer's law firm and against third parties to the extent of the amount recovered by claimant from the fund. Payments from the fund shall be made only after exhaustion of all available assets, insurance, and sureties of the offending lawyer and the offending lawyer's law firm. Payments from the fund shall be made only to victims who have lost money or property as the result of the defalcation of the lawyer, and no payments shall be made to any assignee, subrogee, or successor of such victim. The heirs or legatees of deceased victims may be eligible for payment from the fund. Except with respect to claims where the amount determined by the committee to be due the claimant is less than \$2,500, payments from the fund shall be made only at the end of each fund year. Except with respect to claims where the amount determined by the committee to be due the claimant is less than \$2,500, payments from the fund with respect to an individual lawyer shall not be made until all claims have been finalized with respect to that lawyer. The maximum amount of reimbursement to all claimants against the fund in respect to all conduct of any one lawyer shall be ~~\$250,000~~ **[\$500,000]** in the aggregate. In determining whether the maximum reimbursement described in the immediately preceding sentence (but not the sentence immediately following this sentence) has been reached, claims where the amount determined by the committee to be due the claimant is less than \$2,500 shall be excluded from the calculation. The maximum amount of reimbursement to any one claimant, or all claimants, against the fund in any fund year as defined in paragraph (6) shall be \$250,000 and \$1,000,000, respectively, in the aggregate. The maximum amount which may be paid on a claim shall be the dollar value of the money or property lost by lawyer defalcation and shall not include interest on the amount lost or money spent attempting to collect the loss. If payable claims against a lawyer exceed ~~\$250,000~~ **[\$500,000]**, then all payable claims against that lawyer, except claims where the amount determined by the committee to be due the claimant is less than \$2,500, shall be reduced in proportion to their

relative value in order to reduce total payments as a result of that lawyer's conduct to ~~\$250,000~~ **[\$500,000]**. If payable claims in a single fund year exceed \$1,000,000, then all payable claims for that fund year shall be reduced in proportion to their relative value in order to reduce total payments for that year to \$1,000,000. That portion of payable claims excluded from payment by reason of the dollar limitations described in this section shall not be paid in any subsequent fund year.