

NEW HAMPSHIRE SUPREME COURT ADVISORY COMMITTEE ON RULES
INVITATION FOR PUBLIC COMMENT
(AMENDED 3/19/24)

The New Hampshire Supreme Court Advisory Committee on Rules (Committee) is considering proposals to amend the following rules: (1) Supreme Court Rule 37(5)(a), see Appendix A; (2) Supreme Court Rule 37(20)(l), see Appendix B; (3) Supreme Court Rule 50(1)(A), see Appendix C; (4) Supreme Court Rule 53.1(B)(2), see Appendix D; (5) Supreme Court Rule 54(4), see Appendix E; and (6) Supreme Court Rule 55(4), see Appendix F.

Additional information concerning the proposals may be found on the Committee's webpage, which is available at:

<https://www.courts.nh.gov/resources/committees/advisory-committee-rules/committee-materials-docket-number>. The Committee docket numbers associated with the proposed amendments are as follows:

- # 2023-016, Supreme Court Rule 37(5)(a);
- # 2023-018, Supreme Court Rule 37(20)(l);
- # 2023-017, Supreme Court Rule 50(1)(A);
- # 2023-015, Supreme Court Rule 53.1(B)(2);
- # 2024-001, Supreme Court Rule 54(4); and
- # 2024-002, Supreme Court Rule 55(4).

Comments on the proposals that the Committee is considering for possible recommendation to the Supreme Court may be submitted in writing to the secretary of the Committee by email, regular mail, or hand delivery, for receipt on or before May 20, 2024.

The email address is rulescomment@courts.state.nh.us. The mailing and physical address for comments submitted to the Committee is:

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

Any suggestions for rules changes other than those set forth in this invitation for public comment may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

New Hampshire Supreme Court
Advisory Committee on Rules

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

March 18, 2024

APPENDIX A

Amend Supreme Court Rule 37(5)(a) as follows (deletions are in ~~strikethrough~~ format; additions are in **[bold and brackets]**):

RULE 37. ATTORNEY DISCIPLINE SYSTEM

. . .

(5) Complaint Screening Committee:

(a) The court shall appoint a committee to be known as the complaint screening committee which shall consist of **[ten]** ~~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~~ **[Six]** 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: **[with four appointments made in one three-year term and three appointments made in each of the other two staggered terms.]** ~~three members for three years; three members for two years; and three members for one year. Thereafter, t~~**[T]**he 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.

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APPENDIX B

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

RULE 37. ATTORNEY DISCIPLINE SYSTEM

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

. . .

(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 **[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.~~

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APPENDIX C

Amend Supreme Court Rule 50(1)(A) as follows (deletions are in ~~striketrough~~ format; additions are in **[bold and brackets]**):

RULE 50. Trust Accounts

(1) *Interest-Bearing Pooled Trust Accounts.* In addition to any individual client trust accounts, a member of the New Hampshire Bar who is not exempt from this requirement pursuant to Rule 50(1)(F) shall create or maintain a pooled, interest-bearing trust account known as “Interest on Lawyers Trust Accounts program” or “IOLTA” account for clients’ funds which are nominal in amount or to be held for a short period of time and must comply with the following provisions:

A. An interest-bearing trust account shall be established with any bank[, ~~or~~ savings and loan association[, **or credit union**] authorized by **[F]**~~federal~~ or State law to do business in New Hampshire and insured by the Federal Deposit Insurance Corporation[, ~~or~~ the Federal Savings and Loan Insurance Corporation[, **or the National Credit Union Administration,**] or other financial institution with adequate federal insurance covering client funds (“financial institution”). Funds in each interest-bearing trust account shall be subject to withdrawal upon demand. **[A lawyer establishing such a trust account and the financial institution holding the trust account funds are permitted to deposit the trust account’s funds into so-called “sweep” accounts to secure more than the federal insurance coverage provided for individual accounts. Additionally, such “sweep” accounts are permitted under this Rule even if the trust funds in the “sweep” accounts may be deposited by the lawyer’s New Hampshire financial institution in financial institutions outside of New Hampshire, so long as all financial institutions holding the trust funds are federally insured by the federal entities as identified above. For purposes of this Rule, “sweep” accounts are those accounts that automatically transfer amounts above a client-established threshold into separate accounts at the close of each business day, but whose funds are still available for withdrawal upon demand.]**

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APPENDIX D

Amend Supreme Court Rule 53.1(B)(2) as follows (deletions are in ~~striketrough~~ format; additions are in **[bold and brackets]**):

RULE 53.1. NHMCLE Requirement

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B. Amount Required

1. *In General* – Every 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, **[Veterans Legal Justice,]** 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.

3. *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.

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APPENDIX E

Amend Supreme Court Rule 54(4) as follows (deletions are in ~~strikethrough~~ format; additions are in **[bold and brackets]**):

RULE 54. Administrative Judges and Administrative Council

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(4) Role and Responsibilities of the Administrative Judge. The administrative judge (or, upon the unavailability of the administrative judge of the circuit court, the deputy administrative judge) has general supervisory responsibility for the administration, operation and improvement of the court in order to provide for the expeditious disposition of all cases over which the court has jurisdiction, subject to the policies, rules, orders and guidelines established by the supreme court. The administrative judge (or, upon the unavailability of the administrative judge of the circuit court, the deputy administrative judge), in addition to the foregoing, shall, when not in conflict with part II, article 73-a of the New Hampshire Constitution, have such duties and responsibilities as may be conferred by statute.

Without limiting the foregoing, the responsibilities of the administrative judge (or, upon the unavailability of the administrative judge of the circuit court, the deputy administrative judge) include the following:

(a) Exercising supervisory powers over judges, clerks, registers and court personnel;

(b) The employment and discharge of all personnel in accordance with budgetary and personnel rules and regulations, collective bargaining agreements and such policies as have been established by the supreme court;

(c) Issuing superior court or circuit court administrative orders as may be required from time to time to carry out the responsibilities of the office[, **provided however, that any administrative order which supplements, modifies, or augments existing court rules shall be issued only on an emergency temporary basis while the proposed rule or amendment is subject to the Rule-Making Procedures in Supreme Court Rule 51. Upon Final Action by the Supreme Court in the Rule-Making Procedure all emergency temporary administrative orders concerning the proposed rule or amendment shall be void. All current administrative orders which supplement, modify, or augment existing court rules shall be void.**];

(d) Effectuating compliance by judges and court personnel with all applicable court rules, provisions of law and administrative orders;

(e) Counseling, assisting and supervising judges in their conduct and in the performance of their administrative responsibilities;

(f) Appointing court personnel to committees of the court;

(g) Implementing established policies, orders and regulations concerning the court's internal management and operation, including but not limited to business hours, the timely disposition of the court's business, judicial vacations and leaves of absence, attendance at meetings, and education and training conferences;

(h) Supervising caseload management;

(i) Appointing a presiding judge for each court location, assigning judges and court personnel to court locations when workload and other factors so require, and allocating equipment and other internal court resources where needed;

(j) Preparing the court budget requests and supervising the financial affairs of the court;

(k) Representing the court in its relations with other courts, other branches of government, the bar, the general public, the news media, and in ceremonial functions;

(l) In the event of unavailability of the administrative judge (or, in the circuit court, the unavailability of both the administrative judge and the deputy administrative judge), designating an acting administrative judge, subject to the approval of the supreme court.

APPENDIX F

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

RULE 55. Public Protection Fund

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(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.