Rules Petition Regarding Modifying Proposal #2022-001 including Removing Redefinition of the ADO public file [or in the alternative to Amend Rule 37(20)]

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

Re: Rules Petition Regarding Modifying Proposal #2022-001 and Removing Redefinition of the ADO public file as Proposed Amendments to Supreme Court Rule 37 and 37A [or in the alternative to Amend Rule 37(20)]

Dear Rules Committee (hereinafter "Committee"):

Enclosed is a rules petition or memorandum ("memo") prepared by myself[1], regarding proposed changes to Supreme Court Rules 37 and 37A, which govern the attorney discipline system in New Hampshire. The Memorandum describes each proposed amendment and further provides detail and background for the proposed amendments.

I. PROPOSAL/PETITION

This rules petition or memo proposes the following changes or amendments.

1. I propose modification of the already voted on proposal #2022-001 (that was originally proposed by the ADO in March 2022 and voted on by the committee in June 2022). The details are as follows.
    a. Proposal #2022-001 proposed several changes to NH Supreme Court Rule 37 and 37A (hereinafter "Rule 37 and Rule 37A"). See **Exhibit A** for relevant part of proposal #2022-001.
    b. Among other items, these changes included certain amendments to NH Supreme Court Rule 37(20) (hereinafter "Rule 37(20)"), governing the definition of ADO files and the confidentiality/public access of ADO files, as follows:
        i. The ADO proposed to "amend what constitutes the "public file" maintained by the ADO". In particular, this included a proposal that "the public file" shall consist of:
            1. "(1) for non-docketed matters, the grievance, voluntary response(s) from the respondent attorney, if any, the non-docket letter, the grievant's request for reconsideration and response(s) thereto, if any, and any written decision of the Complaint Screening Committee;"
            2. "(2) for docketed matters that are not referred to disciplinary counsel for formal proceedings, the complaint, mandatory response(s) from the respondent

[1]NB: As a brief introduction, it should be noted that I have a background in business/management/organizational consulting including process improvement and strategy development for organizations (including as well two advance/graduate degrees in the areas of business/management and also further postgraduate credentials in management). There are others, like me, who are involved with the courts that can also provide valuable expertise or input. Input or participation should not be from persons that are all lawyers. In fact, there should be an effort (or a more concrete effort) by the committee to seek out those who are not lawyers who can bring a different perspective and lens to such matters. In many instances, there are process implications for these proposals that may not be contemplated in any actual rules proposal. I have a concern that there are blindspots that are not being addressed. By allowing for a more broad-based vetting process, it will allow more opportunity for such blindspots to be uncovered. It would behoove the committee to avail itself more of such input from the public, and not just members of the NH bar, including from those who have expertise in organizational issues/process blueprinting issues such as myself or others with such background and education, among others as well. I also have additional background in Christian ministry and education in theology, hermeneutics, literary analysis, linguistics, as well as professional background and training in negotiation, conflict resolution and alternative dispute resolution, in which field I was a pioneer of ground-breaking academic programming in negotiation theory and practice in an Ivy League context including but not limited to the application/intersection of negotiation theory and practice to/with race & minority issues. I also have some limited experience with both the NH supreme court (and some of its committees such as the ADO and PCC) as well as with NH superior court, both as a self-represented litigant and as a non-lawyer representative for others.

attorney, complainant's or respondent's requests for reconsideration, if any, and any responses(s) thereto, and any written decision of the Complaint Screening Committee;"

ii. The ADO also proposed an amendment to "provide that members of the public, in addition to a right to "inspect" such public file, may also make or receive copies of same".[2]

1. In particular, this proposal included the following:
    a. "The public file relating to a grievance determined by the attorney discipline office or the complaint screening committee not to meet the requirements for docketing as a complaint shall be available for public inspection and copying at the expense of the member of the public seeking such copies (other than work product, internal memoranda, and deliberations)…".
    b. "The public file relating to a complaint docketed by the attorney discipline system shall be available for public inspection and copying at the expense of the member of the public seeking such copies (other than work product, internal memoranda, and deliberations)…".

iii. I therefore **propose** the following modification:

1. This rules petition proposal is a simple one.
2. First, it is a proposal to prevent or undo/remove the proposed changed by the ADO concerning the "redefinition" of what constitutes the ADO public file (that was attached/included as part of the rules petition submitted by the ADO in proposal #2022-001). This means that the amendments in proposal #2022-001, referencing the redefinition of the public file and limiting it to only a few select documents, as noted in paragraphs 1(b)(1) and (2) above, should be removed and the original language, that included "all records and materials" or "all records and proceedings" as part of the public record, should be maintained. NB: To the extent that I could have missed any other similar reference made by the ADO in its #2022-001 proposal, it should be noted that this proposal includes removal of any language in proposal #2022-001 that redefines the public file and limits it to only a few select documents, as exemplified but not necessarily limited to the proposed language by the ADO noted in paragraphs 1(b)(1) and (2) above.[3]
3. The reasons are as follows:
    a. The ADO public file should not be redefined to just a few limited documents as that would undermine the public's right to access and public accountability of government, which are enshrined under the NH constitution.

[2] NB: As part of this proposed amendment, the ADO also cited the following:

> "This issue has become particularly troublesome recently, following Orders of the PCC relevant to a litigated matter in which the ADO was sued in Superior Court. Those Orders are attached hereto as Exhibits 5-6. The PCC has interpreted the current rule to mean that members of the public may only inspect the public file, but they cannot make copies of it, nor can the ADO forward copies, electronically or otherwise, to members of the public. For example, a witness (or a newspaper representative) will seek a copy of a Hearing Panel Report following a trial, but the ADO cannot mail or email a copy to such persons nor can such persons make a copy of the Report. Eventually, when a matter is final, such Report is accessible on the ADO website, but that process can sometimes take one year or more from the time that a Hearing Panel issues a report. In addition, members of the public occasionally want to see additional public file materials that are not posted on the website at all (i.e. an expert report, or the initial grievance);".

[3] NB: I do not object to any other items or language proposed in Proposal #2022-001. My objection and this proposal pertain only to the two items, relating to Rule 37(20), as noted above.

b. The public files of ADO cases should include all of the records and materials, that have not been redacted for confidentiality, in the ADO case, which is how it is as it currently stands and has been that way previously. There is no reason to now limit the definition of the public file, when there is a redaction policy that allows for private, sensitive or protected material to be redacted.
c. These materials in any ADO case also show the exchanges between the ADO and the participants which are critical to understanding how any case was handled by the ADO. It allows the public to scrutinize whether the ADO is doing things in a fair way and allows the public to criticize the ADO as a public body by seeing the materials and records that make the process transparent and not hidden. By unnecessarily limiting the public file (as proposal #2022-001 does), this infringes on the public's first amendment right to criticize government or to keep government accountable, as this redefinition of the public file could hide information that the ADO may not want the public to know about. All records and materials in an ADO file include materials that inform what was done by the ADO and the basis for the decisions. The limitations on what constitutes a public file of the ADO, as imposed by proposal #2022-001, do not necessarily capture that.

4. Second, this proposal includes another aspect regarding modifying proposal #2022-001. It is that the public is not charged for copies if an electronic copy of the file already exists. This means allowing members of the public to not only make copies of the ADO's public file for ADO cases, and allowing the ADO to transmit same through email or hard copy, but to do so free of charge if an electronic copy of the file already exists and an electronic copy is requested. The public should only be charged a per page copy if a printed paper copy is requested or if an electronic copy of the file does not already exist.
5. The reasons are as follows.
    a. ADO files can sometimes range in the hundreds or even thousands of pages. To charge a per page copy for such can involve significant costs. This would impose a burden on the poor, and less wealthy members of the public. In many instances, only wealthy individuals and/or corporations would thus have public access to such files.
    b. The ADO has a redaction policy which requires that case files be redacted by the ADO before they are made public by the ADO. It also requires that the ADO seek the input of the attorney respondent and/or the complainant in the ADO case, in order to obtain any suggested redactions that the respondent or complainant have to offer. As a practical matter, what has typically occurred is that the ADO creates an electronic/digitized copy of the entire case file, with redactions determined by the ADO to be appropriate, already included, in that electronic copy. For more recent cases, the entire case file is already digitized because the original documents were transmitted to the ADO by email or by other electronic means (such as by dropbox, etc.). In either instance, there will likely always exist an electronic copy of the entire case, with redactions completed, prior to any member of the

public being allowed to access a public file for any ADO case. This means that the effort to create an electronic copy would have already been undertaken by the ADO during the redaction process for any ADO case. This usually involves electronically transmitting the case file to the respondent and complainant but does not involve charging a fee to the respondent or complainant for doing so. It is therefore unfair to then charge members of the public for something that already completely exists electronically and for which the respondent and complaint was not charged for. There is no extra effort or work involved for the ADO for simply forwarding or transmitting a completed case file that already exists electronically to a member of the public. To do so would create unnecessary barriers to public access to a large swath of the public. In fact, as a non-wealthy member of the public, it would be burdensome for me.[4]

c. NB: This is why such proposals often needs or would benefit from the input and perspective of members of the public, like me, because these are things that the ADO would not likely think of on its own (as it did not do in its proposal #2022-001) and which the committee evidently did not think of or consider in its voting on said proposal.
d. This is clearly an abundantly reasonable point here that I have made and there are no logical or policy grounds that I can think of to object to it. This therefore at a minimum should be voted on with approval by this committee, as promptly as possible, without any hesitation or consternation.
e. See also paragraph 7-10 under the next section (section II: further background).

iv. It should be noted that although Proposal #2022-001 was voted on[5] by the rules committee in June 2022, it is still pending before the NH supreme court. I am submitting this proposal to modify that #2022-001 proposal before it goes into effect or even after it goes into effect. However, it seems much more efficient to address any need for modification before the changes in proposal #2022-001 go into effect. Either way, it is important that this issue be addressed one way or the other and I am filing this rules

[4] NB: With respect to the matter, I am currently litigating on the issue of public access, the files in question for that case originally totaled in the thousands of pages and the redacted version (which I have not seen, and which is also subject to legal challenge once or if I get to see it) purportedly contains over 500 pages or more. For the redacted version, at one dollar per page, that would total a minimum of $500 or more. This would be cost-prohibitive for me and for most of the public. Even at ten cents per page that would total over $50 which would still be burdensome for me and most members of the public. This would be even more true if a member of the public requested the files for more than one case. For files that contain thousands of pages, the costs to the public would potentially become astronomical. Costs for copying or printing should only be passed on to the public when such costs are actually incurred because of a request made by a member of the public. Otherwise, it is unconscionable, and arguably constitutes an unreasonable restriction on public access, to charge members of the public for case files that already completely exists in an electronic form.

[5] NB: It should be noted also that I had previously attempted to address this issue but was not allowed to participate in the June 3, 2022, committee meeting (though I requested reasonable accommodation for remote participation pursuant to the ADA) nor was my prior written comment/letter presented to the committee at the time (which included an ADA request to table the 2 issues of copies of ADO files available but with cost of copies to the public, and of the re-definition to limit what goes into the public file, and otherwise, offered a brief version of the objections and amendments contained in this petition, but to no avail as it was not accepted or presented.). Consequently, the proposal was voted on in the June 3, 2022, committee meeting, without my input or participation. See **Exhibit B**.

petition in order to do so[6]. NB: I am using layman's terms here, so I ask that my statements, as a non-lawyer, be liberally construed and interpreted.

2. I have here prepared an alternative framing of this proposal/petition. I have done so because of the off chance that there could be a technicality regarding that I am proposing modification of a proposal by the ADO that has not yet been adopted by the NH supreme court. In that sense, it could be construed that my proposal is a competing proposal instead of a modification proposal of another proposal. I trust that the concept of a modification of proposal makes sense (both intuitively and practically, and especially where the proposal being to be modified has not yet been adopted) or has been utilized/allowed previously by the committee. But I have no idea if this is a real possible issue and how the committee has or would handle such an issue (or if it has ever happened before). Therefore, to protect the logical and procedural grounding of this proposal (to the extent necessary and/or at least in both a theoretical and practice sense), I, in the alternative, propose the following amendments to Rule 37(20).
    a. Keep the definition of the ADO's "public file," as it is currently and officially stands, as of this date, but make clear that members of the public are allowed to make copies of the ADO's public file for ADO cases, and that the ADO is allowed to transmit same through email or hard copy, and allow the ADO to do so free of charge if an electronic copy of the file already exists and an electronic copy is requested. The public should only be charged a per page copy if a printed paper copy is requested or if an electronic copy of the file does not already exist.
    b. The grounds are found in paragraphs 1(b)(iii)(3-5). I provide this paragraph reference in order to avoid repeating them here, to the extent it is unnecessary. This reference is incorporated here as if fully stated.

II. FURTHER BACKGROUND

3. It should be noted that my wife sued the ADO in superior court, wherein I was a non-lawyer representative, for violating the right to know law. See Case No. 217-2020-CV-00567 in Merrimack superior court. My wife's action is currently on appeal. See Case No. 2021-0604.
4. I have also separately sued the ADO and Brian Moushegian in superior court for other violations of RSA 91A that pertain to me.
5. In those actions, the ADO has denied the right to know requests on the grounds that RSA 91A does not apply to the ADO because, according to an AG opinion from 2015, RSA 91A does not apply to the judicial branch. But the AG opinion is subject to legal challenge in superior court under RSA 91A. So, I have challenged this legal opinion of the AG, upon which the ADO has relied, for its legal position. In response, I, on behalf of my wife, countered that the ADO is not a court, that it is special in character as stated in previous NHSC decisions, and that there is no NHSC decision that has stated that RSA 91A does not apply to the ADO and further beyond that there is actually no NHSC decision that has stated that RSA 91A does not apply to the judicial branch. See **Exhibit C** for excerpt of reply brief in current appeal that addresses further points.
6. If RSA 91A applies to the ADO, then the ADO cannot prevent copies of ADO files from being given to members of the public upon request. Therefore, proposal 2022-001 seeks to amend something that

[6] It should also be noted that I am not a member of the NH bar. It appears that the only means by which the committee announces a meeting to the public is via the NH bar members email list (other than its webpage). But the public is larger than the NH bar email list. So, there is no way I would have known about the 6-3-22 meeting or that the 2022-001 rule change proposal would be discussed at that meeting. I only discovered that there was a hearing, after inquiring with the NHSC clerk about a related issue, who then directed me to the committee's secretary, who then eventually emailed me on the late evening of 6-2-22 to inform me of a committee meeting the very next day of 6-3-22 at 12.30pm. I then promptly made a request for reasonable accommodation early the next morning at about 6.43am on 6-3-22, which allowed several hours of time to accommodate my request to attend by phone for the 12.30pm meeting, but I was denied. It should be noted that, pursuant to Rule 51, also I should have been contacted directly by the committee prior to the meeting, given that there were two documents included in the #2022-001 proposal that referenced my very name as an impacted party, but I was not so contacted.

does not need to be amended if RSA 91A applies. Similarly, the NH constitution also requires copies of ADO public files to be given to the public.

7. The current litigation/appeal is intended to address and resolve such issues. But instead of making its arguments before the court, instead, what the ADO did was quietly, without informing me, around the time of the first week of March 2022, seek to present rule change proposals to the rules committee under 2022-001 that pertained to the ADO. Similarly, in or around the same time, proposal #2022-003 was also floated/advanced to the committee by the director of the AOC, which suddenly, right after my wife's appeal was filed, sought to make structural changes to the ADO, in a way that evidently would enhance the ADO's legal position before the NH supreme court. On information and belief, this was done either at the behest of or in conjunction with the ADO [NB: It is not believable that the director of the AOC just simply decided to up and submit this rule change proposal without extensive consultation and discussion with the ADO.][7]. Both of these proposals will directly affect the current litigation before the NH supreme court. On information and belief, these proposals were advanced in order to provide legal cover to the ADO and PCC relative to the current litigation before the NH supreme court. [See again Exhibit A for proposal #2022-001 Supreme Court Rules 37 and 37A - Proposed Amendments submitted by the ADO.].
8. These documents and information related to two NH supreme court advisory rules committee proposals (#2022-001 and #2022-003) recommending certain changes to the ADO or to ADO rules, were evidently intended to impact or influence current litigation before the NH supreme court, after the fact. In particular, this is further confirmed by the fact that proposal #2022-001 was subsequently referenced by the ADO in the current appeal before the NH supreme court. However, these proposals did not exist at the time the underlying case was ongoing or at the time the trial court issued its judgment. The reason that they did not exist is because they were created and proposed in March 2022, a couple of months after the filing of this appeal. They were created and proposed by the ADO or in conjunction, coordination, consultation, and/or approval by the ADO. Evidently, these two proposals were calculated to impact this litigation and appeal.
9. Thus, these two proposals were intended to enhance or sure up the ADO/PCC's legal positions before the NH supreme court, once these proposals are pushed through or implemented. It appears to have been a clever maneuver designed to protect their legal position. The problem is that these are being done after the fact, and are being done with the intent to impact the current appeal. This is tantamount to game-rigging by quietly moving the inside levers of the machinery of the judicial system to swipe the rug from out underneath the feet of the plaintiff, so that the ADO and PCC can make new definitions that will help to make certain legal arguments that they could not make or stand on before with certainty, and where even if the plaintiff wins on the appeal, she still will lose because of the rule change proposals. For example, in rule change proposal 2022-001, the ADO/PCC have proposed to redefine the public file in a way that would allow them to whittle down the file to very little or almost nothing, especially when compared to what was in the public file before or at the time when my wife filed suit in Superior Court. The ADO's proposal also included a change to the copy policy of the ADO, which has been a

[7] NB: The first time that these two amendments or changes to for Rule 37(20) (g), contained in rule change proposal #2022-001, were raised, was at the rules committee hearing on March 11, 2022. On information and belief, after it was first proposed by the ADO to the rules committee by email in or around March 2022, there was no real discussion of the proposal nor was any consideration given to the need to tweak or edit the two proposed amendments in question, during that time. However, a one-time 30-day timeline for soliciting comment from the public was allowed. On information and belief, this is typically not adequate time for an issue to be circulated to the public. In other instances, a 90-day time for public comment is allowed (e.g., there is a public comment solicitation for another proposal this year that lasted for 3 months instead of one month). Moreover, during this time, no one from the committee contacted me or my spouse as directly impacted parties (where it was clear we were affected parties because our names were noted in the documents attached to the #2022-001 proposal), in violation of Rule 51 (2) which states: "*The Advisory Committee on Rules shall have the following responsibilities: (A) To receive and assess all suggested rule and rule amendments referred by the Chair of the Committee; (B) To identify, and solicit comment from, those who are likely to be most affected by, or interested in, a suggested rule or rule amendment*". Typically, the rules committee gives opportunity for public comment and thereafter gives discussion before adopting an amendment, especially if members from the public have something to say about it.

key part of the constitutional issues and analysis in the underlying superior court case. This change in ADO copy policy, now advanced by the ADO and the PCC to the rules committee, which would allow copies of ADO files to now be given to the public, contradicts the policy and legal position that the ADO and PCC took in the lower court as well as in the current appeal. This supports the contention that the ADO/PCC have singled out and targeted my wife for discriminatory treatment by reinterpreting the ADO copy policy, when it came to my wife, to mean that ADO files can only be viewed but never copied, which was so interpreted for first time in the ADO's history, at least for the past 10 years or more, even 20 years, when my wife made her request to obtain a copy of the 2016 ADO case files of the respondent attorney in September 2020. And this new reinterpretation by the ADO/PCC only occurred upon the insistence of the respondent attorney in question, that it now be so interpreted for the first time when it comes to his 2016 ADO files, thus barring my wife from obtaining a copy thereof, and thus forcing my wife and her attorney in fact, to have go to the ADO office to view the hundreds or thousands of pages of files only, at a time when the death toll for the Covid pandemic was at or nearest its highest, making it tantamount to a death sentence for my wife and the undersigned, especially as African Americans who were disproportionately suffered death or serious complications from contracting Covid. All of this transpired while allowing the respondent attorney, at around the same time, the opportunity to review the same files electronically by email for redactions, without having to go physically to the same ADO office that my wife was being forced to go to review the same files, even though the ADO redaction policy required physical viewing of files at the ADO office and no exception was stated in the redaction policy allowing for electronic/remote review, which would be consistent with the new interpretation of copy policy of the ADO. But they carved out an exception for the respondent attorney while in a draconian manner, creating a new policy for public records requests, only for the first time that my wife requested the 2016 ADO case files of the respondent attorney. See **Exhibit D for ADO redaction policy.**

10. With respect to #2022-003, the proposal seeks to redefine the ADO to become part of the judicial branch, by fully incorporating it under the Administrative Office of the Court (AOC). Although initially it actually redounds to being an admission of a weakness in its legal position, this move was evidently intended to try to bolster one of the main legal arguments of ADO/PCC in the current appeal, i.e., that the ADO is therefore not subject to right to know laws because it is part of or under the judicial branch. However, through this rule change proposal, the ADO is trying to create a new situation, after the fact, where the ADO can bolster any claim that it is part of the judicial branch, once the rule change is implemented.
11. These are nuanced and sophisticated points that are implicated by the fact that the ADO and PCC themselves advanced these proposals in the first instance, and then referenced these proposals in the current appeal as part of their brief.

III. FURTHER GROUNDS

12. Further grounds why this proposal should be approved are as follows.
    a. Redefinition of ADO public file violates the NH constitution and first amendment because it ultimately seeks to hide from public view what the ADO is up to as a government/public agency. The NH supreme court and the First Circuit have addressed this issue before. See Troy Brooks v NH Supreme Court 1996 case in the First Circuit Federal Court, and the Petition of Troy Brooks NH supreme court 1996 in the NH supreme court. See **Exhibit E.**
    b. The PCC's new interpretation is demonstrably incorrect from the text itself. See next section below.
    c. Also, there are practical problems with this new interpretation by the ADO/PCC. It cannot withstand scrutiny or the test of time. This is evidenced by the fact that after making this interpretation/policy, the ADO/PCC within a short period had to run to go to the rules committee to suggest a proposal 2022-001 that undoes their own new interpretation. The ADO/PCC proposal 2022-001 is effectively a complaint about their own novel interpretation.

This further confirms that there are problems with this new interpretation/policy, including by their own admission.

d. The history of the changes to Rule 37 and the confidentiality policy thereof does not support the PCC's new interpretation of Rule 37(20). The changes made historically to Rule 37, leading to its current version, was never intended to prevent copies to the public and was never so stated or interpreted by those who made the changes including the rules committee, the NH supreme court or the ADO/PCC itself. See **Exhibit F**.

A. Arguments For Why The PCC's Interpretation Of Rule 37(20)(N) Is Not Correct

13. The ADO has thus enacted a new "view-only" policy for the first time, prohibiting copies/pictures/scanning/possession of ADO files by the public ("no-copy-policy"), clearly creating unreasonable restrictions on access. The majority of the public, especially vulnerable-populations, will not be able to spend multiple-hours and/or multiple-days reviewing/memorizing 100s or 1000s of pages of ADO public records. This is a barrier to access for the majority of the public, including myself. NB: What if courts adopted this no-copy policy? It would clearly be deemed unreasonable.
14. This policy—coupled with the ADO/PCC' s refusal to provide any access at all to my wife, since December 2020 for about 2 years—resulted in unreasonable-restriction-on-access for my wife and myself. The new 'inspection-only' policy is tantamount to denial-of-access (especially for those outside NH, with travel prohibitive, and for disabled-persons who, for medical-reasons, cannot travel to the-ADO-office, both of which applied to my wife and me, as her attorney-in-fact.). By placing these insurmountable conditions/obstacles in her path, the ADO/PCC blocked/deprived my wife of her rights, while claiming that she could "view" the files. It's similar in logic/effect to how States, during Jim-Crow, used literacy tests as obstacles to voting by blacks, while saying they can vote.
15. NB: "Viewing only" also means that ADO files cannot be used/produced in any other proceeding/forum/venue/in-the-media, and thus cannot serve as proof/evidence/facts, only hearsay. By requiring in-office viewing/inspection only, subjecting my wife and myself to unnecessary Covid-19-exposure/possibly death (during heights of pandemic), the ADO/PCC violated our constitutional right-to-public-access, and first amendment rights (as applied through the-fourteenth amendment) to criticize how the ADO has handled past ADO cases (including whether there is cronyism/discrimination/corruption/negligence/other misconduct). See Union Leader Corp. v. N.H. Ret. Sys., 162 N.H. 673,684(2011) (noting that public interest existed in disclosure where the "Union Leader seeks to use the information to uncover potential governmental error or corruption"); See also Prof 'l Firefighters of N.H., 159 N.H.;709 ("Public scrutiny can expose corruption, incompetence, inefficiency, prejudice and favoritism."); See also Petition of Brooks, 140 N.H. 813(1996).
16. The clear goal of this new policy is to muzzle/squelch/limit free-speech or public criticism because no-one, except the most ardent/zealous members of public or the most resourced-organizations can obtain information necessary to make public-criticisms of the ADO process or ADO decisions, as well as of any prominent/public figure against whom an ADO complaint was filed.
17. NB: Neither my wife nor myself nor any member of the public should be burdened with proposing/enacting rule-change-petitions (or proposing/lobbying legislation, etc.), simply to obtain public-records as I am doing now.
18. In Sumner v. New Hampshire Sec'y of State, 168 N.H. 667,669-70(N.H. 2016), the NH supreme court stated: "*To determine whether restrictions are reasonable, we balance the public's right of access against the competing constitutional interests in the context of the facts of each case." Id. (quotations and emphasis omitted). "The reasonableness of any restriction on the public's right of access to any governmental proceeding or record must be examined in light of the ability of the public to hold government accountable absent such access." Associated Press v. State of N.H.,153 N.H. 120, 125, 888 A.2d 1236(2005).*"
19. It wasn't reasonable for the ADO/PCC to single-out/target plaintiff, as the first-person in history to apply a no-copy-policy/interpretation to.

20. The NH supreme court has never issued any decision where it interpreted Rule-37(20)(n) in the new way that defendants recently did, for the first time, on 10-28-20.
21. Moreover, the previous long-held interpretation by the ADO and PCC (i.e., an open-copy policy) is the correct one. See Holland v. New Hampshire Board of Chiropractic Examiners, 119 N.H.17 (1979) ("We view this administrative interpretation by the board over a prolonged period of time…as evidence that it conforms to the legislative intent.").
22. Either way, the common-law-presumption of public-access that includes copying, and that applies to "judicial records", should be applied to the ADO. See Nixon v. Warner Communications, Inc., 435 U.S. 589,597(1978) (holding there is a common law right "to inspect and copy public records and documents, including judicial records and documents").
23. The NH supreme court has stated that "the right to public access shall generally include the right to make notes and to obtain copies at normal rates.". See NH-Supreme-Court-Guideline-for-Public Access, with web-link at https://www.courts.nh.gov/guidelines-public-access-court-records. The ADO/PCC new policy/interpretation contradicts this fundamental principle/definition/declaration of this court.
24. NB: There is no state interest in preventing copies to the public. How is there harm for the public to get copies of ADO-files?
25. NB: The ADO/PCC have never demonstrated that their new interpretation is correct. Conversely, the-ADO/PCC have effectively conceded their new interpretation is incorrect, by requesting (in the recent rules-committee-proposal-#2022-001), that their new interpretation be changed (back) to allow copies to public (but with major-caveat redefining public-file leaving almost-nothing in file, which is harmful to public, including plaintiff, allowing little/no public-accountability).
26. The ADO for 10 years or 20-years or more, never interpreted that rule to mean that public access to ADO records was limited by "inspection-only". The ADO/PCC now suggests that for the past 10 or 20 years or more, the ADO/PCC got it wrong when they allowed copies to the public. On 9-1-20, when my wife made her right-to-know request, there was no rule interpretation blocking file copies to the public. The only reason given by ADO for not producing files then, was because of a 2015-Attorney-General (AG) legal-opinion that RSA-91A didn't apply to the-judicial-branch; not a rule-interpretation of Rule-37(20)(n). The ADO/PCC has long-interpreted Rule-37(20)(n) as allowing copies to the public. See Petition of Brooks, 140 N.H. 813(1996), showing that the NH supreme court interpreted Rule 37, consistent with allowing public dissemination (i.e., copies) of ADO public records (See **Exhibit D**).
27. NB: Attorney discipline records aren't the only records at the ADO; there are records on budgets/staffing/operations, and communications with the public (including requests-for-public-files), external-organizations (i.e., news-media), and other state-agencies, including law-enforcement. These communications are or should be subject to right-to-know public accountability. And there is no reason to prevent a copy of these files from being given to the public upon request.
28. In light of the above, it is or should be clear that copies of ADO public files must be made available to the public. It should also be clear that the concomitant is also true: that these must be made available to the public without charge if there is no cost to the ADO for providing the copy (i.e., in electronic format).
29. NB: There is an annulment argument that has been advanced subsequently by the attorney respondent in question. However, this does not hold water because the ADO and PCC allowed copies previously for decades without any such issue being a problem. See **Exhibit G** for pleading filed in ADO case that addresses some of these related points.
30. This new requirement by the ADO/PCC is equivalent is a violation of first amendment rights.
31. It is also draconian and burdensome and violative of the spirit and intent of the constitutional requirement of transparent access to public files. The constitutional right of public access and the right to know under RSA 91A both provide that the public is entitled to an actual copy of the public files. ADO policy all along has always been to give copies to members of the public

who request them. The effect of these conditions is to de facto create a kind of protective order, where there has been no request for protective order or sealing, when there has been no showing of a need for protective order or sealing, and when no evidence or information in particular has been cited as being in need of protective order or sealing; and even if there was, the redaction process takes care of that. There is no logical, legal or common-sense basis to bar copies of fully redacted public files of the ADO.

1. Similarly, it should be noted that the NH supreme court explicitly authorized the NH judicial branch committees including the PCC to provide accommodation by way of remote methods in order to safeguard the public from the pandemic. NB: As of May 2021, the Governor of NH and the NH Supreme Court ("NHSC") issued updated directives to all judicial bodies or committees to relax any rule or provision that would bar or prevent them from allowing remote alternatives from being used in order to facilitate the health and safety of its employees and the public i.e., the exact quote[4] is: "***Any Supreme Court Rule that impedes a committee's ability to utilize available technologies, in appropriate circumstances, to limit in-person contact is suspended during the effective period of this order***."
2. Yet, the ADO or PCC did not suspend or relax its policy of barring copies of public files to the undersigned/complainant at the time but still enforced the unreasonable policy, in violation of not only the ADA but also of the NHSC's orders and the NH Governor's directives. Why would the PCC not adhere to this order/directive? There is simply no good reason for this i.e., to go up against or violate not only the Governor's directives and the NHSC orders just to stop the undersigned and his wife from obtaining a copy of the 2016 files? All of this trouble, consternation and litigation all because the respondent suggested a new interpretation of a policy that neither the PCC or ADO held before nor enforced before, and where the ADO and PCC gave copies of such files to the public for over 10 years or more until now, and until this case.

B. Further Arguments For Why PCC's Interpretation Of Rule 37(20)(N) Is Not Correct

3. It should be noted that Rule 37 (20)(n) states: "*With respect to records to be made available for public inspection under this Rule or Rule 37A, final disciplinary decisions of the professional conduct committee and the supreme court shall be made available for public inspection electronically via the internet; all other records shall be made available for public inspection only at the attorney discipline office.*"
4. Here the word "public inspection" electronically via the internet means that the public is free to make a copy of it from the internet. By making it available on the internet, it means that part of the records would be permanently copiable by the public. Therefore "public inspection" as used in context, by definition, cannot mean only "inspect" with the intent to forbid "copying".
5. Hence, the word "public inspection" is being used in reference to the electronic display of decisions on the NH supreme court website. The Respondent's definition would mean that the records of decisions which are part of the file cannot be published online because if the case is later destroyed then the public would have a copy of the decision, which is part of the file.
6. This is an absurd interpretation.
7. The word "inspection" has always had the meaning to include copy. This is a new and novel interpretation by the respondent recently adopted by the ADO/PCC.
8. Moreover, confidential files can be sealed via protective order. If a respondent feels there is something damaging to him that should not be public, he can take it up with the ADO in the redaction process and thereafter with the PCC. He has adequate remedy for any concerns. The remedy should not be to ban all members of the public from obtaining a copy. The respondent's

interpretation would mean the public has to commit the files to memory when they come to the ADO's office to inspect the files whereby they cannot obtain a copy. For example, if the news media wants a copy of the files, they would have to memorize the files in order to reference them in a story. They could misremember or get it wrong by being forced to commit the files to memory. This is unduly burdensome and not consistent with the NH constitution, not for the news media but for any regular member of the public.

9. What then would be the purpose of allowing only inspection but no copying? To prevent the public from having the information? But the purpose of the public right to access public files is to allow the public to have the information. Under such circumstances, only those with a photographic memory would have the information, or copious amounts of time would have to be spent re-writing the files from scratch. But even that would have to be prevented too based on the logic of the respondent. This is a new and novel interpretation but also an absurd, burdensome, impractical and untenable one.
10. This would also have deleterious consequences for those cases in which the files were transmitted to the ADO via electronic means, which more and more cases are submitted to the ADO via email. For such cases or files, there would be the odd result that respondent's interpretation would require a member of the public to physically come in to the office in order to look on a screen to view the files on a computer only but not obtain a copy, or it would require the ADO to print paper copies of electronic files in order to force members of the public to view the files in paper only and still not be able to obtain a copy. This makes no sense.
11. Moreover, producing electronic documents is often more efficient and cost-effective than producing them in paper form. This also ensures the greatest degree of openness and the greatest amount of public access consistent with the constitutional mandate. Similarly, it is consistent with the statutory principle that states that public files shall be made available in electronic formats if it is not impractical to do so. RSA 91-A:4, V makes it clear paper copies are only required where copying to electronic media *is not reasonably practicable,* or if the person or entity requesting access requests a different method. The ADO has already stated it would be reasonably practical to provide the files by electronic means. It is clear that the requests for copies have been made for electronic delivery.
12. This issue was specifically taken up in *Green v. SAU #55, 168 N.H. 796 (N.H. 2016)* where the petitioner sought certain records in electronic form and the NH Supreme Court held that where producing the records electronically is "reasonably practical", it must be provided in electronic form when requested. See excerpts from case as follows:

    a. "…*producing electronic documents is often more efficient and cost-effective than producing them in paper form. See Mechling v. City of Monroe, 222 P.3d 808, 817 (Wash. Ct. App. 2009) ("Providing electronic records can be cheaper and easier for [a public body] than paper records." (quotation omitted)*."

    b. "…*we agree with the plaintiff that the "[dissemination of public, non-confidential information in commonly used [electronic] formats ensures the greatest degree of openness and the greatest amount of public access*…"

    c. "…*there is no evidence that it was "not reasonably practicable" to copy the requested documents "to electronic media using standard or common file formats." RSA 91-A:4, V."*

C. Final Arguments For Why The PCC's Interpretation Of Rule 37(20)(N) Is Not Correct

13. There are further critically important reasons why the PCC's interpretation of Rule 37(20)(n) is not correct, with all due respect. The complainant asks the PCC to step back and really consider the following arguments, reasoning and points of fact and law.

14. The ADO/PCC has allowed copies, including electronic copies, to be provided, upon request, to the public for decades prior to the initial request for the records made by the complainant back in the fall of 2020.
15. The provision of electronic copies of such records cannot be inherently prohibitive. The PCC only recently (as of fall 2020) for the first time (at least since about 2000 or thereabouts) adopted a novel interpretation, suggested by the respondent, that copies of such records should not be provided to members of the public. This means that for over 20 years or so, copies of records, including electronic copies, have been provided to members of the public upon request, until the PCC in the fall of 2020, ruled (as it pertained to the complainant's request) that it should no longer be done due to an interpretation of Rule 37(20)(n) that had never been so construed, interpreted or adopted before.
16. The complainant/undersigned believes that such an interpretation is incorrect or erroneous, and this is further supported by the fact no one, neither the PCC or the ADO, or any lawyer or person, ever so interpreted Rule 37(20)(n) prior to that. Furthermore, it is not consistent with the constitutional principles of open and free access to public records, nor with acceptable public policy.
17. NB: Presumably, it is likely that the newspapers of New Hampshire, for example, will not stand for this novel interpretation and new policy of the ADO, and will litigate this if they are told they cannot get copies of public records from the ADO.
18. In further examining the matter closely, it is evident that the issue here hinges on the interpretation of two words "public inspection" found in Rule 37(20)(n).
19. The novel interpretation first advanced by the respondent and then adopted by the ADO/PCC is that the term "public inspection" means only inspect but not copy or retain. This novel interpretation was adopted by the PCC (which essentially became a rule change as these words had never been so interpreted or enforced before over the last 20 years or thereabouts). NB: If this new interpretation is correct, then it would appear that every generation of the ADO and the PCC since the year 2000 or so, simply got it wrong and missed this correct interpretation.
20. But is this really the correct interpretation? Did the ADO/PCC over the past 20 years really get this wrong when they made copies available to the public, until the first time after my wife and the undersigned requested the 2016 ADO files of the respondent attorney in question?
21. The burden of showing that a 20-year held interpretation is wrong is pretty high. It cannot be approached flippantly or nonchalantly but it must be approached with diligence and careful scrutiny. The respondent attorney did not carry his burden and the PCC in adopting his interpretation evidently did so hastily. Grounds for this conclusion are as follows.
22. The text in question in Rule (20)(n) is as follows:

> (n) With respect to records to be made available for public inspection under this Rule or Rule 37A, final disciplinary decisions of the professional conduct committee and the supreme court shall be made available for public inspection electronically via the internet; all other records shall be made available for public inspection only at the attorney discipline office.

23. Based on a careful reading and analysis of the above, the words "public inspection" cannot mean "the public cannot retain a copy".
24. Here, the words "public inspection" is used to describe placing documents on the internet.
25. If the term **"public inspection"** means **"the public cannot retain the words/cannot retain or have a copy of the words in the document",** then the term **"made available for public inspection electronically via the internet"** is an oxymoron. This proves that the term "public

inspection" cannot mean "the public cannot retain the words/cannot retain or have a copy of the words in the document." [NB: a proper grammatical and syntactical analysis of this sentence demonstrates that the words "public inspection" in this context cannot mean "only view in person but no retention/copy". It is hermeneutically[8] flawed to ignore the context of the term in their relation to other words and how those words modulate the meaning of this term.

26. If this was the correct interpretation, then the words in Rule 37(20)(n) would effectively read as follows:

> "(n) With respect to records to be made available for **viewing only but no retention/copy allowed** under this Rule or Rule 37A, final disciplinary decisions of the professional conduct committee and the supreme court shall be made available for **viewing only but no retention/copy allowed** electronically via the internet; all other records shall be made available for **viewing only but no retention/copy allowed** only at the attorney discipline office.

27. This sentence would make no sense because it is impossible to make a document available on the internet but still intend for there to be viewing only but no retention/copy.
28. The placing of the words "electronically via the internet" next to "public inspection", modulates the meaning of "public inspection" and serves to define its meaning in a way that cannot exclude retention/copy.
29. Words have no meaning apart from their context. The context determines the correct meaning and interpretation of any word or words. This is the fundamental or first key rule of hermeneutics. One cannot force or impose a meaning onto a word that defies the context. The words that precede and that follow a word are the context ([pre-text and post-text). The words in the pre-text and posttext of a word modulate the meaning of a word. In this case, the words that immediately follow the words "public inspection" are "electronically via the internet." These words modulate or limit the meaning of "public inspection". It therefore cannot mean "no retention/no copy allowed".
30. Moreover, the words "public inspection" appears 3 times in the sentence that constitutes this section of Rule 37/(20)(n). When applied throughout the sentence, the words "public inspection" has one meaning from the context of the sentence. The part of the sentence that limits the meaning of "public inspection" (i.e., the second usage) must limit the meaning of it in the other places in the same sentence (i.e., the first and third usage).
31. Similarly, the words "all other records shall be made available for public inspection only at the attorney discipline office" cannot mean "the public cannot retain a copy". It simply means that if a member of the public wishes to obtain a copy, then they have to request it from the ADO. These do not prohibit the ADO from providing copies to the public upon request. The ADO thus can provide copies to the public (as it has done for decades previously) until the time for destruction of the records has come. The ADO needs to regulate the destruction of records that the ADO has. If it is placed on the internet, then it is not subject to destruction. It makes sense why the records subject to being destroyed are not placed on the internet by the ADO. The requirement that members of the public obtain copies from the ADO directly, is intended to allow for control over when such copies will have to halt after destruction of records occurs.

[8]NB: The undersigned has a background and expertise in hermeneutics and have previously taught hermeneutics at the college level, and so is speaking from a place of some proficiency here. Although the undersigned is not a lawyer, his background in hermeneutics allows him to be able to properly analyze the correct interpretation of words in a sentence, regardless of whether it is in the field of history, theology, law or literature.

32. When these words were written as amendment to Rule 37(20)(n) in or around the year 2000 or thereabouts, it was in the context of the Troy Brooks case[9] who sought to overturn the ADO/PCC policy of prohibiting complainants from disclosing ADO records publicly. Mr. Brooks wanted to provide material from the ADO to use as he saw fit, whether for another proceeding or for news/media purposes. Mr. Brooks first filed an action in the NH supreme court and then a federal court lawsuit and a first circuit appeal [10]on this matter, raising first amendment concerns, and the first circuit federal court signaled the validity of the first amendment issue. The NHSC then granted the change that Troy Brooks was seeking, which was to allow Mr. Brooks and members of the public to make ADO records available to the public. This was the context for this amendment to Rule 37(20)(n)[11]. It goes against the context and history of this rule change and the reason for the rule change, to now posit or suggest that the meaning and intent of these words was that ADO records were only to be made available to be viewed but not to retain a copy.
33. Similarly, by expanding the meaning to mean no retention/copy, it goes beyond the limits prescribed by the state constitution, mandating the broadest or utmost access to public records, and is therefore impermissibly and unconstitutionally overbroad as it unreasonably restricts public access in contravention of the constitutional mandate.

IV. CONCLUSION

34. I request that that committee approves this petition.
35. I also request that the committee ask the NH supreme court to consolidate this petition with the pending proposal #2022-001 or to await the decision of the committee on this proposal before making a final decision on the matter.

Thank you for your consideration.

Sincerely,
/s/Andre Bisasor
Andre Bisasor
679 Washington Street #8-206
Attleboro MA 02703

Dated: December 8, 2022

[9] See Petition of Troy E. Brooks, 140 N.H. 813 (1996).
[10] See Troy E. Brooks v. New Hampshire Supreme Court, et al. 80 F.3d 633 (1st Cir. 1996).
[11] See note at the beginning of Rule 37 (20) as follows:
"(20) Confidentiality and Public Access - Matters Initiated on Or After April 1, 2000:"
"Applicability Note: Section 20 shall apply to records and proceedings in all matters initiated on or after April 1, 2000."

Exhibit A

NEW HAMPSHIRE SUPREME COURT
ATTORNEY DISCIPLINE OFFICE

Brian R. Moushegian
General Counsel

Mark P. Cornell
Deputy General Counsel

Andrea Q. Labonte
Assistant General Counsel

Sara S. Greene
Disciplinary Counsel

Elizabeth M. Murphy
Assistant Disciplinary Counsel

March 7, 2022

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

Re: Proposed Amendments to Supreme Court Rule 37 and 37A

Dear Justice Donovan:

Dear Justice Donovan,

Enclosed is a Memorandum prepared by myself, and Brian Moushegian, General Counsel of the Attorney Discipline Office ("ADO"), regarding various proposed changes to Supreme Court Rules 37 and 37A, which govern the discipline system in New Hampshire. The Memorandum describes in detail the background for each proposed amendment, and contains the language of the current Rule(s), as well as proposed amendments with strikethroughs, etc.

To summarize, the proposals would:

- Amend Rule 37(8) to give the ADO "reciprocal" subpoena power, which would allow the ADO to issue a subpoena in this jurisdiction where a subpoena has been duly approved under the law of another disciplinary jurisdiction;

- Create a "reinstatement form" for applicants for reinstatement to the Bar to fill out and attach to their motion for reinstatement under Rule 37(14)(b). Rule 37(14)(b), as currently written, references a "reinstatement form," but one does not exist. The ADO requests a

subcommittee to work towards drafting the form and presenting it to the Committee.

- Amend Rule 37(20) to:
  - define what constitutes the ADO's "public file," depending on the stage at which it resolves in the discipline process;
  - allow the ADO to provide otherwise confidential documents to the Public Protection Fund;
  - provide that members of the public, in addition to a right to "inspect" the public file, may also make copies of same, and the ADO may transmit same through email or hard copy; and
  - renumber paragraphs as necessary.

- Delete Rule 37(21), which is no longer necessary, as it applied to matters "initiated on or before April 1, 2000;"

- Amend Rule 37A(III)(a)(2) to allow the ADO to move for conditional default against Respondents who fail to timely furnish discovery; and

- Amend Rule 37A(V) to allow attorneys to request annulments not only of reprimands, but also of public censures.

Thank you for your consideration.

Sincerely,

Brian R. Moushegian
General Counsel

and

Sara S. Greene
Disciplinary Counsel

Rule 37(20) – Formal Proceedings; Format of Pleadings and Documents: Confidentiality and Public Access - Matters Initiated On Or After April 1, 2000:

Background:

This Rule change would remove a section, Rule 37(21), for disciplinary matters initiated "on or before April 1, 2000." That section was necessary when the disciplinary rules were first drafted in 2004, but is no longer necessary.

This Rule would clarify Rule 37(20), governing public access to ADO files for matters initiated "on or after April 1, 2000," to:

(1) provide that the ADO may provide otherwise confidential documents to the Public Protection Fund, just as it can to agencies authorized to investigate violations of criminal statutes;
(2) amend what constitutes the "public file" maintained by the ADO;
(3) provide that members of the public, in addition to a right to "inspect" such public file, may also make or receive copies of same. This issue has become particularly troublesome recently, following Orders of the PCC relevant to a litigated matter in which the ADO was sued in Superior Court. Those Orders are attached hereto as Exhibits 5-6 . The PCC has interpreted the current rule to mean that members of the public may only inspect the public file, but they cannot make copies of it, nor can the ADO forward copies, electronically or otherwise, to members of the public. For example, a witness (or a newspaper representative) will seek a copy of a Hearing Panel Report following a trial, but the ADO cannot mail or email a copy to such persons nor can such persons make a copy of the Report. Eventually, when a matter is final, such Report is accessible on the ADO website, but that process can sometimes take one year or more from the time that a Hearing Panel issues a report. In addition, members of the public occasionally want to see additional public file materials that are not posted on the website at all (i.e. an expert report, or the initial grievance); and
(4) Renumber paragraphs based on the deletion of Rule 37(21)

Current Rule:

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

Applicability Note: Section 20 shall apply to records and proceedings in all matters initiated on or after April 1, 2000.

(a) Grievance outside the Jurisdiction of the Attorney Discipline System or Not Meeting the Requirements for Docketing as a Complaint:

(1) A grievance against a person who is not subject to the rules of professional conduct shall be returned to the grievant. No file on the grievance will be maintained.

(2) All records and materials relating to a grievance determined by the attorney discipline office or the complaint screening committee not to meet the requirements for docketing as a complaint shall be available for public inspection (other than work product, internal memoranda, and deliberations) beginning 30 days after correspondence is sent to the respondent attorney who is the subject of the grievance and the respondent attorney has the opportunity to provide a reply to be filed in the public record. The records and material shall be maintained at the attorney discipline office for two (2) years from the date of the original filing. After this two-year period, the records shall be destroyed.

(3) Index of Complaints. The attorney discipline office shall maintain an index of complaints docketed against each attorney, which shall contain pertinent information, including the outcome of the complaint. No index of grievances that are not docketed as complaints shall be maintained.

(b) Grievance Docketed as Complaint: All records and proceedings relating to a complaint docketed by the attorney discipline system shall be available for public inspection (other than work product, internal memoranda, and deliberations) upon the earliest of the following:

(1) When the Attorney Discipline Office general counsel, the complaint screening committee or the professional conduct committee finally disposes of a complaint;

(2) When disciplinary counsel issues a notice of charges;

(3) When the professional conduct committee files a petition with the supreme court, except as provided by section (11) regarding resignations; or

(4) When the respondent attorney, prior to dismissal of a complaint or the issuance of a notice of charges, requests that the matter be public.

(c) Records may be destroyed after:

(1) three years of the date of notice of dismissal; or

(2) three years of the date of an annulment in accordance with Rule 37A; or

(3) five years after the death of the attorney-respondent.

(d) Proceedings for Reinstatement or Readmission: When an attorney seeks reinstatement or readmission pursuant to section (14), the records, with the exception of the bar application, and the proceedings before the hearing panel and the professional conduct committee shall be public (other than work product, internal memoranda, and deliberations).

(e) Proceedings Based upon Conviction or Public Discipline: If the investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the respondent in another jurisdiction, the entire file pertaining to the crime or the public discipline, other than the work product, internal memoranda, and deliberations of the attorney discipline system, shall be available for public inspection.

(f) Proceedings Alleging Disability: All proceedings involving allegations of disability on the part of a New Hampshire licensed attorney shall be kept confidential until and unless the supreme court enters an order suspending said attorney from the practice of law pursuant to section (10), in which case said order shall be public.

(g) Protective Orders: Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant, a witness, the attorney, or other persons. In order to protect the legitimate privacy interests of such persons, the professional conduct committee, may, upon request, or on its own initiative, issue a protective order prohibiting the disclosure of confidential, malicious, personal, privileged information or material submitted in bad faith. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time. Any person aggrieved by a decision on a protective order may, within thirty (30) days of the decision, request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the court has acted or the period for requesting court review has expired.

(h) Disclosure to Authorized Agency: The attorney discipline office may disclose relevant information that is otherwise confidential to agencies authorized to investigate the qualifications of judicial candidates, to authorized agencies investigating qualifications for admission to practice or fitness to continue practice, to law enforcement agencies investigating qualifications for government employment, and to law enforcement agencies authorized to investigate and prosecute violations of the criminal law. If the attorney discipline office decides to answer a request for relevant information, and if the attorney who is the subject of the request has not signed a waiver permitting the requesting agency to obtain confidential information, the attorney discipline office shall send to the attorney at his or her last known address, by certified mail, a notice that information had been requested and by whom, together with a copy of the information that the attorney discipline office proposes to release to the requesting agency. The attorney discipline office shall inform the subject attorney that the information shall be released at the end of ten (10) days from the date of mailing the notice unless the attorney obtains a supreme court order restraining such disclosure. Notice to the attorney, as provided in this section, shall not be required prior to disclosure of relevant information that is otherwise confidential to law enforcement agencies authorized to investigate and prosecute violations of the criminal law.

(i) Disclosure to Supreme Court for Rule 36 Review: The attorney discipline office shall disclose relevant information that is otherwise confidential to the supreme court, upon its request, in connection with the court's review of applications under Supreme Court Rule 36.

(j) Disclosure to National Discipline Data Bank: The clerk of the supreme court shall transmit notice of all public discipline imposed on an attorney by the supreme court or the professional conduct committee (upon notice from said committee), or the suspension from law practice

due to disability of an attorney, to the National Discipline Data Bank maintained by the American Bar Association.

(k) Disclosure to Lawyers Assistance Program: The Attorney Discipline Office shall have the power to disclose otherwise confidential information to the New Hampshire Lawyers Assistance Program whenever the Attorney Discipline Office determines that such disclosure would be in the public interest.

(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 a grievant from disclosing publicly the underlying conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. 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.

(m) Violation of Duty of Confidentiality: Any violation of the duty of confidentiality imposed by section (20) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the proceedings earlier than would have been the case under section (20), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.

(n) With respect to records to be made available for public inspection under this Rule or Rule 37A, final disciplinary decisions of the professional conduct committee and the supreme court shall be made available for public inspection electronically via the internet; all other records shall be made available for public inspection only at the attorney discipline office.

Proposed Amendment:

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

~~Applicability Note: Section 20 shall apply to records and proceedings in all matters initiated on or after April 1, 2000.~~

(a)The Attorney Discipline Office shall maintain a public file relating to a grievance. The public file shall not include the work product, internal memoranda, and deliberations of the Attorney Discipline Office, the Hearings Committee or the Professional Conduct Committee. The public file shall consist of:

(1) for non-docketed matters, the grievance, voluntary response(s) from the respondent attorney, if any, the non-docket letter, the grievant's request for reconsideration and response(s) thereto, if any, and any written decision of the Complaint Screening Committee;

(2) for docketed matters that are not referred to disciplinary counsel for formal proceedings, the complaint, mandatory response(s) from the respondent attorney, complainant's or respondent's requests for reconsideration, if any, and any responses(s) thereto, and any written decision of the Complaint Screening Committee; and

(3) for matters that result in formal proceedings, the documents referenced in the index of record maintained by Clerk of the Hearings and Professional Conduct Committees.

(b~~a~~) Grievance outside the Jurisdiction of the Attorney Discipline System or Not Meeting the Requirements for Docketing as a Complaint:

(1) A grievance against a person who is not subject to the rules of professional conduct shall be returned to the grievant. No file on the grievance will be maintained.

(2) ~~All records and materials~~ The public file relating to a grievance determined by the attorney discipline office or the complaint screening committee not to meet the requirements for docketing as a complaint shall be available for public inspection and copying at the expense of the member of the public seeking such copies ~~(other than work product, internal memoranda, and deliberations)~~ beginning 30 days after correspondence is sent to the respondent attorney who is the subject of the grievance and the respondent attorney has the opportunity to provide a reply to be filed in the public record. The records and material shall be maintained at the attorney discipline office for two (2) years from the date of the original filing. After this two-year period, the records shall be destroyed.

(3) Index of Complaints. The attorney discipline office shall maintain an index of complaints docketed against each attorney, which shall contain pertinent information, including the outcome of the complaint. No index of grievances that are not docketed as complaints shall be maintained.

(c~~b~~) Grievance Docketed as Complaint: ~~All records and proceedings~~ The public file relating to a complaint docketed by the attorney discipline system shall be available for public inspection and copying at the expense of the member of the public seeking such copies ~~(other than work product, internal memoranda, and deliberations)~~ upon the earliest of the following:

(1) When the Attorney Discipline Office general counsel, the complaint screening committee or the professional conduct committee finally disposes of a complaint;

(2) When disciplinary counsel issues a notice of charges;

(3) When the attorney discipline office or the professional conduct committee files a petition with the supreme court, except as provided by section (11) regarding resignations; or

(4) When the respondent attorney, prior to dismissal of a complaint or the issuance of a notice of charges, requests that the matter be public.

(dc) Records may be destroyed after:

(1) three years of the date of notice of dismissal; or

(2) three years of the date of an annulment in accordance with Rule 37A; or

(3) five years after the death of the attorney-respondent.

(ed) Proceedings for Reinstatement or Readmission: When an attorney seeks reinstatement or readmission pursuant to section (14), the Attorney Discipline Office shall maintain a public file relating to such reinstatement or readmission. The public file shalll not include the work product, internal memoranda, and deliberations of the Attorney Discipline Office, the Hearings Committee or the Professional Conduct Committee. The public file shall consist of the documents referenced in the index of record maintained by Clerk of the Hearings and Professional Conduct Committees.

~~the records, with the exception of the bar application, and the proceedings before the hearing panel and the professional conduct committee shall be public (other than work product, internal memoranda, and deliberations).~~

(fe) Proceedings Based upon Conviction or Public Discipline: If the investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the respondent in another jurisdiction, the entire file pertaining to the crime or the public discipline, other than the work product, internal memoranda, and deliberations of the attorney discipline system, shall be available for public inspection.

(gf) Proceedings Alleging Disability: All proceedings involving allegations of disability on the part of a New Hampshire licensed attorney shall be kept confidential until and unless the supreme court enters an order suspending said attorney from the practice of law pursuant to section (10), in which case said order shall be public.

(hg) Protective Orders: Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant, a witness, the attorney, or other persons. In order to protect the legitimate privacy interests of such persons, the professional conduct committee, may, upon request, or on its own initiative, issue a protective order prohibiting the disclosure of confidential, malicious, personal, privileged information or material submitted in bad faith. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time. Any person aggrieved by a decision on a protective order may, within thirty (30) days of the decision, request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the court has acted or the period for requesting court review has expired.

(ih) Disclosure to Authorized Agency: The attorney discipline office may disclose relevant information that is otherwise confidential to agencies authorized to investigate the qualifications of judicial candidates, to authorized agencies investigating qualifications for admission to practice or fitness to continue practice, to law enforcement agencies investigating qualifications for government employment, to the New Hampshire Public Protection Fund, and to law enforcement agencies authorized to investigate and prosecute violations of the criminal law. If the attorney discipline office decides to answer a request for relevant information, and if the attorney who is the subject of the request has not signed a waiver permitting the requesting agency to obtain confidential information, the attorney discipline office shall send to the attorney at his or her last known address, by certified mail, a notice that information had been requested and by whom, together with a copy of the information that the attorney discipline office proposes to release to the requesting agency. The attorney discipline office shall inform the subject attorney that the information shall be released at the end of ten (10) days from the date of mailing the notice unless the attorney obtains a supreme court order restraining such disclosure. Notice to the attorney, as provided in this section, shall not be required prior to disclosure of relevant information that is otherwise confidential to the New Hampshire Public Protection Fund or to law enforcement agencies authorized to investigate and prosecute violations of the criminal law.

(ji) Disclosure to Supreme Court for Rule 36 Review: The attorney discipline office shall disclose relevant information that is otherwise confidential to the supreme court, upon its request, in connection with the court's review of applications under Supreme Court Rule 36.

(kj) Disclosure to National Discipline Data Bank: The clerk of the supreme court shall transmit notice of all public discipline imposed on an attorney by the supreme court or the professional conduct committee (upon notice from said committee), or the suspension from law practice due to disability of an attorney, to the National Discipline Data Bank maintained by the American Bar Association.

(lk) Disclosure to Lawyers Assistance Program: The Attorney Discipline Office shall have the power to disclose otherwise confidential information to the New Hampshire Lawyers Assistance Program whenever the Attorney Discipline Office determines that such disclosure would be in the public interest.

(ml) 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 a grievant from disclosing publicly the underlying conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. 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.

(n~~m~~) Violation of Duty of Confidentiality: Any violation of the duty of confidentiality imposed by section (20) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the proceedings earlier than would have been the case under section (20), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.

(o~~n~~) With respect to records to be made available for public inspection under this Rule or Rule 37A, final disciplinary decisions of the professional conduct committee and the supreme court shall be made available for public inspection electronically via the internet; all other records shall be made available for public inspection only at the attorney discipline office.

**delete Rule 37(21) addressing matters initiated before April 1, 2000

**renumber 37(22) as 37(21)

Exhibit B

Comments/Suggestions To The Rules Committee of the NH Supreme Court on Proposal # 2022-001

I ask that the committee table the two issues below because accommodation was not allowed for me to attend by phone or zoom.

This hearing affects not only local people but also people who are out of state. My not being accommodated is a case in point as to why it is important to hear from people like me in the public, particularly with respect to allowing copies to be provided to the public.

I did not have enough time to prepare my comments as I was just told 5 minutes ago to submit my comments by 12.20pm which is 10 minutes. Thus, I am being prejudiced by all of this but even more so by the lack of accommodation of my request for disability accommodation under the American Disabilities Act.

In any event, here are my short comments. I hope that I will be allowed an opportunity to provide further comment hereafter.

1. I object to the proposed change to Rule 37(20) that would limit the definition of the public file.
    a. Public file should include all of the records and materials, that are not redacted for confidentiality, in the ADO case. There is no reason to limit the definition of the public file when there is a redaction policy that allows for private, sensitive or protected material to be redacted.
    b. These materials also show the exchanges between the ADO and the participants which are critical to understanding how any case was handled. It allows the public to scrutinize whether the ADO is doing things in a fair way and allows the public to criticize the ADO as a public body. By unnecessarily limiting the public file, this infringes on the public's first amendment right to criticize government, as it could hide information that the ADO may not want the public to know about.
    c. All records and materials includes materials that inform what was done. The limitations on the filings do not necessarily capture that.
    d. See attached filing made to the ADO and PCC.
2. I agree with the proposed rule change to allow the public to obtain copies. I also suggest that the public is not charged for copies if an electronic copy of the file already exists.

Respectfully
/s/andre bisasor
Andre Bisasor

June 3, 2022

EXHIBIT A

September 30, 2021

To: NH Professional Conduct Committee (PCC)
4 Chenell Drive, Suite 102
Concord, NH 03301

Re: Donais, Craig S. advs. Attorney Discipline Office; #20-011

Complainant's Renewed/Updated Request for
Electronic Copy of Public Files of the 2016 Donais Matter (Expedited)

The Complainant hereby requests that the PCC allows a copy of the public files of the 2016 prior Donais complaint matter (which was previously requested), to be provided to her electronically. Grounds are as follows.

1. An electronic copy of the files has already been created by the ADO and currently exists at the ADO office.
2. An electronic copy of the files has already been provided to the respondent by the ADO.
3. An electronic copy of the files will not create any additional cost.
4. An electronic copy is efficient in terms of being sent and received. No lost mail. No delay in the mail.
5. An electronic copy allows 100% accuracy in determining what was sent and received. NB: No chance of missing pages or error and if there is, it can be easily detected or rectified.
6. Complainant has a right to an electronic copy of public records.
7. It is against the NH constitution to not provide a copy to the Complainant.
8. The ADO/PCC has allowed or provided copies of public files for over 10 years or more to anyone who requested it previously. On information and belief, Complainant is the first person in history that has been denied a copy of public files, when the PCC issued its order in this case (in the fall of 2020) for the first time barring a copy of public files from being given to the Complainant. This is not right or fair. Even if it were the case that the PCC wanted to change its policy now all of sudden, arguably such sudden change in policy should only take effect after the Complainant receives her copy in this matter, because the policy that was in effect at the time the Complainant requested the files, was the policy that allowed copies to be provided to members of the public who requested it. Therefore, this new policy comes across as being targeted at and for the Complainant only. In fact, since the PCC's order in September 2020, the ADO has not published this new policy publicly. For all the Complainant knows, the ADO could be giving copies of public files to others who request it but deny only the Complainant from receiving a copy of the public files she requested. There is no transparency with this highly unusual new policy.
9. The new policy also stifles the Complainant's first amendment rights as it bars or impedes her from effectively being able to properly review and/or make public criticisms of the ADO or PCC's decisions or handling of cases involving the discipline of attorneys or other such related matters.
10. This new policy is not reasonable in light of the NH constitution's requirement of openness, transparency, accountability and responsiveness and in light of the NH constitution's Part 1, Article 8 requirement of no unreasonable restriction of access to public records.
11. Furthermore, the Complainant and her spouse (her non-lawyer representative) cannot physically come to the ADO office in Concord NH to review the files in person. As mentioned before, the Complainant and her spouse have lived and continue to live in another state and have medical conditions that make them particularly vulnerable to getting seriously ill or dying from Covid-19 (in addition to the fact that as African Americans, they are in a group that has disproportionately died from Covid-19). This has been documented. See attached **Exhibit A.**
12. To require the Complainant and her spouse to physically come to a public facility during the Covid pandemic, was and continues to be very dangerous to their health and wellbeing. In light of this fact alone, it would be tantamount to a potential death sentence to force the Plaintiff and her spouse to

essentially "walk the plank" and brave an in person travel/visit to the ADO office, especially when provision of electronic copies to her is perfectly feasible and able to be easily facilitated.

13. Moreover, forcing the Complainant and her spouse to have to spend multiple hours and/or multiple days (including having to pay for overnight hotel) reviewing several thousand pages of documents, without copying them, and thus forcing them to have to memorize or manually take notes of thousands of pages is not only unreasonable but cruel and unusual. This is an insurmountable barrier for the Complainant and her spouse and effectively bars her and her spouse from having public access to these files. Again, this fails the reasonableness test under the NH constitution.
14. Lastly, as of May 2021, the Governor of NH and the NHSC has issued updated directives to all judicial bodies or committees to relax any rule or provision that would bar or prevent them from allowing remote alternatives from being used in order to facilitate the health and safety of its employees and the public (i.e., "*Any Supreme Court Rule that impedes a committee's ability to utilize available technologies, in appropriate circumstances, to limit in-person contact is suspended during the effective period of this order.*" See attached excerpt as **Exhibit B**.
15. In light of the foregoing, the complainant therefore requests that the PCC grant her request and relax or reverse the previous order barring copy of the public files from being given to her.
16. NB: In light of recent email exchange with the AG's office, this would also likely facilitate resolution of the current longstanding litigation and any continued litigation or appeals regarding this matter. I therefore ask that the PCC provides an **expedited** response, if possible, in advance of today's hearing especially in light of the objective and straightforward information and grounds provided above..

Respectfully submitted by
Andre Bisasor on behalf of Complainant Natalie Anderson:

Andre Bisasor (attorney-in-fact)
679 Washington Street, Suite # 8-206,
Attleboro, MA 02703
781-492-5675

Exhibit A

Exhibit B

that the deadlines for scheduling of hearings may be extended as the needs of the trial court require.

Additional Provisions Applicable to Supreme Court Committees

43. Each committee with a physical office will be open and accessible to the public for purposes of obtaining forms, requesting information or assistance, submitting filings, or reviewing publicly available files. Persons are encouraged to obtain forms and information remotely by reviewing the committee's website, if applicable, or by calling the committee's telephone number. Persons are also encouraged to contact the office in advance to make arrangements for any in-person visit to the office.

44. Each committee is encouraged, but not required, to conduct in-person committee proceedings, in-person committee hearings, and other in-person committee meetings governed by Supreme Court Rules (collectively, "in-person committee proceedings").

45. Each committee is authorized to determine the extent and manner in which in-person committee proceedings are to be conducted and may determine that such proceedings are to be conducted instead by telephone or video conference. In Supreme Court committee-related proceedings, a single justice is authorized to determine the extent and manner in which in-person proceedings are to be conducted and may determine that such proceedings are to be conducted instead by telephone or video conference.

46. Each committee may determine, based upon staffing levels or other factors, that in-person proceedings be conducted at locations other than those at which they would normally occur. Any provisions in Supreme Court Rules concerning the location of holding in-person committee proceedings are hereby suspended during the effective period of this order.

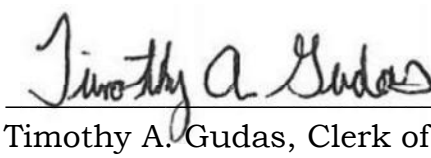
47. Any Supreme Court Rule that impedes a committee's ability to utilize available technologies, in appropriate circumstances, to limit in-person contact is suspended during the effective period of this order. Without limiting the generality of the foregoing, any provisions in Supreme Court Rules requiring physical presence of committee members for quorum or voting purposes are suspended during the effective period of this order.

48. The Attorney Discipline Office ("ADO") will allow and accept the electronic submission and service of pleadings, as well as electronic signatures, in addition to conventional (paper) filings and conventional signatures. The ADO and each other committee should provide drop boxes, if available, for persons to file documents conventionally.

49. This order expressly does not prohibit committee proceedings by telephone, video, teleconferencing, email, or other means that do not involve in-person contact. This order does not affect any committee's consideration of matters that can be resolved without in-person proceedings.

50. Filing and other deadlines are not extended, tolled or suspended by this order, but may be extended upon request in accordance with the committee's standard rules and procedures.

Issued: May 14, 2021

ATTEST: 

Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

COMPLAINANT'S NOTICE OF INTENT TO FILE A MOTION FOR RECONSIDERATION

November 20, 2020

Professional Conduct Committee
NH Attorney Discipline Office
4 Chenell Drive, Suite 102
Concord, NH 03301

Dear Professional Conduct Committee ("PCC"):

This filing is notice to the PCC that I plan to file a motion for reconsideration and reserve the right to do so in the time allowed for reconsideration. By reserving this right via this notice of intent, I intend to preserve the status quo on our motion to change the PCC's order, meaning that this motion is not yet disposed, and cannot be treated as such by the ADO, the CSC or the respondent, as it is still pending. This is because I believe the PCC made clear, plain and provable errors that should necessitate reconsideration of its decision. Moreover, I intend to take up these issues as necessary with the superior court which has jurisdiction over the resolution of this matter.

Further, it should be noted that a motion for reconsideration is necessary because I was not allowed an opportunity to address the last minute filings of Mr. Hilliard on the eve of the PCC meeting on 11-17-20. This last minute filing contained scurrilous assertions intended to cast aspersions and to mislead the PCC. I alerted the PCC to this problem and the need to be allowed an opportunity to respond and be heard. But rather than allow us to be heard, the PCC took a one-sided approach based on false/misleading statements and rank speculation from Mr. Hilliard. Mr. Hilliard was unreasonably given the benefit of the doubt on his speculation on things that he has no knowledge of or what he was speculating on but yet presented his speculation as fact, and/or on things willfully and misleadingly taken out of context by Mr. Hilliard, and/or on things that were just outright mischaracterizations and falsehoods. This undermines confidence that the PCC is being fair. When I file the motion for reconsideration, it will be clear that the PCC is complete error regarding the facts and that its ruling is thus totally unfair and erroneous.

The PCC ruling also has a racially adverse effect because it ignores the fact that African-Americans are more vulnerable to Covid, including contracting, getting seriously ill and dying from Covid. It is Covid vulnerability that was the key point in our motion to change the order, not medical conditions. As the PCC is aware from widely known facts about the pandemic, certain medical conditions become a comorbidity increasing risk of death from Covid. The PCC evidently jumped over that point to focus on asserting that we provided no proof of medical conditions. But the PCC needs no proof that there is a pandemic or that we are African-American. The CDC and other health organizations has provided results and statistics showing that African-Americans are more vulnerable to Covid, including contracting, getting seriously ill and dying from Covid. The PCC is thus essentially ordering a "death sentence" for us as black people to have to travel to NH, spend numerous hours reviewing hundreds of pages of files and hand-taking notes thereof in a public/government facility during a deadly pandemic. To fail to take that that into account, but instead quibble that proof was not provided[1] is

[1] NB: Please note that I did not know that medical proof was need to be provided to the PCC as no proof was asked for either by the ADO, CSC or the PCC and in most cases, simple stating that would be sufficient with any fair-minded judge.

callous and draconian. This is a violation of our civil rights and our human rights, and it also a refusal to provide accommodation in a deadly pandemic, which is willfully putting our lives at risk. NB: The PCC assertion that we knew that physical presence would be required in instituting proceedings against Donais is completely fallacious and inapposite because the complainant instituted proceedings in 2019 prior to the pandemic. Since then, the NHSC has ordered remote access to court proceedings taking the pandemic and public health risks into account. The PCC jumped over all of that to assert this biased and callous assertion, evidently, as an illogical and invalid grab at straws, to justify its knowingly unfair ruling.

Other errors by the PCC include that the unrelated Massachusetts litigation referenced by Mr. Hilliard was instituted also in 2019 which was before the pandemic (and was put on hold by that court due to the pandemic as well as due to medical conditions/vulnerability to Covid as expressed by me to the court and for which the court stayed the case for almost a year) and most importantly that litigation was e-filed in Massachusetts superior court (which that court readily facilitates remote access for a long time now). Mr. Hilliard knew this but lied to the court to make it seem as though we traveled to the Massachusetts court to file litigation in October 2020 i.e. by Mr. Hilliard taking a pleading pertaining to an affidavit of service, out of context[2] (which pleading was also e-filed).[3] So the one-sided assumption by the PCC that we traveled anywhere to file litigation is wrong, erroneous and false.

Similarly, some time ago, we filed a formal change of address with the ADO stating that the Chelmsford address was changed to an Attleboro address as where all correspondence should be sent to. This is on file with the ADO and has not changed and Mr. Hilliard received a copy of that some time ago as well. So Mr. Hilliard was aware of that but yet he wrongly tried to lead the PCC to believe otherwise.

The issue of proof was raised last minute by Mr. Hilliard, without giving me any opportunity to respond and was intended to blindside us, which was its intended effect and it evidently worked.

[2] NB: That Massachusetts case was filed in late 2019. Because everything got put on hold due to Covid etc., I did not file a change of address with the court. But it really did not matter because everything was e-filed in that court so there was no rush to do so and the case had been stayed for the past year because of Covid and other related issues. But this one service document provided to the court by Mr. Hilliard was taken out of context by an adversary. The PCC should have known better than to credit the intended use of that one pleading by Mr. Hilliard to try to make the PCC believe that my physical location was Chelmsford. Also, the Chelmsford address is a mailing address to a mail handler, which can be forwarded as necessary to anywhere else. Moreover, the PCC was told that the Chelmsford address was a UPS mail handler address. Why would the PCC think that I live there? It makes no logical sense. The only way this makes sense is unless the PCC intends to never give us the benefit of the doubt over Mr. Donais and Mr. Hilliard, unless the PCC will never take our word for it for anything, and unless the PCC is skeptical of our word from jump without having any valid reason for it, and unless the PCC intends to unfairly latch on to any scant tenuous negative inference it can find to find against us even if that information or inference makes no logical sense.

[3] What is worse is that Mr. Hilliard is not involved in that Massachusetts litigation but he evidently has scoured that case court docket to retrieve case filing information in order to submit it gratuitously to the PCC, and so not only did he know that the case was filed in 2019 but he knew that it was e-filed and that the court continued/stayed the case because of the pandemic and further extended it to begin as of October 30, 2020 also because of medical conditions and vulnerability to Covid for some time now. Yet, he tries to make it seem to the PCC as though I am making up the medical issues/Covid issues when this has long been presented to other courts and to the ADO itself, etc. Moreover, the SJC in Massachusetts has stated in a Covid order for all MA courts that it does not expect litigants impacted by Covid to have to provide proof (as it essentially knows there is a deadly pandemic out there and masses of people have been drastically impacted in many ways). I mistakenly believed that the PCC would understand this as part of a humane conscientious approach to valuing human life in a pandemic, rather than taking the most skeptical, strict, narrow, tight, draconian approach. I evidently was wrong.

The Chelmsford was a previous mailing address used in this proceeding. Yet again that address is immaterial either way, because it was all efiling done in the Massachusetts litigation filed in that court, which does not require physical filing or physical presence for anything. For the PCC to assert that it appears that that we live in Chelmsford as our physical location is belied by the facts as follows:

1. We filed a change of address with the ADO changing from Chelmsford to Attleboro. We have the right to have our filings with the ADO taken seriously and not be capriciously second-guessed.
2. That change of address includes notice to the PCC as part of the ADO system. We have the right to have our filings with the PCC taken seriously and not be capriciously second-guessed.
3. Every filing that we made to the ADO or CSC, since that notice of change of address (which are too numerous to count) has the changed Attleboro address.
4. Every filing that we made to the PCC since the notice of change of address (which are too numerous to count) has the Attleboro address.
5. Every filing we filed in the NH supreme court, which are too numerous to count, has the Attleboro address.
6. Even the recent Merrimack Superior court case for the RSA 91A complaint and Motion for TRO (which were also e-filed) which the PCC received a copy of, has the Attleboro address.

Why in the world would the PCC jump over all of that to presume incorrectly that Chelmsford is the address where we are physically located? The PCC allowed Mr. Hilliard to mislead it. The PCC had voluminous evidence otherwise that Attleboro was the address of note. The PCC appears to have gone out of its way to ignore several hundred pieces of corroboration of the changed Attleboro address, and allow an out of context one page pleading as a basis to seize upon a negative inference which was invalid, overly suspicious and skeptical, which was careless and reckless for the PCC to do so. The PCC cannot, in all fairness, take a one-sided misleading characterization from an adversary to define something that only we know the facts of. It is hearsay speculation at best[4]. Basic principles of fairness would say the PCC would have to allow us to respond. This demonstrates that something is terribly wrong with how the PCC is treating the complainant[5]. This is unreasonable and biased. Bias can be also shown by the lack of due process provided and the lack of an opportunity to be heard. Mr. Hilliard

[4] Mr. Hilliard's comments about my address were at best logically unintelligible speculation. He has no personal knowledge of our physical location but he gave the impression that he as a lawyer had some kind of knowledge to prove my statement about travel, false.

[5] The bias is shown further when the PCC stated "rather than seizing the opportunity" in reference to me citing that it was logistically and medically prohibitive for us to physically inspect the files at the ADO. To cast such implicit aspersions is unnecessary and reflects bias. But it illogical bias. Why would I not seize the opportunity to review the files? What is the logical theory in that? That I want to delay receiving the files? That I don't want to really review the files? How does that make sense when if the PCC ordered the electronic release of the files, we would get it immediately and the matter not dragged on any further (which is what we have been asking for, for over 2 months going on 3 months now)? Is the litigation filed in court, just a joke? The PCC has to arrive at certain illogical conclusions to assert "rather than seize the opportunity", and this can only be explained by bias including possible racial bias and stereotyping. I say that becauseedical research has found that white doctors tend to discount or ignore the symptoms, and complaints of pain by black patients, and that whites tend to disbelieve blacks when they complain of illness. This is shown in implicit bias studies across the board. Is this what the PCC is doing here, disbelieving our valid medical concerns, because we are black? What basis does the PCC have to disbelieve or to be skeptical of our medical concerns? These issues are becoming ripe for adjudication.

introduced last minute points and allegations, and we requested an opportunity to respond or that these be stricken but the PCC did not even mention any of that. Also, the PCC skipped over the postal receipt for the affidavit of service pleading submitted by Mr. Hilliard, showing an East Greenwich location, which would make no sense if we lived in Chelmsford MA. NB: Mr. Hilliard also made other false statements about the ADO and CSC regarding this issue that I intend to show forth in the upcoming motion for reconsideration with attachments.

If the PCC had simply credited the Attleboro address, it would have seen that travel is prohibitive as follows.

- The travel time from Attleboro MA to Concord NH is about 2hrs in general and about 3hrs with traffic (it is over 110 miles). That counts both ways. So that's a total travel time of about 4 to 6hrs on the road (over 220 miles).
- The travel time from East Greenwich RI where the postal receipt provided with the pleading submitted by Mr. Hilliard is shown, is about 2.5 hrs to 3.5hrs, depending on traffic which is even further. That counts both ways. So that's a total travel time of about 5 to 7hrs on the road.

It would have been more reasonable for the PCC to use any of those examples as a basis to determine or estimate travel time/distance. Instead it latched onto the most negative interpretation to try to find against us, which is not fair and again shows bias as shown above.

Also, the gas cost for the above would range in to the hundred dollar range or more, round trip, and it would necessitate at least one or more nights of overnight stay in NH (with 6 hours on the road plus a considerable amount time need to be spent reviewing the documents and handing taking notes of hundreds of pages, we could not be expected to travel back the same night or in one day).

So the PCC is firmly and demonstrably wrong, in much of its findings and assertions. Once these errors are presented and evidence is attached that puts everything into proper, correct and truthful context and the lies and errors are exposed, the PCC will have no choice but to change its order.

Mr. Hilliard's false and misleading statements[6] will be proven in my filing with attachments. I needed time to prepare and submit attachments. I was not only allowed any opportunity to do so, even though I was led to believe by Ms. Guay that my request to be heard, would be properly considered. It evidently

[6] Mr. Hilliard also lied about having 3 different names in filings depending on venue. This is false. First, his assertion that the I filed cases with the variant name "Bisassor" is false and fabricated. There is no such case with that spelling of my name. Why did Mr. Hilliard manufacture this assertion? In order to try to cast aspersions on me in an unwarranted manner and to prejudice me/us with the PCC. Mr. Hilliard should be disciplined for doing this. Second, the second variant of Bissasor mentioned by Mr. Hilliard, occurred in the Massachusetts case cited in the affidavit pleading submitted by Mr. Hilliard, but this was due to a scrivener error at the outset of the case (the mispelling was inadvertently copied from an error in another document where the mispelling was not noticed). This error replicated in the title of the case but I have noted the correct spelling however in the signature of my pleadings in that case, as shown in the very pleading submitted by Mr. Hilliard. Again, Mr. Hilliard engages in rank speculation, making up facts and casting aspersions when he has no knowledge of the facts or the reason for the facts. Moreover, this kind of attack on my character is Ad Hominem, and is irrelevant and scandalous and annoying and intended to cause burden, which is prohibited by the rules of conduct. What does the spelling of my name have to do with this matter before the ADO for which I am non-lawyer legal representative? Should I stop representing my wife so that Mr. Hilliard can stop attacking me personally with gratuitous baseless trivial irrelevant attacks? The PCC should not countenance such conduct by Mr. Hilliard and he should be told not to do it anymore.

was not[7] and so I was essentially misled into not filing a formal motion to be heard, as requested in the 5 emails directed to the PCC on 11-17-20. This is why this notice of intent is being filed as a pleading and not as an email. I no longer trust that anything I write to Ms. Guay will be considered properly and heard. Our rights were deprived by that misleading or wrong information.

Respectfully submitted,
On behalf of complainant Natalie Anderson

ANDRE BISASOR
679 Washington Street, Suite # 8—206,
Attleboro, MA 02703
781-492-5675

Dated: November 20, 2020

[7] The PCC did not allow my request to either strike the pleadings or to allow a brief time to respond. The PCC assistant, Ms. Guay, led me to believe it would be considered. Apparently, it was not considered. The PCC did not address my request for an opportunity to respond. So the PCC is just going to take a one-sided approach and credit every benefit of the doubt and speculation offered by the respondent in a one-sided manner. This seems very unfair and lob-sided. This is procedurally unfair.

Exhibit C

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Case No. 2021-0604

Natalie Anderson
Petitioner – Appellant
v.
New Hampshire Attorney Discipline Office & New Hampshire Professional Conduct Committee
Respondents – Appellees

Rule 7 Mandatory Appeal from the New Hampshire Superior Court, Merrimack County
Case No. 217-2020-CV-00567

[AMENDED/CORRECTED[1]]
REPLY BRIEF FOR PETITIONER–APPELLANT (OR PLAINTIFF)

By:

Attorney-in-fact for Petitioner–Appellant (or Plaintiff)
Andre Bisasor
679 Washington Street, Suite # 8-206
Attleboro, MA 02703
Tel. 781-492-5675
Email: quickquantum@aol.com
November 14, 2022

Oral Argument by: Andre Bisasor

[1] NB: This amended/corrected version is submitted to make certain corrections of errors including but limited to scrivener errors (typos, grammatical/syntactical errors) as well as missing words/items that could affect meaning, and other formatting errors, etc. This is also for clarity and for the convenience of the court so as to avoid confusion or misunderstanding This is being submitted the very next business day after the due date. Plaintiff asks that this version be used instead of the prior version submitted on the due date. The plaintiff also asks that this be considered in light of other pending motions/issues before the court.

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I. ARGUMENT

1. The Attorney-Discipline-Office ("The-ADO") is a "board", "office", and/or "public-agency[2]" of this state, as defined by statute/case-law.

REBUTTAL-TO-STATEMENT-OF-FACTS-OF -DEFENDANTS-BRIEF

2. Plaintiff's statement of facts is correct/accurate.[3] It's self-serving/improper for defendants to suggest replacing plaintiff's replacing with theirs. This highlights the disputation-of-facts issue, further underscored by Defendants' reference to "part unsworn testimony"(which apply to theirs), buttressing why this case should remand.

REBUTTAL-TO-SUMMARY-OF-ARGUMENT-OF-DEFENDANTS-BRIEF

3. Plaintiff's complaint was RSA-91A action. The underlying request to the-ADO was a right-to-know-request under RSA-91A. How could Plaintiff reframe anything by seeking same relief on appeal? Plaintiff didn't ask the-trial-court to adjudicate NH-supreme-court ("NHSC") rules. It's the-trial-court/Defendants that incorrectly reframed the issue.
4. RSA-91A explicitly confers jurisdiction on the-superior-court("trial-court") to decide any case under RSA-91A that comes before it. There is no exception/caveat provided carving out special place for the-ADO.
5. NB: RSA-91-A:8 mentions "court" 5-times, meaning only superior-court(Add.II,42-44).
6. The-NHSC isn't a trial-court but a court of last resort. Defendants' argument would transform the-NHSC into a trial-court, tasking its justices with daily regulation of public-records-requests.

REBUTTAL-TO-SECTION-I-OF-DEFENDANTS-BRIEF

7. Defendants seem to be contending that anything to do with the-ADO would implicate Rule-37-and-37A because the-ADO functions under Rule-37-and-37A, therefore anything to do with the-ADO would implicate adjudication-of-NHSC-rules. This is an absurd result. This would mean that the-ADO is immuned from any suit in superior-court, not only from right-to-know-actions. This cannot be.
8. If RSA-91A is applied to the-ADO, it wouldn't be in conflict with Rule-37(20)(n) because the-ADO for 10-years-or-20-years-or-more, never interpreted that rule to mean that public-access to ADO-records was limited by "inspection-only", thus there never was a conflict before. Defendants now suggest that for the past 10-or-20-years-or-more, the-ADO/PCC got it wrong when they allowed copies to the public.
9. On 9-1-20, when Plaintiff made her right-to-know request, there was no PCC-order (or rule-interpretation) blocking file-copies to the public. The only reason given by ADO for not producing files then, was because of a 2015-Attorney-General(AG) legal-opinion that

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[2]NB: "Public agency" is defined as "any agency, authority, department, or office of the state..." RSA-91-A:1-a(V). The-ADO is also defined as a 'public-agency' in *Richmond-v.-NH-Committee-on-Professional-Conduct,542,F.3d, 913,917(1stCir.2008).*(ApxII.54-58).

[3]ApxII.44-280.

RSA-91A didn't apply to the-judicial-branch; not a rule-interpretation of Rule-37(20)(n).

10. The-ADO/PCC long-interpreted Rule-37(20)(n) as allowing copies to the public. See *Petition of Brooks, 140 N.H. 813(1996)*, showing this court interpreted Rule-37, consistent with allowing public-dissemination(i.e., copies) of ADO-public-records(Attachment-A).
11. Defendants try to put words in the mouth of the-trial-court-judge, incorrectly intimating the-trial-court-judge may have intended for certain inferences be made from his silence on RSA-91A(i.e.,fallacious-argument-from-silence).
12. It's circular reasoning for defendants to state that "regardless of RSA-91A applicability", the-trial-court lacked jurisdiction. If RSA-91A applied to the-ADO, then the-superior-court couldn't lack jurisdiction.
13. It's well-established that the-ADO isn't a court, it isn't civil/criminal/administrative, but "special in character".[4] The factual-questions surrounding this "special"/"hybrid" nature[5] of the-ADO is critical, before RSA-91A applicability can be properly/fully determined. This should be interpreted to give the broadest meaning to the-right-to-public-access[6].
14. This factual-issue is underscored by the-ADO's own statement (in its recent NH-rules-committee-proposal#2022-003)[7] that it's not (or only partly) under the-judicial-branch, seeking to come fully under the-judicial-branch. If it wasn't fully under the-judicial-branch, then it's only partly under the-judicial-branch. This "part" designation is sufficient to create RSA-91A-applicability. ADO-General-Counsel-Brian Moushegian must be questioned under oath about the meaning of this statement. If the-ADO was under the-judicial-branch, then how could it have not been under the administration/oversight of the-judicial-branch? This goes to the "special" nature question, the exact nature of which should be established in a hearing, so prerequisite facts are established for proper RSA-91A-determination.
15. Similarly, the testimony of Brian-Moushegian, is needed on the record regarding other factual issues germane to RSA-91A applicability. E.g. if the-ADO is partly under the-judicial-branch/partly under the NH-Bar-Association, or partly sharing with other bodies, like the attorney-general/other law-enforcement, or receives funding from executive-branch or its operations partly administered by other bodies, then this can determine whether ADO is a "quasi" something else, subject to RSA-91A.
16. NB: Attorney-discipline-records aren't the only records at the-ADO; there are records on budgets/staffing/operations, and communications with the public (including

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[4]*Richmond-v.-NH-Committee-on-Professional-Conduct,542,F.3d,913,917(1stCir.2008)*("attorney disciplinary proceedings…are "special in character."; "they are "special" proceedings.").

[5]*Union-Leader-Corp.-v.-N.H.-Housing-Fin.-Auth.,142,N.H.540,546(1997))*("any general definition can be of only limited utility to a court confronted with…myriad organizational arrangements for getting the business of government done").

[6]Seacoast-Newspapers, Inc.-v.-City-of-Portsmouth,173,N.H.325,330(2020).

[7]NH-Supreme-Court-Advisory-Rules-Committee-Proposal#2022-003(web-link-on-page-4).

requests-for-public-files), external-organizations (i.e., news-media), and other state-agencies, including law-enforcement. These communications are subject to right-to-know public accountability/RSA-91A.

17. Further record is needed for this court to reach the question of RSA-91A applicability to ADO.
18. Conversely, there is nothing in RSA-91A that states/suggests that RSA-91A "wasn't intended to apply to judicially-created-entities".
19. RSA-91A explicitly provides exemption for "petit-and-master-juries", which are the-judicially-created-bodies. Yet, RSA-91A doesn't further list the-ADO as exempt (nor any other judicially-created-body). This means just because something is related to the-judicial-branch, it doesn't mean it's exempt from RSA-91A. Using principle of "expressio-unius-est-exclusion-alterius", (expression of one is the exclusion of the other), it can be inferred that, in mentioning only petit-and-master-juries, as only reference to judicially-created-bodies, the legislative intent was to exclude all others that are omitted from the statute including the-ADO. *Union Leader Corp. v. N.H. Housing Fin. Auth., 142 N.H. 540, 546(1997))*("we broadly construe provisions favoring disclosure and interpret the exemptions restrictively").(ApxII.59).
20. NB: Judge-Andrew-Schulman also had this interpretation (Note: Defendants don't dispute this). See also Dan Lynch's Memo[8] from NHSC-taskforce-on-public access, stating: "The fact that the statute expressly exempts certain court proceedings might suggest by implication that court proceedings and records are subject to RSA 91-A.".
21. Thus, judicially-created-entities can be subject to requirements of RSA-91A; e.g. the NH-Bar-Association is related to the-judicial-branch, but is separate with its own incorporation/bylaws. It previously was custodian of attorney-discipline-records. It can be sued under RSA-91A; so can NH-Bar-Foundation (set-up as non-profit-organization). The factual-history of the NH-Bar-Association and NH-Bar-Foundation is dispositive.[9]
22. NB: Defendants' reference to RSA-21-G5 is misleading/circular, because it defines "agency" used only in relation to the-executive-branch, not more broadly for RSA-91A purposes.
23. NB: None of the court-cases cited by defendants are binding precedent, nor pertains to the-ADO/PCC.
24. Defendants' argument that even if RSA-91A applies, the-ADO doesn't have to comply because of the-separation-of-powers-doctrine, is incorrect.(ApxII.63-64).
    a. Defendants contend RSA-91A applies only to non-constitutional-agencies, and not to constitutional-offices. However, this conclusion isn't supported by the plain text of the statute—which applies to "office[s] of the state," without

[8]NH-Supreme-Court-TaskForce-On-Public-Access(web-link-on-page-4).

[9]NH-Bar-Association-Website(web-link-on-page-4).

delineation between constitutional and nonconstitutional offices.

b. Defendants ignore legislature's regulation-powers including its broader power through Article 5 "to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions, and instructions"—a power not limited to regulating non-constitutional-offices; or to make any laws it deems necessary "for the benefit and welfare of this state"; "for the governing and ordering [of the state and its subjects]"; and for the "support and defense of the government." Id.
c. Furthermore, defendants have an overbroad view of separation-of-powers. The Separation-of-Powers-Clause is interpreted narrowly and "is violated only when one branch usurps an essential power of another." *New Hampshire Health Care Ass'n v. Governor, 161 N.H. 378(2011);386.*
d. A separation-of-powers-analysis involves determining whether alleged violations implicate specific constitutional provisions, delineating discrete powers/responsibilities and assessing whether those powers/responsibilities are exclusive to one branch.
e. Absent specific constitutional authority exclusive to a single branch, separation of powers isn't implicated. *In re S. N.H. Med. Ctr., 164 N.H. 319,327,329–30(2012)* (statute prohibiting certain evidence from trial did not violate separation of powers because the constitution doesn't grant exclusive authority to the judiciary to adopt evidentiary rules); *Assoc. Press v. New Hampshire, 153 N.H. 120(2005);143–44*(finding statute related to court record access did not usurp "essential power of the judiciary . . . to control its own proceedings" because statute could coexist with related court rule).
f. In *Associated Press v. State of New Hampshire, 153 N.H.(2005)*, this court further recognized the appropriate exercise of legislature's authority to establish policy with respect to access to certain court records, need not involve a conflict with the court's authority to control its proceedings/records. Id. (holding a statute sealing divorce financial affidavits in the first instance does not violate the separation of powers guaranteed by the constitution).
g. There is no specific constitutional-provision providing exclusive-powers to the-ADO with which application of RSA-91A to the-ADO would conflict.
h. RSA-91A doesn't prohibit/usurp any essential function/power of the-ADO. The-ADO is supposed to facilitate public-access as a constitutional mandate, and applying RSA91A to the-ADO only supports/furthers that mandate. *In re the Judicial Conduct Committee, 151 N.H. 123(2004)*("When the actions of one branch of government defeat or materially impair the inherent functions of another branch, such actions aren't constitutionally acceptable.).
i. Defendants' generalized concern is insufficient to implicate constitutional

concerns. *N.H. Health Care Ass'n, 161 N.H.;394*(holding clause not violated merely by "one branch of government exercising certain powers that may in some way pertain to another branch, but [only when] the power exercised so encroaches upon another branch's power as to usurp from that branch its constitutionally defined function").

j. See also *In re New Hampshire Bar Ass'n, 151 N.H. 112(2004)*("Although it is in the prerogative of the judicial branch "to regulate the practice of law, the législature, under the police power, may act to protect the public interest, but in so doing, it acts in aid of the judiciary and does not supersede or detract from the power of the courts.").

25. Hence, application of RSA-91A to ADO doesn't violate Separation-of-Powers-Clause.

REBUTTAL-TO-SECTION-III-OF-DEFENDANTS-BRIEF

26. Defendants incorrectly shifted the ground to insinuate plaintiff is attacking NHSC-rules. It's defendants' interpretation[10] of Rule-37(20)(n) plaintiff takes issue with.(ApxII.222).
27. The-NHSC never issued any decision where it interpreted Rule-37(20)(n) in the new way that defendants recently did, for the first time, on 10-28-20.
28. In *Sumner v. New Hampshire Sec'y of State, 168 N.H. 667,669-70(N.H. 2016)*, this court stated:

> "To determine whether restrictions are reasonable, we balance the public's right of access against the competing constitutional interests in the context of the facts of each case." Id. (quotations and emphasis omitted). "The reasonableness of any restriction on the public's right of access to any governmental proceeding or record must be examined in light of the ability of the public to hold government accountable absent such access." Associated Press v. State of N.H.,153 N.H. 120, 125, 888 A.2d 1236(2005)."

29. It wasn't reasonable for defendants to single-out/target plaintiff, as the first-person in history to apply a no-copy-policy/interpretation to.(ApxII.80-90;222-259).
30. The previous long-held interpretation by the-ADO(i.e.,the-open-copy-policy) is the correct one. *Holland v. New Hampshire Board of Chiropractic Examiners, 119 N.H.17 (1979)*("We view this administrative interpretation by the board over a prolonged period of time…as evidence that it conforms to the legislative intent.").(ApxII.261).
31. Either way, the **common-law-presumption of public-access that includes copying**, and that applies to "judicial records", should be applied to the ADO. *Nixon v. Warner Communications, Inc., 435 U.S. 589,597(1978)*(holding there is a common law right "to

[10]NB: Defendants haven't demonstrated the new-interpretation is correct. Conversely, the-ADO/PCC conceded the new-interpretation is incorrect, by requesting (in recent rules-committee-proposal-#2022-001), the new-interpretation be changed (back) to allow copies to public (but with major-caveat redefining public-file leaving almost-nothing in file, which is harmful to public, including plaintiff, allowing little/no public-accountability).NH-Supreme-Court-Advisory-Rules-Committee-Proposal-#2022-001(web-link-on page-4).

inspect and copy public records and documents, including judicial records and documents").

32. This court has stated[11] that "the right to public access shall generally include the right to make notes and to obtain copies at normal rates.". Defendants' policy/interpretation contradicts this fundamental principle/definition/declaration of this court.
33. NB: There is no state-interest in preventing copies to the public. How is there harm for the public to get copies of ADO-files?
34. The nature of what the-ADO does is instructive. Its functions affect citizens who bring their complaints concerning attorneys to the-ADO. This is exactly the type of oversight body that affects citizens, that the legislature intended RSA-91A to apply to. *Appeal of Plantier, 126 N.H. 500(1985).* RSA-91A:l-a, III (Supp. 1983)(applicable to any functions affecting citizens by "[a]ny board or commission of any State agency or authority"); *Lodge v. Knowlton, 118 N.H. 574, 575-76, 391 A.2d 893, 894(1978).*
35. The-ADO is similar to the-state-agency regulating physicians in NH, i.e. the-board-of-medicine, whose purpose includes "to protect the public from persons unfit to practice medicine"…and "to undertake disciplinary action to protect the public interest." It's well established that the-board-of-medicine is subject to RSA-91A[12]. *Appeal of Plantier, 126 N.H. 500(1985).* The board-of-medicine was created by the legislature, not by the-judicial-branch. Yet still RSA-91A applies to it. This **defeats the defendants' argument** that RSA-91A can only apply to the-executive-branch.
36. This Court stated in *Rousseau v. Eshleman, 128 N.H. 564(1986)*:

> "Admission to the practice of law and regulation of the conduct of attorneys in this State has been dealt with as an area of shared responsibility between the legislative and judicial branches of government. See RSA 490:4; RSA chapter 311; N.H. CONST, pt. II, art. 73-a (Supp 1985). Pursuant to its statutory and constitutional authority, this court not only has established an integrated bar association, membership in which is required as a condition of practicing law in this State, see In re Unified New Hampshire Bar, 112 N.H. 204, 291 A.2d 600(1972), but also has established a professional conduct committee which has responsibility for regulating attorney conduct…The professional conduct committee of this court is, in our view, a regulatory board acting under statutory (and constitutional) authority of this State within the meaning of RSA 358-A:3, I."

37. This proves the-ADO/PCC are "boards" of this state, and are shared creatures of the legislative and judicial-branches.
38. Since bodies created by the legislative branch are/can be subject to RSA-91A, such as the board-of-medicine, then clearly the-ADO can be subject to RSA-91A.
39. Defendants enacted a new "view-only"policy for the first time, prohibiting copies/pictures/scanning/possession of ADO-files by public ("no-copy-policy")[13],

[11]NH-Supreme-Court-Guideline-for-Public Access(web-link-on-page-4).

[12]NH-Board-of-Medicine-Website(web-link-on-page-4), stating Right-To-Know law applies.

[13]ApxII.66-75;ApxII.222-259.

clearly creating unreasonable restrictions on access.

40. The majority of the public, especially vulnerable-populations, will not be able to spend multiple-hours and/or multiple-days reviewing/memorizing 100s-or-1000s of pages of ADO-public-records. This is a barrier to access for majority of the public, including Plaintiff. NB: What if courts adopted this no-copy policy? It would clearly be deemed unreasonable.
41. This policy—coupled with Defendants' refusal to provide any access at all, since December-2020 for about 2-years—resulted in unreasonable-restriction-on-access for Plaintiff[14].
42. The new 'inspection-only' policy is tantamount to denial-of-access (especially for those outside NH, with travel prohibitive, and for disabled-persons who, for medical-reasons, cannot travel to the-ADO-office, both of which applied to plaintiff/her attorney-in-fact.).
43. By placing these insurmountable-conditions/obstacles in her path, defendants blocked/deprived Plaintiff of her rights, while claiming that she could "view" the files. It's similar in logic/effect to how states, during Jim-Crow, used literacy tests as obstacles to voting by blacks, while saying they can vote.
44. NB: "Viewing only" also means that ADO-files cannot be used/produced in any other proceeding/forum/venue/in-the-media, and thus cannot serve as proof/evidence/facts, only hearsay.
45. By requiring in-office viewing/inspection only, subjecting plaintiff to unnecessary Covid-19-exposure/possibly death (during heights of pandemic), defendants violated plaintiff's constitutional-right-to-public-access[15], and first-amendment-rights (as applied through the-fourteenth-amendment[16]) to criticize how the-ADO handled past ADO cases (including whether there is cronyism/discrimination/corruption/negligence/other misconduct). *Union Leader Corp. v. N.H. Ret. Sys., 162 N.H. 673,684(2011)*(noting that public interest existed in disclosure where the "Union Leader seeks to use the information to uncover potential governmental error or corruption"); *Prof'l Firefighters of N.H., 159 N.H.;709* ("Public scrutiny can expose corruption, incompetence, inefficiency, prejudice and favoritism."); See also *Petition of Brooks, 140 N.H. 813(1996)*[17].
46. The clear goal of this policy is to muzzle/squelch/limit free-speech/public-criticism because no-one, except the most ardent/zealous members of public or the most resourced-organizations can obtain information necessary to make public-criticisms of the-ADO process/ADO decisions, as well as of any prominent/public figure against whom an ADO complaint was filed.(ApxII.275-276).

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[14]ApxII.146-147(Ex.3,Ex.9andEx.12inEx.8).

[15]ApxII.44-280.

[16]ApxII.79-80.

[17]ApxII.198-206

47. Because constitutional issues involve fact-intensive-inquiry, subject to a reasonableness test, this court cannot reach those issues, as virtually no record exists on this, and thus the case should remand for development of the record.
48. NB: Plaintiff shouldn't be burdened with proposing/enacting rule-change-petitions (or proposing/lobbying legislation, etc.), simply to obtain public-records.

REBUTTAL-TO-SECTION-IV-OF-DEFENDANTS-BRIEF

49. The-superior-court's consideration/reference to unauthenticated/unverified affidavits is reversible error.(ApxII.99-100).
50. Defendants contradict themselves because, in the 10-1-21 superior-court-hearing, the defendants retracted/withdrew the-affidavits from being used with motion-to-dismiss, in recognition they're improper. Now, Defendants flips-flop here, saying it was proper. They must be judicially-estopped from changing positions in this court, after using opposite in the-trial-court. Either way, the-trial-court erred in using them.
51. Defendants' reference to "the administrative record"(whatever-that-means) is puzzling, when two-affidavits were created specifically for the motion-to-dismiss. It wasn't proper for the-trial-court to consider them at all, without proper procedural-safeguards[18].
52. It's unfair to reference them, even for "context". How can plaintiff be protected against improper use of affidavits, when purportedly used for 'context', without allowing any cross/discovery? This constitutes reversible error.
53. The misstated-date wasn't a typo error; it was used by the-trial-court to arrive at its erroneous-conclusion that plaintiff was seeking review of a PCC-order. If the-trial-court had the date correct, then it couldn't so find. This misstated-date was a crucial error relied upon by the-trial-court to make findings central to its ruling that it had no jurisdiction. If the-trial-court understood that plaintiff's complaint was filed before the-PCC-order was issued, then logically it couldn't conclude that it was being asked to review a PCC-order, leading to the issue of the-adjudication-of-the-NHSC-rules.
54. By adopting these errors, it led to confusion over threshold facts needed for jurisdictional finding, and to reasoning that couldn't be employed if those errors weren't made/relied upon.[19]

RESPONSE-TO-INTERVENOR

55. Intervenor's reference to Mark-Cornell's affidavit, and other pleading, isn't valid because it's disputed/was never subject to cross/verification of affiant.

II. CONCLUSION

56. Remainder of plaintiff's arguments are in Appendix-I-and-II, the official-transcript and in Attachments(A-D), wherein Plaintiff reserves all rights/reservations. Please read them all carefully, with liberal-construction.
57. Please remand or reverse the-trial-court-order, consistent with relief requested

[18]ApxI.228-233,241-258,260-265.

[19]ApxII.429-509.

herein/Plaintiff's corrected-brief.

Respectfully submitted,
/s/ Andre Bisasor
Attorney-in-fact for Petitioner–Appellant
Andre Bisasor
679 Washington Street, Suite # 8-206
Attleboro, MA 02703
Tel. 781-492-5675
Email: quickquantum@aol.com

November 14, 2022

REQUEST FOR ORAL ARGUMENT

Plaintiff believes that oral argument would assist the Court in addressing the questions before the court. Petitioner designates her attorney-in-fact Andre Bisasor to be heard at oral argument. Given the nature and complexity of the issues before the Court (including the problem of insufficient record, etc.), Plaintiff requests 30 minutes for oral argument (or otherwise, 15 minutes, in the alternative, if that is what the court prefers). NB: Plaintiff hereby would like to emphasize the importance of oral argument in this matter, which also would be proper given that Plaintiff (and her representative) is not a trained lawyer and her legal writing may require oral argument for clarity/elucidation. Plaintiff requests that the court give her this one chance to present her case orally and to answer any questions from the court.

STATEMENT OF COMPLIANCE

The undersigned hereby certifies that this reply brief complies with New Hampshire Supreme Court Rules for reply briefing. The undersigned certifies that this brief doesn't exceed 3000 words from the "Argument" through the "Conclusion" sections of this reply brief (using computer software word count program).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this day, November 10, 2022, on all counsel of record via the Court's electronic filing system.

/s/ Andre Bisasor
Andre Bisasor
November 14, 2022

Exhibit D

New Hampshire Supreme Court

Professional Conduct Committee

a committee of the attorney discipline system

4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
603-224-5828 • Fax 228-9511

STANDING ORDER CONCERNING FILE REDACTION

On May 15, 2012, the Professional Conduct Committee voted in favor of the following policy:

In lieu of requiring General Counsel and/or Disciplinary Counsel to file requests for protective orders, pursuant to New Hampshire Supreme Court Rule 37(21)(c), in all cases where the files that are about to become public contain "...confidential, malicious, personal, privileged information or materials submitted in bad faith," the Professional Conduct Committee hereby delegates to General Counsel and/or Disciplinary Counsel the authority to redact such information from files before they become public, provided that the following steps are taken:

a. General Counsel and/or Disciplinary Counsel will provide both the complainant and the responding attorney(s) with notice of their intended redaction of materials in the file to be made public. Materials and information to be redacted may include (but is not necessarily limited to) the following:

- records pertaining to delinquency and abuse and neglect proceedings

- financial affidavits in divorce proceedings

- pre-sentence investigation reports

- reports of guardians ad litem

- records pertaining to termination of parental rights proceedings

- records pertaining to adoption proceedings

- records pertaining to guardianship proceedings

- records pertaining to mental health proceedings

- records sealed by the court

- social security numbers

-dates of birth

- juror questionnaires

- driver's license numbers

- financial account numbers

- medical records

b. Copies of the proposed redacted materials will be provided to, or made available to at the Attorney Discipline Office, both the complainant and the responding attorney(s), with a notice that unless a written objection is filed within ten days of the date of that notice, the file will be made public with the intended redactions.

c. In the event that an objection to the intended redaction is filed, the intended redaction will be treated by the Professional Conduct Committee as a request for a protective order pursuant to New Hampshire Supreme Court Rule 37(21)(c) and the provisions of that rule will govern further proceedings concerning the material in question.

May 22, 2012

Margaret H. Nelson
Chair

Distribution:
Thomas V. Trevethick, Acting General Counsel
Janet F. DeVito, Assistant General Counsel
Julie A. Introcaso, Disciplinary Counsel
James L. Kruse, Assistant General Counsel
All Legal Assistants
File

Exhibit E

Petition of Troy E. Brooks

Petition of Brooks NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Clerk/Reporter, Supreme Court of New Hampshire, Supreme Court Building, Concord, New Hampshire 03301, of any errors in order that corrections may be made before the opinion goes to press.

THE SUPREME COURT OF NEW HAMPSHIRE

Original

No. SMC-95-001

PETITION OF TROY E. BROOKS

May 8, 1996

Philip T. Cobbin, of Canaan, by brief for the petitioner.

Donahue, McCaffrey, Tucker & Ciandella, of Exeter (Michael J. Donahue and Robert M. Derosier on the brief), for the committee on professional conduct.

Blodgett, Makechnie & Vetne, of Newburyport, Massachusetts (John H. Vetne on the brief), for the respondent.

THAYER, J. The petitioner, Troy E. Brooks, invoked the original jurisdiction of this court to challenge the constitutionality of Supreme Court Rule 37(17), as it existed prior to an amendment dated March 7, 1996, which provided for confidentiality in the attorney disciplinary process. We conclude that the pre-amendment rule violated a complainant's first amendment right to free speech.

Beginning in September 1993, the petitioner filed a series of three complaints with the professional conduct committee (PCC or committee), each alleging misconduct by a separate attorney. In all three cases, the committee responded by letter with a finding of no professional misconduct or a failure to allege professional misconduct. These letters ended with a caveat explaining the requirement of confidentiality:

Please be advised that all matters relating to complaints submitted to the Committee, and any action taken by the Committee[,] shall be kept confidential, unless otherwise provided by the Rules of the Supreme Court. Rule 37(17)(g) states: "All participants in the proceedings shall conduct themselves SO AS TO MAINTAIN THE CONFIDENTIALITY MANDATED BY THIS RULE. Violation of this duty shall constitute an act of contempt of the supreme court." (Emphasis added.)

The petitioner argues that the imposition of confidentiality violates his right to free speech by subjecting him to possible contempt proceedings for divulging information related to the complaints. Specifically, he desires to disclose the fact that he filed the complaints and information learned through interaction with the committee, and to state his opinion on the PCC's handling of the complaints.

We note initially that the petitioner has violated, on several occasions, the provisions of the rule to which he objects. See, e.g., Brooks v. New Hampshire Supreme Court, ___ F.3d ____, ____ (1st Cir. April 8, 1996). All of the petitioner's conduct involving allegedly protected speech constituting the gravamen of his petition took place after the committee had dismissed his complaints. His conduct, accordingly, would not run afoul of the rules as they have been amended. See Sup. Ct. R. 37(17)(g) (amended March 7, 1996). This court has not used, and will not use, against the petitioner its contempt powers pursuant to Rule 37(17)(g) as it existed prior to the March 7, 1996, amendments. As a result, the petitioner's right to free speech, which he has exercised and continues to exercise, has not been abridged. Dismissing his claim as moot would be an appropriate result.

"[T]he question of mootness is one of convenience and discretion and is not subject to hard-and-fast rules," however. Appeal of Hinsdale Fed. of Teachers, 133 N.H. 272, 276, 575 A.2d 1316, 1318 (1990) (quotation omitted). We generally will refuse to review a question that "no longer presents a justiciable controversy because issues involved have become academic or dead," id. at 276, 575 A.2d at 1318-19 (quotation omitted), but may review a question that has become moot if it involves a significant constitutional question or an issue of significant public concern, Royer v. State Dep't of Empl. Security, 118 N.H. 673, 675, 394 A.2d 828, 829 (1978). We will address the petitioner's claim because it raises a significant constitutional issue.

Although the petitioner invokes both the Federal and State Constitutions to support his claim, his reference to the latter is limited to the conclusory assertion that part I, article 22 of the State Constitution, which protects the right to free speech, is "relevant" to his case and "consistent" with corresponding federal law. Because these references are "without any supporting argument or further reference that might be thought to develop a position on independent State grounds," In re N.H. Disabilities Rights Center, Inc., 130 N.H. 328, 334, 541 A.2d 208, 212 (1988), we consider the petitioner's claim as arising solely under the first amendment to the Federal Constitution as applied to the States through the fourteenth amendment. See Gitlow v. New York, 268 U.S. 652, 666 (1925). The petitioner's brief may also be read as suggesting that a public right of access to the hearings and files of the PCC exists under part I, article 8 of the State Constitution. Because this claim has been made, if at all, only in "passing reference," we do not consider it. State v. Hermsdorf, 135 N.H. 360, 365-66, 605 A.2d 1045, 1048 (1992).

We have both inherent and statutory authority to discipline attorneys. RSA 311:8 (1995); RSA 490:4 (1983); Wehringer's Case, 130 N.H. 707, 718, 547 A.2d 252, 259 (1988), cert. denied, 489 U.S. 1001 (1989). "The task of supervising and disciplining attorneys within this State falls squarely upon the shoulders of this court." Astles' Case, 134 N.H. 602, 605, 594 A.2d 167, 170 (1991). In furtherance of this task, and pursuant to our rule-making authority under the State Constitution, "this court . . . has established a professional conduct committee which has responsibility for regulating attorney conduct." Rousseau v. Eshleman, 128 N.H. 564, 567, 519 A.2d 243, 245 (1986) (citation omitted); see N.H. CONST. pt. II, art. 73-a. The committee is charged, under Supreme Court Rule 37 (amended March 7, 1996), with investigating attorney misconduct and disciplining, or requesting discipline by this court for, attorneys found to have violated standards of professional conduct. The procedures followed by the committee are set out in Rule 37 and in the Rules and Procedures of the Professional Conduct Committee (amended March 7, 1996).

The confidentiality provisions of the pre-amendment Supreme Court Rule 37(17) provided:

(17) Confidentiality:

(a) Proceedings Alleging Misconduct. All records and proceedings involving allegations of misconduct by an attorney shall be confidential and shall not be disclosed except:

(1) When the prosecution of formal charges is initiated by the filing of a petition with the New Hampshire Supreme Court, in which case, except as provided by section 9 regarding resignations, the pleadings, all information admitted at the proceedings, the proceedings themselves (other than deliberations of the supreme court), and the decision, shall be public; or

(2) When an attorney seeks reinstatement pursuant to section 12, in which case the proceedings before the committee shall be conducted the same as prescribed in subsection (1); or

(3) When the attorney/respondent, prior to the filing of formal charges, requests that the matter be public, in which case the entire file, other than the work product and internal memoranda of the committee, shall be public; or

(4) If the investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the respondent in another jurisdiction, in which case the entire file pertaining to the crime or the public discipline, other than the work product and internal memoranda of the committee, shall be public.

. . . .

(g) Duty of Participants. All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule. Violation of this duty shall constitute an act of contempt of the supreme court.

The parties agree that the proceedings initiated by the petitioner's three complaints to the PCC do not fall under any of the exceptions listed in prior Rule 37(17)(a).

The PCC interprets the prior rule to prohibit the petitioner from divulging both the fact that he filed the complaints and any information he might have learned from his interaction with the committee, but not to prevent him from disclosing the underlying facts and substance of his complaints. This is correct, but not quite complete. The plain language of the rule precluded disclosure of information related to proceedings but not information gained independently of the disciplinary process, including the underlying set of facts that

led to the filing of a complaint. The prohibition extended further, however, to encompass all aspects of the complainant's involvement with the disciplinary process. Thus, unless an exception to the rule of confidentiality applied, a complainant was barred from revealing the fact that a complaint had been filed, what information or testimony the complainant provided the committee, any action taken by the committee in response to the complaint, and any information acquired by the complainant through interaction with the committee. Even when the committee deemed a complaint well-founded and the attorney under investigation received an admonition or a reprimand, the complainant was still forever barred from publicly disclosing this information, unless an exception applied. Because the language of the prior rule is clear and unambiguous, its meaning is not subject to modification by judicial construction. See State v. Flynn, 123 N.H. 457, 462, 464 A.2d 268, 271 (1983).

We now turn to the question of whether prior Rule 37(17), thus interpreted, offended the petitioner's right to free speech under the first amendment. We think it obvious, and the PCC does not dispute, that the rule was triggered by the content of the expression in question. The rule suppressed speech based on the perceived beneficial effects of confidentiality, and a determination of what speech was subject to the rule could not be made without reference to the content of the speech. See Madison Sch. Dist. v. Wisconsin Emp. Rel. Comm'n, 429 U.S. 167, 175-76 (1976); Doe v. State of Fla. Judicial Qualifications Com'n, 748 F. Supp. 1520, 1523-24 (S.D. Fla. 1990).

The scope of prior Rule 37(17)(a) extended to speech traditionally accorded the most solicitous protection of the first amendment; namely, criticism of the government's performance of its duties. See Butterworth v. Smith, 494 U.S. 624, 632 (1990); Mills v. Alabama, 384 U.S. 214, 218-19 (1966). Under the rule, a complainant wishing to criticize the PCC's handling of a particular investigation might have been permanently barred from doing so because disclosure of the mere fact that an investigation took place, as well as the specific actions taken by the committee, would have violated the confidentiality of the process. More generally, public discussion on the conduct of particular attorneys and corresponding investigations by the PCC would have been hindered, when not altogether stifled, by the rule. It cannot be gainsaid that protection of such debate lies at the heart of the first amendment. Any regulation attempting to rein in that debate must pass the strictest of constitutional tests. See New York Times Co. v. Sullivan, 376 U.S. 254, 269-70 (1964).

The United States Supreme Court has stated that "[c]ontent-based regulations are presumptively invalid," R.A.V. v. St. Paul, 505 U.S. 377, 382 (1992), and that "state action

to punish the publication of truthful information seldom can satisfy constitutional standards," Smith v. Daily Mail Publishing Co., 443 U.S. 97, 102 (1979). A content-based prohibition on speech concerning matters of public interest "must be subjected to the most exacting scrutiny." Boos v. Barry, 485 U.S. 312, 321 (1988). To survive such scrutiny, the prohibition must serve a compelling State interest and be narrowly tailored to accomplish that interest, Perry Ed. Assn v. Perry Local Educators' Assn., 460 U.S. 37, 45 (1983), or else the targeted speech must fall into one of a few narrowly-defined categories of expression not meriting full protection, see R.A.V. v. St. Paul, 505 U.S. at 383 (listing categories); Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984) (according less protection to information gained through trial court's discovery process). If the State has the power to regulate some speech, that power "must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." Cantwell v. Connecticut, 310 U.S. 296, 304 (1940).

We have previously recognized several purposes served by prior Rule 37(17): (1) protection of the reputation of an attorney from meritless complaints; (2) protection of the anonymity of complainants; and (3) maintenance of the integrity of pending grievance committee investigations. State v. Merski, 121 N.H. 901, 910, 437 A.2d 710, 715 (1981), cert. denied, 455 U.S. 943 (1982). The PCC in its brief provides several additional purposes served by confidentiality:

(4) chronic or disgruntled litigants would use the Committee as a forum for collateral litigation taxing the limited resources of the Committee; (5) avoidance of the possibility that a complainant might use publication of the fact that a complaint had been filed as a "bully pulpit" or to pursue a vendetta; (6) witnesses and client confidences are protected if the allegations are unsubstantiated; and (7) preserving informal discipline.

To this list may be added two further purposes: (8) protection of the State bar from the loss of confidence that might result from public disclosure of frivolous complaints, see Doe v. Supreme Court of Florida, 734 F. Supp. 981, 987 (S.D. Fla. 1990); and (9) encouragement of investigated attorneys to resign under Supreme Court Rule 37(9), see Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 835-36 (1978).

The information that was protected from disclosure under the prior rule included the fact that a complaint had been filed, what information or testimony the complainant provided the committee, the action taken by the committee in response to the complaint, as well as information learned by the complainant through the complainant's interaction with the committee, including comments and testimony of other participants in the process. This information bears directly on a complainant's ability to comment on the workings of the

attorney disciplinary process. The fact that a complainant initiates an investigation does not change the analysis. See Lind v. Grimmer, 30 F.3d 1115, 1118-19 (9th Cir. 1994), cert. denied, 115 S. Ct. 902 (1995). We begin our review by examining the State interests served by the confidentiality provisions of prior Rule 37(17).

We consider first the protection of reputation, both of the State bar as an institution and of individual attorneys under investigation, from frivolous complaints. In Landmark Communications, Inc., the United States Supreme Court stated, in the judicial discipline context, that "injury to official reputation is an insufficient reason for repressing speech that would otherwise be free. . . . [T]he institutional reputation of the courts[] is entitled to no greater weight in the constitutional scales." 435 U.S. at 841-42 (quotation and citations omitted). Surely the reputation of the State bar is entitled to no more protection than is the reputation of the State judiciary.

With regard to attorneys in their individual capacities, we have long held that attorneys are "officer[s] of the court." Merski, 121 N.H. at 908, 437 A.2d at 713. Although we recognize that attorneys are not public officials in the sense that judges are, the fundamental importance of the first amendment, combined with the role of attorneys as officers of the court, compels the application of similar principles of free expression to the reputational interests of attorneys, at least with respect to the issues in this case.

Assuming arguendo that protection of reputation from damage caused by frivolous complaints may justify restriction of a complainant's right to expression, prior Rule 37(17) (a) and (g) prohibited more speech than was necessary by preventing disclosure of well-founded complaints as well, and accordingly were overbroad. See Shelton v. Tucker, 364 U.S. 479, 488-90 (1960); Cantwell, 310 U.S. at 304. Any interest that an attorney or the State bar as an institution might have in preventing damage to reputation caused by well-founded complaints is insufficient to justify curtailing a complainant's free speech rights. See N.A.A.C.P. v. Button, 371 U.S. 415, 432 (1963) (considering application of prohibitory rule to contexts different than those presented in that case).

To the extent legitimate interests in reputation are at stake, an accused attorney has always had recourse to a defamation action based on defamatory statements made by a complainant outside of the disciplinary process. Supreme Court Rule 37(5), as it existed during the time relevant to this case, provided:

(5) Immunity: Each person shall be immune from civil liability for all of his statements made in good faith to the committee, the office of the attorney general or to this court or

given in any investigation or proceedings pertaining to alleged misconduct of an attorney. The protection of this immunity does not exist as to statements made to others.

(Emphasis added.) In addition, "the filing of false complaint[s] could perhaps be punished, without imposing prior restraint on speech, in much the same way perjury or the filing of false reports of crime are punished." Doe v. Supreme Court of Florida, 734 F. Supp. at 988.

The confidentiality provisions were not sufficiently narrowly tailored to meet any State interest in protecting the confidences of complainants and witnesses. We assume, arguendo, that the State's legitimate interest in "encourag[ing] complaints, assistance in investigations, and complete and truthful testimony," Kamasinski v. Judicial Review Council, 44 F.3d 106, 110 (2d Cir. 1994), requires that confidentiality of testimony be available to complainants and witnesses. This interest could be advanced by permitting, rather than requiring, confidentiality. See Butterworth v. Smith, 494 U.S. at 633 (concluding in grand jury context that "the concern that some witnesses will be deterred from presenting testimony due to fears of retribution is . . . not advanced by this prohibition; any witness is free not to divulge his own testimony").

We next address the State interest of preserving the integrity of pending investigations by protecting PCC proceedings from misuse as a "forum for collateral litigation," as a "bully pulpit" endowing a complaint with an unwarranted air of legitimacy, or as a means of pursuing a vendetta. We agree that such misuse of the disciplinary process is to be avoided, but the concern in each of these three cases is misplaced when a complaint has merit, because bringing a valid complaint can hardly qualify as misuse of the disciplinary process. If the concern relates to meritless claims, then the confidentiality provisions of prior Rule 37(17) were overbroad as applied to meritorious complaints. See Doe v. State of Fla. Judicial Qualifications Com'n, 748 F. Supp. at 1528.

The final State interest to be considered is the facilitation of the PCC's duties through "preserving informal discipline" and encouraging resignation by attorneys pursuant to Rule 37(9). Under the prior rules, the willingness of an attorney to accept an admonition or reprimand without formal proceedings or to resign voluntarily with prejudice may well have depended on whether the complaint would remain confidential, thus obviating the need to seek vindication against a publicly-filed complaint. This gain in efficiency of the process and the cooperation of attorneys under investigation is not sufficiently compelling to justify restriction of a complainant's fundamental right to free expression, particularly considering the broad scope of the confidentiality provision in prior Rule 37.

The confidentiality provisions of prior Supreme Court Rule 37(17)(a) and (g) were not sufficiently narrowly tailored to meet compelling State interests and accordingly have failed first amendment scrutiny.

So ordered.

BRODERICK, J., did not participate; BATCHELDER, J., retired, participated by special assignment under RSA 490:3; all who participated concurred.

Exhibit F

grievance or complaint or to prosecute a charge, nor settlement, compromise or restitution shall by itself justify abatement of an investigation into the conduct of an attorney.

(19) ***Monetary Sanctions: Expenses Relating to Discipline Enforcement:***

(a) All expenses incurred by the attorney discipline system in the investigation and enforcement of discipline may, in whole or in part, be assessed to a disciplined attorney to the extent appropriate.

(b) Following any assessment, the professional conduct committee shall send a written statement of the nature and amount of each such expense to the disciplined attorney, together with a formal demand for payment. The assessment shall become final after 30 days unless the disciplined attorney responds in writing, listing each disputed expense and explaining the reasons for disagreement. If the parties are unable to agree on an amount, the professional conduct committee may resolve and enforce the assessment by petition to the superior court in any county in the state.

(c) A final assessment shall have the force and effect of a civil judgment against the disciplined attorney. The professional conduct committee may file a copy of the final assessment with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures.

(d) The superior court may increase the assessment to include any taxable costs or other expenses incurred in the resolution or enforcement of any assessment. Such expenses may include reasonable attorney's fees payable to counsel retained by the committee to resolve or recover the assessment.

(e) Any monetary assessment made against a disciplined attorney shall be deemed to be monetary sanctions asserted by the professional conduct committee or the applicable court against such attorney.

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

Applicability Note: Section 20 shall apply to records and proceedings in all matters initiated on or after April 1, 2000.

(a) *Grievance outside the Jurisdiction of the Attorney Discipline System or Not Meeting the Requirements for Docketing as a Complaint:*

(1) A grievance against a person who is not subject to the rules of professional conduct shall be returned to the grievant. No file on the grievance will be maintained.

(2) All records and materials relating to a grievance determined by the attorney discipline office or the complaint screening committee not to meet the requirements for docketing as a complaint shall be available for public inspection (other than work product, internal memoranda, and deliberations) beginning 30 days after correspondence is sent to the respondent attorney who is the subject of the grievance and the respondent attorney has the opportunity to provide a reply to be filed in the public record. The records and material shall be maintained at the attorney discipline office for two (2) years from the date of the original filing. After this two-year period, the records shall be destroyed.

(3) *Index of Complaints.* The attorney discipline office shall maintain an index of complaints docketed against each attorney, which shall contain pertinent information, including the outcome of the complaint. No index of grievances that are not docketed as complaints shall be maintained.

(b) *Grievance Docketed as Complaint:* All records and proceedings relating to a complaint docketed by the attorney discipline system shall be available for public inspection (other than work product, internal memoranda, and deliberations) upon the earliest of the following:

(1) When the Attorney Discipline Office general counsel, the complaint screening committee or the professional conduct committee finally disposes of a complaint;

(2) When disciplinary counsel issues a notice of charges;

(3) When the professional conduct committee files a petition with the supreme court, except as provided by section (11) regarding resignations; or

(4) When the respondent attorney, prior to dismissal of a complaint or the issuance of a notice of charges, requests that the matter be public.

(c) *Records may be destroyed after:*

(1) three years of the date of notice of dismissal; or

(2) three years of the date of an annulment in accordance with Rule 37A; or

(3) five years after the death of the attorney-respondent.

(d) *Proceedings for Reinstatement or Readmission:* When an attorney seeks reinstatement or readmission pursuant to section (14), the records, with the exception of the bar application, and the proceedings before the hearing panel and the professional conduct committee shall be public (other than work product, internal memoranda, and deliberations).

(e) *Proceedings Based upon Conviction or Public Discipline:* If the investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the respondent in another jurisdiction, the entire file pertaining to the crime or the public discipline, other than the work product, internal memoranda, and deliberations of the attorney discipline system, shall be available for public inspection.

(f) *Proceedings Alleging Disability:* All proceedings involving allegations of disability on the part of a New Hampshire licensed attorney shall be kept confidential until and unless the supreme court enters an order suspending said attorney from the practice of law pursuant to section (10), in which case said order shall be public.

(g) *Protective Orders:* Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant, a witness, the attorney, or other persons. In order to protect the legitimate privacy interests of such persons, the professional conduct committee, may, upon request, or on its own initiative, issue a protective order prohibiting the disclosure of confidential, malicious, personal, privileged information or material submitted in bad faith. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time. Any person aggrieved by a decision on a protective order may, within thirty (30) days of the decision, request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the court has acted or the period for requesting court review has expired.

(h) *Disclosure to Authorized Agency:* The attorney discipline office may disclose relevant information that is otherwise confidential to agencies authorized to investigate the qualifications of judicial candidates, to authorized agencies investigating qualifications for admission to practice or fitness to continue practice, to law enforcement agencies investigating qualifications for government employment, and to law enforcement agencies authorized to investigate and prosecute violations of the criminal law. If the attorney discipline office decides to answer a request for relevant information, and if the attorney who is the subject of the request has not signed a waiver permitting the requesting agency to obtain confidential information, the attorney discipline office shall send to the attorney at his or her last known address, by certified mail, a notice that information had been requested and by whom, together with a copy of the information that the attorney discipline office proposes to release to the requesting agency. The attorney discipline office shall inform the subject attorney that the information shall be released at the end of ten (10) days from the date of mailing the notice unless the attorney obtains a supreme court order restraining such disclosure. Notice to the attorney, as provided in this section, shall not be required prior to disclosure of relevant information that is otherwise confidential to law enforcement agencies authorized to investigate and prosecute violations of the criminal law.

(i) *Disclosure to Supreme Court for Rule 36 Review:* The attorney discipline office shall disclose relevant information that is otherwise confidential to the supreme court, upon its request, in connection with the court's review of applications under Supreme Court Rule 36.

(j) *Disclosure to National Discipline Data Bank:* The clerk of the supreme court shall transmit notice of all public discipline imposed on an attorney by the supreme court or the professional conduct committee (upon notice from said committee), or the suspension from law practice due to disability of an attorney, to the National Discipline Data Bank maintained by the American Bar Association.

(k) *Disclosure to Lawyers Assistance Program:* The Attorney Discipline Office shall have the power to disclose otherwise confidential information to the New Hampshire Lawyers Assistance Program whenever the Attorney Discipline Office determines that such disclosure would be in the public interest.

(*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 a grievant from disclosing publicly the underlying conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. 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.

(m) *Violation of Duty of Confidentiality:* Any violation of the duty of confidentiality imposed by section (20) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the proceedings earlier than would have been the case under section (20), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.

(n) With respect to records to be made available for public inspection under this Rule or Rule 37A, final disciplinary decisions of the professional conduct committee and the supreme court shall be made available for public inspection electronically via the internet; all other records shall be made available for public inspection only at the attorney discipline office.

(21) ***Confidentiality and Public Access - Matters Initiated Before April 1, 2000:***

Applicability Note: Section 21 shall apply to records and proceedings in matters initiated before April 1, 2000.

All records and proceedings involving allegations of misconduct by an attorney shall be confidential and shall not be disclosed except:

(a) When disciplinary counsel issues a notice of charges, in which case the notice, the file (other than work product and internal memoranda), the proceedings before the committees (other than deliberations), and the decision shall be public; or

(b) When the professional conduct committee files a petition with the supreme court in which case, except as provided in section (11) regarding resignations, the pleadings, all information admitted at the proceedings, the proceedings themselves (other than deliberations of the supreme court), and the decision, shall be public; or

(c) When an attorney seeks reinstatement or readmission pursuant to section (14), in which case the proceedings before the hearings committee panel and the professional conduct committee and the court shall be conducted the same as prescribed in subsections (a) and (b); or

(d) When the respondent attorney, prior to the issuance of a notice of charges as prescribed in subsection (a), requests that the matter be public, in which case the entire file, other than the work product and internal memoranda, of the attorney discipline system, shall be public; or

(e) If the investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the respondent in another jurisdiction, in which case the entire file pertaining to the crime or the public discipline, other than the work product and internal memoranda, of the attorney discipline system shall be public.

(22) ***Copy of Rule:***

A copy of Supreme Court Rules 37 and 37A shall be provided to all grievants, complainants, and respondent attorneys.—Amended March 5, 1980; April 23, 1982; January 1, 1983; January 1, 1984; May 17, 1984; February 1, 1986; September 1, 1987; March 1, 1989; March 1, 1990; March 7, 1996; October 21, 1998; January 20, 2000, eff. April 1, 2000; May 1, 2001, eff. June 1, 2001; October 17, 2001, eff. January 1, 2002; January 15, 2002; July 18, 2002; August 15, 2002, eff. October 1, 2002; August 27, 2003, eff. January 1, 2004; October 22, 2003, eff. January 1, 2004; September 10, 2004, eff. November 1, 2004; April 25, 2006, eff. July 1, 2006; January 18, 2007, eff. March 1, 2007; April 2, 2007; October 9, 2007, eff. January 1, 2008; November 16, 2007; June 6, 2008, eff. July 1, 2008; November 14, 2008, eff. January 1, 2009; October 16, 2009, eff. January 1, 2010; May 21, 2015, eff. July 1, 2015; April 20, 2017, eff. July 1, 2017; October 18, 2017, eff. January 1, 2018; April 19, 2018, eff. July 1, 2018; October 29, 2019, eff. January 1, 2020.

History

Amendments—2019. The 2019 amendment added (8)(c).

—2018. The 2018 amendment, in (12), substituted "attorney discipline office" for "professional conduct committee" wherever it appears; added (12)(e); rewrote (14); in (16)(c), added the last sentence.

—2017. The 2017 amendment, by Supreme Court Order dated October 18, 2017, effective January 1, 2018, added (20)(a)(3).

The 2017 amendment, by Supreme Court Order dated April 20, 2017, effective July 1, 2017, added (1)(f), (6)(b)(6), and (9-B) and deleted "disciplinary counsel" following "respondents' counsel" in the first sentence of (5)(c).

—2015. The 2015 amendment added "imposing a reprimand, public censure or a suspension of six (6) months or less" in the first sentence of (2)(a); deleted former (2)(k); deleted "with or without a warning" following "complaints" in the last sentence of (3)(c)(2); deleted "with or without a warning" at the end of the first sentence of (4)(c)(1), (5)(b)(5), (6)(c)(4), at the end of (5)(b)(4), (6)(c)(3); deleted "with or without a warning" following "any reason" in (6)(c)(6); substituted "See sections (20)(k)" for "See sections (20)(j) and (21)(g)" in the second sentence of (7); rewrote (8); added the second sentence of (9)(a) and (9)(c); added the first two sentences of (9)(g); added (9-A); rewrote (16); deleted "however, the attorney discipline office shall retain a copy of the letter to the grievant returning the grievance, which shall be available for public inspection in accordance with Supreme Court Rule 37A" at the end of the second sentence of (20)(a)(1); in (20)(a)(2), substituted "beginning 30 days" for "in accordance with Supreme Court Rule 37A" in the first sentence and added the second sentence; deleted "in accordance with Supreme Court Rule 37A" preceding "upon the earliest" in the introductory language of (20)(b); added (20)(c) and (20)(n); redesignated former (20)(c) through (20)(l) as (20)(d) through (20)(m); rewrote (20)(g); added "underlying" in the first sentence of the second paragraph of (20)(l); rewrote (21); and deleted former (23).

—2009. Subdivision (9)(d): Adopted without change on a permanent basis.

—2008. Supreme Court Order dated June 6, 2008, amended subdiv. (9)(d) generally. See "Temporary provisions" note set out below.

Supreme Court Order dated November 14, 2008, adopted subdivs. (1)(e), (2)(c), (2)(f), (2)(k), (5)(b), (6)(c), (20)(b)(1), (20)(j)–(*l*) without change on a permanent basis and inserted "supreme" preceding "court" in the third sentence and deleted the former fifth sentence of subdivs. (20)(f) and (21)(c).

—2007. Supreme Court Order dated January 18, 2007, eff. March 1, 2007, inserted "and New Hampshire Lawyers Assistance Program" following "Committee" in the heading and preceding "which is indicative" in subdiv. (1)(e); inserted "attorney discipline office or the" preceding "complaint screening" in the second sentence in subdiv. (2)(c); inserted "attorney discipline office or the" preceding "complaint screening" in the third sentence in subdiv. (2)(f); inserted "general counsel, the" preceding "complaint screening" in subdiv. (2)(k); inserted "to divert attorneys out of the system, or to dismiss a complaint after investigation" following "a matter" in subdiv. (5)(b)(1); added the second sentence in subdiv. (5)(b)(5); inserted "only where there is a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence" following "a hearing" in subdiv. (5)(b)(7); inserted subdivs. (2)–(5) and redesignated former subdivs. (2)–(5) as subdivs. (6)–(9) in subdiv. (6)(c); inserted "Attorney Discipline Office general counsel, the" preceding "complaint screening" in subdiv. (20)(b)(1); and added subdiv. (j) and redesignated former subdivs. (j) & (k) as subdivs. (k) & (*l*) in subdiv. (20). See "Temporary provisions" note set out below.

Supreme Court Order dated April 2, 2007, deleted "an attorney aggrieved by a finding of professional misconduct and sanction imposed by the professional conduct committee has filed" following "the event

that," inserted "is filed" following "Rule 37A(VI)," and substituted "and/or" for "and" following "professional misconduct" in the fourth sentence of the last paragraph of (3)(c).

Supreme Court Order dated October 9, 2007, added subdiv. (3)(c)(15) and amended subdiv. (19) generally.

Supreme Court Order dated November 16, 2007, substituted "section 14" for "section 15" in the third sentence of subdiv. (2)(j).

—2006. Subdivision (2)(a): Added "An appeal shall not be a mandatory appeal. *See* Rule 3."
Subdivision (3)(c)(14): Amended the second paragraph generally.
Subdivision (16)(g): Amended generally.
Subdivision (16)(j): Amended generally.

—2004. Subdivision (1)(b): Amended the first paragraph generally.
Subdivision (3)(a): Adopted on a permanent basis.
Subdivision (3)(c): Added subdiv. (14).
Subdivision (6)(c)(5): Deleted "and" following "the system" and added "and preparation of an annual report summarizing the activities of the attorney discipline system during the preceding year" at the end.
Subdivision (14)(f): Added.
Subdivisions (16)(g) and (23): Adopted on a permanent basis.

—2003. Supreme Court Order, dated August 27, 2003, amended rule generally.
Supreme Court Order dated October 22, 2003, rewrote subdiv. (3)(a); added the second paragraph of subdiv. (16)(g); and added subdiv. (23). See "Temporary provisions" note set out below.

—2002. Supreme Court Order dated January 15, 2002, amended this rule generally. See "Temporary provisions" note set out below.
Supreme Court Order dated July 18, 2002, added new subdiv. (3)(c) and redesignated former subdiv. (3)(c) as subdiv. (3)(d). See also "Temporary provisions" note set out below.
Supreme Court Order dated August 15, 2002, eff. October 1, 2002, amended subdivision (10) generally.

—2001. Supreme Court Order dated May 1, 2001, added subdivision (12-a).
Supreme Court Order dated October 17, 2001, inserted "or subpoena *duces tecum*" following "by subpoena" in the first sentence.

—2000. Subdivision (2): Expanded the list of definitions.
Subdivision (3)(a): Changed the provisions to provide for one member to be designated as chair and two members designated as vice chairs and specified that one of the vice chairs would be a non-attorney.
Subdivision (3)(b): Changed the terms of members from 5 years to 3 years.
Subdivision (3)(c)(1): Deleted "of this court" following "jurisdiction," inserted "in accordance with Supreme Court Rule 37A(2)(a)(2)(b)" and substituted "or grievance filed by any person" for "by any person" following "complaint."
Subdivision (3)(c)(4): Inserted "grievance or" preceding "complaint" in the second sentence.
Subdivision (3)(c)(5): Substituted "its jurisdiction for" for "the jurisdiction of this court for" in the first sentence and "Supreme Court Rule 37A(3)(d)(4)" for "§ 3.21 of the Rules and Procedures of the Professional Conduct Committee" in the fourth sentence.
Subdivision (3)(c)(6): Substituted "to propose" for "to adopt."
Subdivision (3)(c)(9): Added.
Subdivision (3A)(a): Substituted "commencing on the August 1 following election" for "coextensive with the term of office" following "one-year term."
Subdivision (5): Amended to include provisions for when protection of immunity does not exist.
Subdivision (12)(b): Amended generally.
Subdivision (15): Amended to include grievances.
Subdivisions (17) and (18): Amended generally.
Subdivision (19): Added.

—1998. Subdivision (3)(c): Substituted "the date" for "receipt" in the third sentence and added the fourth sentence.
Subdivision (12)(b): Added sentences four through seven.

—1996. Subdivision (1)(b): Substituted "the conduct" for "it is the duty" preceding "of every" and "shall be" for "to conduct himself" preceding "at all times" in the second sentence of the first paragraph.
Subdivision (2): Rewrote subdivisions (c)-(g) and deleted subdivision (h).
Subdivision (3)(a): Substituted "eighteen" for "sixteen" following "consist of" and "chairperson" for "chairman" in three places in the first sentence and added the second sentence of the first paragraph.
Subdivision (3)(b): Substituted "a" for "no" preceding "member shall," inserted "not" thereafter, deleted "he" preceding "may be reappointed" and made a minor change in punctuation in the second sentence and substituted "nine" for "eight" preceding "members" in the third sentence.
Subdivision (3)(c)4: Substituted "warning" for "caution, admonition or" following "dismissal" in the first sentence and "warning, administer a" for "caution, administer admonition or" preceding "reprimand" in the second sentence and added the third sentence.
Subdivision (3)(c)5: Deleted "a letter of admonition or" following "issuing" in the first sentence, deleted the former second sentence, deleted "a letter of admonition or" following "receipt of" in the present third sentence and deleted the last sentence.
Subdivision (5): Deleted "of his" preceding "statements" and "or" preceding "given in" and inserted

nnection with" thereafter and "under this Rule" following "proceedings" in the first sentence and ded the third sentence.
ubdivision (6): Substituted "the proceedings before the committee" for "an investigation" following ce of" and inserted "a single justice of" following "issued by" in the first sentence.
ubdivision (7)(c): Substituted "the attorney" for "him" following "against."
ubdivision (7)(e): Amended generally.
ubdivision (8)(a): Substituted "the attorney's" for "his" preceding "guardian" in the second sentence.
ubdivision (8)(b): Substituted "the attorney" for "him" following "suspending" in the second sentence e first paragraph and inserted "or she" preceding "is without" in the second paragraph.
ubdivision (8)(c): Inserted "or she" preceding "is suffering" and deleted "himself" following "adately defend" in the first paragraph.
ubdivision (8)(d): Substituted "the attorney" for "he" following "removed and" in the second sentence e first paragraph and following "duly taken" in the second paragraph, and substituted "the" for "his" eding "disability" and deleted "his" following "direct" in the second paragraph.
ubdivision (8)(f): Deleted "his" following "period of" in the first sentence and substituted "the" for "his" eding "suspension and" in the second sentence and deleted "he" thereafter.
ubdivision (9): Deleted "the" preceding "allegations of misconduct" and substituted "may file a request esign" for "on his part may submit his resignation" thereafter in the introductory paragraph of ubdivision (a), substituted "defended" for "himself against them" in subdivision (a)(4) and made other nor changes in phraseology in subdivisions (a) and (c).
ubdivision (11): Substituted "the disbarred or suspended attorney" for "he" following "effective date" the second sentence of subdivision (c) and made other minor changes in phraseology throughout the ubdivision.
ubdivision (12)(b): Made minor changes in phraseology in the fourth sentence.
ubdivision (13)(c): Substituted "an" for "his" following "file" and deleted "upon him" following mplaint."
ubdivision (13)(e): Substituted "a" for "his" preceding "written" and added "as to the alleged violations as to the recommended sanction" following "law."
ubdivision (13)(f): Deleted the former first, second and third sentences.
ubdivision (14)(a): Substituted "whose" for "his" preceding "whereabouts."
ubdivision (17)(a): Added a new subdivision (1), redesignated former subdivision (1) as subdivision (2) ubstituted "committee files" for "prosecution of formal charges is initiated by the filing of" preceding petition" in that subdivision, redesignated former subdivision (2) as subdivision (3) and inserted "or admission" preceding "pursuant" and "and the court" following "committee" and substituted "subsec(1) and (2)" for "subsection (1)" in that subdivision, redesignated former subdivision (3) as ubdivision (4) and substituted "issuance of a notice of charges as prescribed in subsection (1)" for "filing ormal charges" preceding "requests" and redesignated former subdivision (4) as subdivision (5).
ubdivision (17)(c): Deleted "or" preceding "a witness" and added "or the attorney/respondent" hereafter in the first sentence and deleted "or the" preceding "witness" and inserted "or attorney/ spondent" thereafter in the second sentence.
ubdivision (17)(d): Inserted "or her" preceding "last known" in the second sentence and added the last tence.
ubdivision (17)(g): Deleted the second sentence of the first paragraph and added the second and third graphs.
ubdivision (17)(h): Added.
ubdivision (18): Added.

1990. Subdivision (17): Added a new subdivision (e) and redesignated former subdivisions (e) and (f) subdivisions (f) and (g), respectively.

1989. Subdivision (2): Added subsections (c) through (h).
Subdivision (3)(c)3: Inserted "at least" preceding "three members."
Subdivision (3)(c)4: Substituted "caution, admonition or" for "private" preceding "reprimand" and made minor stylistic changes in the first sentence, inserted "issue a caution" preceding "administer" and stituted "admonition or" for "private" thereafter in the second sentence.
Subdivision (3)(c)5: Amended generally.
Subdivision (9)(b): Inserted "along with its recommendation" following "with the court."
Subdivision (12): Added "and Readmission" at the end of the subdivision catchline.
Subdivision (12)(a): Substituted "of suspension, and upon the completion of all the terms and itions set forth" for "specified" preceding "in the order."
Subdivision (12)(b): Added the second sentence, substituted "a" for "the" preceding "motion for instatement" and inserted "or an application for readmission" thereafter and "or application" preceding a hearing" in the third sentence, substituted "a" for "the" preceding "motion for reinstatement" and d "or on or before such date as the court may set for an application for readmission" thereafter in the t sentence.
Subdivision (12)(c): Inserted "or application for readmission" following "reinstatement" in two places.
Subdivision (12)(d): Deleted "that the necessary" preceding "expenses incurred," inserted "by the mittee" thereafter and inserted "or application for readmission" following "reinstatement."
Subdivision (12)(e): Added the second sentence.
Subdivision (17): Deleted former subdivision (a)(3) and redesignated former subdivisions (a)(4) and (5) subdivisions (a)(3) and (4), respectively.

1987. Subdivision (1)(d): Substituted "Rule 8.3 of the Rules of Professional Conduct" for "DR 1-103"

and "Rules of Professional Conduct" for "Code of Professional Responsibility."

Subdivision (3): Substituted "sixteen" for "fifteen" preceding "members" in the first sentence and rewrote the second sentence in the first paragraph in subsection (a) and substituted "13" for "14" following "section" in the fifth sentence of subsection (c)(5).

Subdivision (3A): Added.

Subdivision (13)(a): Substituted "Rules of Professional Conduct" for "Code of Professional Responsibility as adopted by the New Hampshire Bar Association" preceding "which have been violated."

Subdivision (17): Substituted "12" for "13" following "section" in subsection (a)(2) and inserted "authorized" preceding "agencies" and "or fitness to continue practice" preceding "to law enforcement agencies" in the first sentence of subsection (d).

—1986. Subdivision (17)(d): Deleted "and" following "practice" and added "and to law enforcement agencies authorized to investigate and prosecute violations of the criminal law" following "government employment" in the first sentence, and substituted "Supreme Court" for "court" preceding "order" in the third sentence.

—1984. Subdivision (1)(d): Added by first 1984 amendment.
Subdivisions (8) to (18): Redesignated as subdivisions (7) to (17) by first 1984 amendment.
Amended generally by second 1984 amendment.

—1983. Subdivision (7): Deleted.

—1982. Subdivision (3)(a): Added second paragraph.

—1980. Subdivision (3)(c)8: Added.
Subdivision (7): Amended by expanding the guidelines regarding attorney's financial records.
Subdivision (13)(e): Added.

Temporary provisions. Pursuant to Supreme Court Order dated January 15, 2002, the amendment to this rule by this order was approved on a temporary basis.

Pursuant to Supreme Court Order dated July 18, 2002, the amendment to this rule by the order was approved on a temporary basis.

Pursuant to Supreme Court Order dated October 22, 2003, effective January 1, 2004, the amendments to this rule by that order were approved on a temporary basis. However, Supreme Court Order dated September 10, 2004, adopted the amendments on a permanent basis.

Pursuant to Supreme Court Order dated January 18, 2007, the amendments to this rule by that order were approved on a temporary basis. However, Supreme Court Order dated November 14, 2008, adopted the amendments on a permanent basis.

Pursuant to Supreme Court Order dated June 6, 2008, the amendment to this rule by that court order was approved on a temporary basis. However, Supreme Court Order dated October 16, 2009, adopted the amendment to subdiv. (9)(d) on a permanent basis.

Effective date—1998. Supreme Court Order dated Oct. 21, 1998, provided that the amendment to subdivs. (3)(c)5 and (12)(b) shall take effect Jan. 1, 1999.

Effective date and application of 1996 amendment; initial terms of new members. Supreme Court Order dated March 7, 1996, provided: "These amendments shall be effective as to all complaints filed on or after this date. With respect to the amendments to Rules 37(3)(a) and (b), increasing the membership of the committee and the quorum requirement, they shall be effective on August 1, 1996. One of the new members shall be appointed for an initial term of two years, and one for an initial term of three years. Thereafter, all terms shall be three years."

Exhibit G

REBUTTAL TO DONAIS' RESPONSE TO THE PCC'S INTERIM ORDER

October 7, 2020

Professional Conduct Committee:
4 Chenell Drive, Suite 102
Concord, NH 03301

Re: Donais, Craig S. advs. Attorney Discipline Office - #20-011

Dear Professional Conduct Committee:

1. Complainant rebuts Donais' response to the PCC's interim order issued on September 23, 2020 as follows:
2. Donais stated in paragraph 1, 2, 3 and 4 of his objection: "*1. Contrary to the plain language of the rule, the grievant's representative has asked that the Attorney Disciplinary Office provide an electronic copy of the file in the previously dismissed matter; Attorney Donais objects on the grounds set forth in this response. 2. By its plain language, the rule speaks of the opportunity to "inspect" a previously dismissed matter, and does not provide for copying or electronic disclosure. 3. It strains credulity to suggest that the word "inspect" would extend to providing a copy, either in paper form or electronic form. 4. Numerous other rules adopted by the Supreme Court, including those pertaining to discovery in the superior court, speak in terms of "inspect and copy," reflecting an intended difference with respect to attorney discipline proceedings. See Superior Court Rules 22, 24, and 25; see also Rule 37A(III)(b)(5)(B) (discovery in formal proceedings).*"
    a. This is not true. In many courts and tribunals, the word "inspect" does include copy. Even the discovery rules mentioned by Donais use the word "inspect" when it meant inspect and copy.
        a. For example, see Rule 21(a): "*Rule 21. General Provisions. (a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for* ***inspection*** *and other purposes; physical or mental examinations; and requests for admission*."
        b. See also: Rule 24: *"(b) Procedure. (1) The request shall set forth, either by individual item or by category, the items to be* ***inspected****, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. (2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties. The response shall state, with respect to each item or category, that* ***inspection*** *and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified,* ***and inspection*** *permitted of the remaining parts. (3) A party who produces documents for* ***inspection*** *shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request."*
        c. It is clear that the NH discovery rules intend to use the term "inspect" to be interchangeable with the term "copy", or more specifically "to be served a copy". In almost every case, when discovery/production of documents is propounded upon opposing party, the expectation is that the opposing party shall provide and serve a copy of the documents requested. In fact, if the opposing party fails to provide/serve a copy of the documents, that party is subject to discovery violations. Mr. Hilliard knows and so his attempt to reference the NH discovery rules as an example to support his argument is inapposite.
        d. The word "inspection" has always had the meaning to include "copy".
    b. The ADO's practice and policy has been to copy public files when requested by the public.
    c. Respondent is essentially requesting a change in ADO policy.
    d. It should be noted that Rule 37 (20)(n) states: "*With respect to records to be made available for public inspection under this Rule or Rule 37A, final disciplinary decisions of the professional conduct committee and the supreme court shall be made available for public inspection electronically via the internet; all other records shall be made available for public inspection only at the attorney discipline office.*"

e. Here the word "public inspection" electronically via the internet means that the public is free to make a copy of it from the internet. By making it available on the internet, it means that part of the records would be permanently copiable by the public. Therefore "public inspection" as used in context, by definition, cannot mean only "inspect" with the intent to forbid "copying".
f. Hence, the word "public inspection" is being used in reference to the electronic display of decisions on the NH supreme court website. Respondent's definition would also mean that the records of decisions which are part of the file cannot be published online because of the case is later destroyed then the public would have a copy of the decision, which is part of the file.
g. This is an absurd interpretation and shows the lengths at which Mr. Hilliard will go to make dishonest arguments to the ADO and the PCC.
h. The word "inspection" has always had the meaning to include copy. This is a new and novel interpretation.
i. Moreover, Respondent is requesting that his file and only his file not be copied.
j. Confidential files can be sealed via protective order. If Donais feels there is something damaging to him that should not be public, he can take it up with the ADO in the redaction process and thereafter with the PCC. He has adequate remedy for any concerns. The remedy should not be to ban all members of the public from obtaining a copy. The respondent's interpretation would mean the public has to commit the files to memory when they come to the ADO's office to inspect the files whereby they cannot obtain a copy. For example, if the news media wants a copy of the files, they would have to memorize the files in order to reference them in a story. They could misremember or get it wrong by being forced to commit the files to memory. This is unduly burdensome and not consistent with the NH constitution, not for the news media but for any regular member of the public.
k. What then would be the purpose of allowing only inspection but no copying? To prevent the public from having the information? But the purpose of the public right to access public files is to allow the public to have the information. Under such circumstances, only those with a photographic memory would have the information, or copious amounts of time would have to spent re-writing the files from scratch. But even that would have to be prevented too based on the logic of the respondent. This would be a new and novel interpretation but also an absurd, burdensome, impractical and untenable one.
l. Similarly, this interpretation (that would be bar copying of public disciplinary files) would have to be the interpretation that governs all attorney discipline systems in every state in America. No other state has this interpretation. The ABA rules on conduct does not have this interpretation. The respondent would like to transform the NH attorney system into the one and only state that has this interpretation.
m. This would also have deleterious consequences for those cases in which the files were transmitted to the ADO via electronic means, which more and more cases are submitted to the ADO via email. For such cases or files, there would be the dd result that respondent's interpretation would require a member of the public to physically come in to the office in order to look on a screen to view the files on a computer only but not obtain a copy, or it would require the ADO to print paper copies of electronic files in order to force members of the public to view the files in paper only and still not be able to obtain a copy. This makes no sense.
n. Moreover, producing electronic documents is often more efficient and cost-effective than producing them in paper form. This also ensures the greatest degree of openness and the greatest amount of public access consistent with the constitutional mandate. Similarly, it is consistent with the statutory principle that states that public files shall be made available in electronic formats if it is not impractical to do so. RSA 91-A:4, V makes it clear paper copies are only required where copying to electronic media *is not reasonably practicable,* or if the person or entity requesting access requests a different method. The ADO has already stated it would be reasonably practical to provide the files by electronic means. It is clear that the requests for copies have been made for electronic delivery.

o. This issue was specifically taken up in *Green v. SAU #55, 168 N.H. 796 (N.H. 2016)* where the petitioner sought certain records in electronic form and the NH Supreme Court held that where producing the records electronically is "reasonably practical", it must be provided in electronic form when requested. See excerpts from case as follows:

a. "*…producing electronic documents is often more efficient and cost-effective than producing them in paper form. See Mechling v. City of Monroe, 222 P.3d 808, 817 (Wash. Ct. App. 2009) ("Providing electronic records can be cheaper and easier for [a public body] than paper records." (quotation omitted).*"

b. "*…we agree with the plaintiff that the "[dissemination of public, non-confidential information in commonly used [electronic] formats ensures the greatest degree of openness and the greatest amount of public access…*"

c. "*…there is no evidence that it was "not reasonably practicable" to copy the requested documents "to electronic media using standard or common file formats." RSA 91-A:4, V."*

3. Donais stated in paragraph 5 of his motion: "*5. To permit copying in either paper or electronic form, and providing it to the public, would eviscerate the rights in the rules regarding destruction of the file, and an opportunity to obtain a complete annulment of the record. See also Rule 37A(V)(e) (effective sealing would be impossible).1*"

a. If the records must be destroyed by 3 years, then how can it be annulled after 5 years.

b. Rule 37(V)(a) states the following:

> (V) Annulment
>
> (a) When Annulment May Be Requested.
> A person who has been issued an admonition (under prior rules), or reprimand may at any time after five (5) years from the date of the admonition or reprimand apply to the professional conduct committee for an order to annul the admonition or reprimand. A person against whom a complaint has been filed which has resulted in a finding of no misconduct, may also apply to the professional conduct committee for an order to annul the record at any time after five (5) years from the date of the finding of no misconduct.
> (b) Matters Which May Not Be Annulled.
> Notwithstanding the foregoing, an order of annulment will not be granted except upon order of the supreme court if respondent's misconduct included conduct which constitutes an element of a felony or which included as a material element fraud, fraudulent misrepresentation, dishonesty, deceit, or breach of fiduciary duty.
> (c) Consideration of Other Complaints.
> When application has been made under subsection (a), the professional conduct committee may consider any other complaints filed against the respondent and any other relevant facts.

c. This means that cases, in which no misconduct was found at the hearing stage, can be held for more than 3 years otherwise annulment would be moot. This means that the ADO rules do not indicate or envision that the 3-year mark is automatic as applied to the prior Donais case.

d. Under this provision of the ADO rules, annulment applies to cases of either minor offenses or cases that went to the hearing stage but ended with findings of no misconduct[1].

e. Therefore, Mr. Donais cannot obtain an annulment until after 5 years. If annulment cannot be obtained until after 5 years, then the ADO rules must envision that ADO files can exist beyond 3 years. This point obliterates the entire premise of the respondent's argument that a file must be destroyed upon the 3 year mark and that if it is not yet destroyed, it has to be treated as though it had already been destroyed.

f. Donais cannot argue that he is entitled to annulment later on, which can only occur after 5 years while also arguing that he is entitled to mandatory destruction of the files upon the 3-year mark. Any possible annulment after 5 years would be made moot by a purported mandatory destruction at the 3-year mark. This is self-contradictory and thus betrays flawed and fallacious reasoning.

[1] NB: Special note should be taken of the fact that this rule highlights complaints of misconduct involving "an element of a felony or which included as a material element fraud, fraudulent misrepresentation, dishonesty, deceit, or breach of fiduciary duty." Any case involving the above types of misconduct shall not be annulled unless by order of the NH supreme court. This means if the prior Donais matter involves any of the above types of misconduct, then the PCC does not have jurisdiction to grant an annulment and, by extension, to order the destruction of the files. The PCC thus has to review the files of the prior Donais matter to determine if it entails such types of misconduct, and if it does, the matter must automatically be dismissed for lack of jurisdiction or referred to the NH supreme court for an order.

g. Moreover, there would be no evisceration of rights to annulment during the 5-year period before annulment can even be requested. In order for this logic to work, it would mean that for annulment to occur, the ADO would have instruct the grievant to not publish any copy of files it has from the case as not doing so would eviscerate his rights to annulment. This makes no sense.
h. Similarly, Donais can seek redaction or a protective order over any specified portion of the files that he feels warranted protection. Donais' rights can be protected and is being protected in the prior matter by being allowed the opportunity to redact. Donais wants to suggest that just because he may have an interest in protecting certain confidential aspects of the files, that he is thus entitled to a blanket protection of the entire file. This is absurd. NB: Certainly, Donais has not recognized any such blanket protection in how he has treated matters and in arguments he has made in the current matter with Ms. Anderson.

4. Donais stated in paragraph 6 of his motion: "*These provisions would be rendered meaningless by proceeding as the grievant's representative has suggested, and particularly so with respect to the grievant and her representative, who are strangers to the prior dismissed matter, and in their hands, the information will be misused*.2"
   a. Mr. Hilliard/Donais has not stated how it will be misused.
   b. But contrary to that assertion, it will not be misused, even though the usage is irrelevant to this analysis. See: He thus also suggests it will also be misused by every member of the public because he wants no one else to get a copy. When a police report is filed, even if dismissed, it still remains public. It is up to the affected person to point out, it was dismissed. Here Donais can simply point out it was dismissed.
   c. It boggles the mind as to how a public file can be misused.
   d. Again, it would be no different than if I went to the court docket room and requested a copy of the files of a case Donais was in, and he objected to its disclosure even though the case had been dismissed and been made public 3 years ago, and was not sealed by the court, because he thinks it will be misused.
   e. The laws governing the right of public access does not consider intended usage. This would upend the intend of the constitutional mandate to grant public access to court records and judicial records. See: Union Leader Corp. v. City of Nashua 141 N.H. 473 (N.H. 1996) 686 A.2d 310 ("*In its order, the trial court considered the plaintiff's motives in seeking the information…the plaintiff's motives for seeking disclosure are irrelevant. E.g., Mans, 112 N.H. at 162, 290 A.2d at 867; see Reporters Committee, 489 U.S. at 771. This is because the Right-to-Know Law "give[s] any member of the public as much right to disclosure as one with a special interest in a particular document," Reporters Committee, 489 U.S. at 771 (quotation and brackets omitted), and accordingly "[t]he motivations of . . . any member of the public . . . are irrelevant to the question of access, " Petition of Keene Sentinel, 136 N.H. at 128, 612 A.2d at 915."*).
   f. Although the Union Leader v City Nashua case, noted above, largely focuses on the ramifications of the Right to Know Law, it articulates the basic constitutional principles of the right to public access that is derived from the NH constitution, from which the law governing right to public access for judicial files is also derived.
   g. Moreover, the ADO has argued that the ADO is a part of the judicial branch of government. Therefore, the public records are constitutionally required to be made available. Donais wants special treatment to the abrogation of our constitutional and statutory rights.

5. Donais stated in paragraph 6 of his motion: "*The ADO's response filed October 1, 2020, overlooks this most significant point. If the file is provided to the grievant and her representative, either traditionally or electronically, it has forever left the control of the ADO, and may be disseminated or published in whatever way and for whatever purpose they see fit. If they had been parties to the earlier matter, as they are now to two grievances, they would already possess the material. They were not, and are strangers to the earlier matter, entitled to no more than a member of the public*."
   a. Then the materials in possession of grievants would also have to be barred from usage. This makes no sense and would result in an absurd outcome or conclusion.
   b. If the ADO were to enact this interpretation now, as suggested by the respondent, it would create an unjust result where previously every other member of the public have been able to obtain a copy of the files, but now the complainant in this case would be the first to be barred from getting a copy of the file. This would be unfair and unjust and it would serve no purpose but to create a special protection

for one respondent, when creating such a special protection is not even necessary especially since the respondent would be provide an opportunity to seek redaction of the file.

6. Donais stated in paragraph 7 of his motion: "*Given the ADO's clear statement in its response, ¶3, that there is no need for access to this material in connection with the pending second grievance, there is simply no occasion to modify the rule, and access when the ADO reopens to the public is sufficient and appropriate. Anything else unnecessarily harms Attorney Donais.3*"
    a. We have a right to determine for ourselves the relevance of the prior matter to our proceeding. The ADO could have missed something. Prior conduct is usually relevant even if the conduct was in different categories. The question is the degree of relevance
    b. Either way, we have a right to not be denied reasonable and speedy access to the files. ADO policy in the past has allowed copies to be provided to members of the public upon request. To do so now would result in an arbitrary and capricious change in its rules and policies and practice to simply grant special favors to Donais. The rule is not modified. The ADO has always interpreted the rule to mean copies can be provided which why they have a per page copy charge for making copies of such files.
    c. This would mean that the mere possession of the files by a grievant would be a harm to Donais because the grievant would have the option of publishing the files publicly. To address Donais' purported harm, the PCC and the ADO would have to instruct the grievant to not publish the files and thus effectively issue a protective order or seal on the entire file (without having to file a request for protective order or request for sealing). This would be absurd.
7. Donais stated in paragraph 8 of his motion: "*Finally, this rationale would extend to providing a copy, in paper or electronic format, of the entire ADO index of public files to anyone who requests it. This cannot be the case, and it lays bare the faulty nature of such reasoning.*"
    a. Again, this makes no sense.
    b. Rule 37 (20)(n) states: "*With respect to records to be made available for public inspection under this Rule or Rule 37A, final disciplinary decisions of the professional conduct committee and the supreme court shall be made available for public inspection electronically via the internet; all other records shall be made available for public inspection only at the attorney discipline office.*"
    c. Here the word "public inspection" electronically via the internet means that the public is free to make a copy of it from the internet. By making it available on the internet, it means that part of the records would be permanently copiable by the public. Therefore "public inspection" as used in this context, by definition, cannot mean only "inspect" with the intent to forbid "copying". This again shows not only the faultiness of such reasoning but the absurdity of it.
8. Donais stated in footnote 1 of his motion: "*1 (e) Sealing of Records of Annulment. Upon issuance of an order of annulment, all records or other evidence of the existence of the complaint shall be sealed, except that the attorney discipline office may keep the docket or card index showing the names of each respondent and complainant, the final disposition, and the date that the records relating to the matter were sealed."*
    a. See again paragraph 3 above.
9. Donais stated in footnote 2 of his motion: *"There are websites that cater to the dissemination of information regarding alleged misconduct of lawyers. See, e.g., www.noethics.net.*"
    a. Neither complainant nor myself have ever heard of this website nor have we ever used such a website, nor do we intend to use such a website. The mention of this site was arbitrary, unnecessary, unwarranted, and intended for sensationalism purposes.
    b. Either way, the intended usage of public records is not relevant to any consideration and cannot otherwise the right to public access would be upended.
    c. Moreover, it would lead to a circus-like process where respondents would speculate as to the intention of any requesting party and it would subject the process to endless speculation and conjecture about usage. Donais has no idea of what we would use the files for, other than what we have stated which is to make an independent determination ourselves as to the relevance as a pattern to our case. Even if the subject matter is not the same, the fact that there are multiple complaints does raise the possibility of some overlap somewhere. It can at least show a general disregard for legal obligation. NB: NH

Professional Conduct Rule 8.4 in the comment section states: "*A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation*."

10. Donais stated in footnote 3 of his motion: "*For the same reasons, the emergency orders issued by the New Hampshire Supreme Court are not intended, and should not be construed, to have any bearing on such a non-emergency situation as is presented here*."
    a. The ADO has so construed the meaning and application of the supreme court orders.
    b. Donais has given no reason why the ADO's application is wrong. Donais has simply made a blanket assertion with no backup. This is wholly insufficient to set aside the ADO's interpretation, application and understanding of the matter.
    c. To the extent Donais requires or seeks further clarification of the supreme court order or wish to challenge it, this is not the forum or place to do so (i.e. in the context of a motion for clarification by complainant).
11. Donais stated in paragraph 9 of his motion: "*Accordingly, there is no justification or occasion to vary the plain language of the rule, and no copying, electronic or otherwise, should be permitted*."
    a. Again, the rules are to be interpreted as a whole and in the context of the purpose of public policy.
    b. Stripping out literal words devoid of context or intent is fallacious approach to interpretation. The rules of proper hermeneutics have always shown that there can be no proper ascribing of meaning outside of context. The clear intent of the authors of the ADO rules and of the ADO in terms of its own practice and policy has been to interpret these rules to allow for copies of public files. To do otherwise would violate the NH constitution.
    c. Part I, article 8 of the New Hampshire Constitution states that the public's right of access to governmental proceedings and records shall not be unreasonably restricted. Hence, the PCC and the ADO has a distinct obligation to not unreasonably restrict access to the records of the prior Donais matter, and if the ADO is required to wait indefinitely until it reopens after the pandemic has subsided, etc., before it can provide access to the files to the complainant, then under any reasonable definition, this would constitute an unreasonable restriction on access to the records, when a more simple and expeditious exists and has been previously offered by the ADO itself.
    d. Because the principles of the NH constitution (as well as the principles enumerated in its statutory counterpart in the Right to Know Law) ensures the greatest possible public access to public files, these issues must be resolved with a view to providing the utmost information in the most effective and efficient manner in order to best effectuate these statutory and constitutional objectives. See CaremarkPCS Health, 167 N.H. at 587 ("As a result, we broadly construe provisions favoring disclosure and interpret the exemptions restrictively.").
12. The relief requested by the respondent should be denied.

Respectfully submitted by
Andre Bisasor on behalf of Complainant Natalie Anderson:

Andre Bisasor (attorney-in-fact)
679 Washington Street, Suite # 8-206,
Attleboro, MA 02703