

To: NH Supreme Court Advisory Committee on the Rule

From: Derek Lick

Re: Proposed Changes to Supreme Court Rule 55(4) – Public Protection Fund

Date: February 14, 2024

Rule 55 of the New Hampshire Supreme Court Rules establishes a public protection fund to provide some measure of reimbursement to victims who have lost money or property caused by the defalcation of lawyers admitted to practice law in New Hampshire. The fund is administered by a nine-member Public Protection Fund Committee of the New Hampshire Bar Association, currently chaired by Attorney Thomas Quarles. Currently, disbursements from the Fund are capped at \$250,000 for all claims against a single attorney, and \$1,000,000 per year. The Committee has recommended a change to the Fund rules to increase the cap for all claims against a single attorney to \$500,000 to cover larger losses periodically experienced by claimants. Attorney Quarles and Paula Lewis, Deputy Executive Director of the Bar Association, presented the change to the New Hampshire Bar Association Board of Governors and explained its potential impact on reserves held in the Fund and members dues (currently assessed at \$30 per year to each member of the Bar). The Board voted 15-1 in favor of recommending the change to the rule to this committee, as provided below.

* * *

New Hampshire Supreme Court Rule 55 (Public Protection Fund)

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

this sentence) has been reached, claims where the amount determined by the committee to be due the claimant is less than \$2,500 shall be excluded from the calculation. The maximum amount of reimbursement to any one claimant, or all claimants, against the fund in any fund year as defined in paragraph (6) shall be \$250,000 and \$1,000,000, respectively, in the aggregate. The maximum amount which may be paid on a claim shall be the dollar value of the money or property lost by lawyer defalcation and shall not include interest on the amount lost or money spent attempting to collect the loss. If payable claims against a lawyer exceed ~~\$250,000~~ **\$500,000**, then all payable claims against that lawyer, except claims where the amount determined by the committee to be due the claimant is less than \$2,500, shall be reduced in proportion to their relative value in order to reduce total payments as a result of that lawyer's conduct to ~~\$250,000~~ **\$500,000**. If payable claims in a single fund year exceed \$1,000,000, then all payable claims for that fund year shall be reduced in proportion to their relative value in order to reduce total payments for that year to \$1,000,000. That portion of payable claims excluded from payment by reason of the dollar limitations described in this section shall not be paid in any subsequent fund year.