

To: NH Supreme Court Advisory Committee on the Rule

From: Derek Lick

Re: Proposed Changes to Supreme Court Rule 37

Date: 11/22/23

The Professional Conduct Committee has had occasion recently to consider the interplay of Rules 37(20) (1). In so doing, the Committee could not discern a purpose behind specifically prohibiting grievants from revealing the fact that a grievance, referral, or complaint has been filed, at the risk of dismissal of a potentially meritorious attorney discipline case. Given that grievants can discuss the underlying allegations, given that the rule is directed solely at grievants, who are not parties to matters in the attorney discipline system, and given the Rule's restriction on otherwise protected speech, the Professional Conduct Committee asks the Rules Committee to consider the Rule, its history and purpose, and whether it serves the interests of the attorney discipline system.

The following proposed rule change is an attempt to remove the restriction from the rule in the event the Committee is inclined to consider such a change. This has been reviewed and considered by the Attorney Discipline Office, and it has no objection to the proposed changes.

* * *

NH Supreme Court Rule 37

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

(1) Duty of Participants: All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule. Nothing in this section prevents participants ~~a grievant~~ from disclosing publicly the fact that a grievance, referral, complaint has been filed, the underlying conduct of an attorney which forms the basis of the grievance, referral, or complaint ~~he or she believes violates the rules of professional conduct or is otherwise inappropriate, or the attorney's response to the allegations in the grievance, referral, or complaint, except for those portions of such filings otherwise confidential pursuant to Rule 37(20).~~ The immunity from civil liability provided by section (7) does not apply to such disclosures. ~~This section does prohibit a grievant, however, from disclosing publicly the fact that a grievance or complaint against the attorney about the conduct had been filed with the attorney discipline system pending the grievance or complaint becoming public in accordance with the provisions of this section.~~