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New Hampshire Supreme Court

NH SUPREME COURT

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September 28, 2023

Timothy A. Gudas, Esquire
Advisory Committee on Rules
New Hampshire Supreme Court
1 Charles Doe Drive
Concord, NH 03301

Re: Proposed Amendment to NH Supreme Court Rule 37(5)(a) (Complaint Screening Committee)

Dear Mr. Gudas:

Enclosed please find a copy of New Hampshire Supreme Court Rule (the "Rule") 37(5)(a) (Complaint Screening Committee), showing proposed Rule changes intended to assist the Complaint Screening Committee with its review of matters before it.

Pursuant to the proposed Rule change, the number of lawyer members of the Complaint Screening Committee would increase from five to six, and the total number of Complaint Screening Committee members would increase from nine to ten (i.e., pursuant to the Rule change there would be six lawyer members and four non-lawyer members).¹ This Rule change is necessary to reduce potential delays in the Complaint Screening Committee's consideration of matters before it. Specifically, the Committee is forced to table consideration of a matter if two of the Committee's lawyer members are, in any combination, recused from voting on the matter and/or unable to attend a meeting.

As further background, Rule 37(5) dictates that "the complaint screening committee shall act only with the consensus of a majority of its members present and voting provided, however, that three attorney members and two non-attorney members shall constitute a quorum." Rule 37(5) further states that the Chair of the Committee "shall only vote on matters relating to specific complaints in the event of a tie among the members present and voting."² The

¹ Please note that the proposed 3:2 ratio of lawyers to non-lawyers on the Complaint Screening would be similar to the 3:2 ratio of lawyers to non-lawyers on Hearing Panels and a higher ratio of lawyers to non-lawyers when compared to the 3:1 ratio of lawyers to non-lawyers that currently serve on the Professional Conduct Committee.

² Upon information and belief, only lawyers have been appointed to serve as Chair of the Complaint Screening Committee.

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Committee interprets Rule 37(5) as prohibiting the Chair (or another Committee member performing duties of the Chair), from voting on a matter if the Chair's participation is needed to establish a quorum. This means, for example, that the Committee will not vote on a matter if two lawyer members are, in any combination, recused and/or absent from a meeting, as that leaves only three lawyers - one of which is the Chair - to vote on the matter to create a quorum. In recent months, a lack of quorum has caused the Complaint Screening Committee to table votes on multiple matters. The Committee and the Attorney Discipline Office believe that this basis for tabling such matters will often be avoided if the Court appoints one additional lawyer to the Committee.

Pursuant to Supreme Court Rule 51, proposed deletions to the current rule are shown in ~~strikethrough~~ and proposed additions in **[bold and brackets]**.

Thank you for your consideration.

Sincerely,

/s/ Julian Jefferson
Julian Jefferson
Chair, Complaint Screening Committee

/s/ Brian R. Moushegian
Brian R. Moushegian
General Counsel
NH Attorney Discipline Office

Enclosure

PROPOSED AMENDMENT TO NH SUPREME COURT RULE 37(5)(a)

(a) The court shall appoint a committee to be known as the complaint screening committee which shall consist of ~~[ten] nine~~ members, one of whom shall be designated by the court as chair and one of whom shall be designated by the court as vice chair to act in the absence or disability of the chair. ~~[Six] Five~~ of the members shall be attorneys and four of them shall be non-attorneys. The complaint screening committee shall act only with the consensus of a majority of its members present and voting provided, however, that three attorney members and two non-attorney members shall constitute a quorum. The chair of the committee, or any member performing the duties of the chair, shall only vote on matters relating to specific complaints in the event of a tie among the members present and voting. Initial appointments shall be for staggered terms: **[with four appointments made in one three-year term and three appointments made in each of the other two staggered terms.]** ~~three members for three years; three members for two years; and three members for one year.~~ Thereafter, ~~t~~**[T]**he regular term of each member shall be three years. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor. A member shall not serve more than three consecutive full terms but may be reappointed after a lapse of one year. No member of the complaint screening committee shall serve concurrently as a member of the professional conduct committee or the hearings committee.