

2022-015

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To: Lorrie Platt, Secretary to the Advisory Committee on Rules of the New Hampshire Supreme Court

Re: Suggested Changes to Rule 42 (xiii) per Rule 51(c)

Dear Secretary Platt:

Greetings.

The following details my suggested rule change to Rule 42 (xiii) regarding the mandatory Practical Skills Course.

A. TEXT OF SUGGESTED RULE (WITH SUGGESTED CHANGES [IN BRACKETS AND IN BOLD])

RULE 42 [xiii(a)]:

Within two years of admission, each person admitted to practice law in New Hampshire must attend a practical skills course presented by the New Hampshire Bar Association, unless the admittee satisfies the requirements of paragraph (b) or, in exceptional instances, a longer period is approved in writing by the court. [**This requirement shall not apply to inactive members; however, should such member return to active status, this course must be taken within one year of the member's return to active status.**] A failure to comply with the requirements of this rule will result in the suspension of the attorney's license. The course will assist new admittees in developing basic

lawyering skills and in gaining practical knowledge of New Hampshire practice and procedure. Attendance is required and each new admittee will be required to execute an affidavit stating that he or she has attended each session of the course unless otherwise excused by the supreme court, but no test will be required. **[This Rule will apply *nunc pro tunc* to the earliest date of this requirement.]**

B. REASONS FOR SUGGESTED CHANGES

1. Inactive members cannot practice law. But practice is the very focus of the Practical Skills Course ["PSC" herein]. So no logical nexus exists between the PSC requirement and inactive members. It is as if the state required the blind to take drivers education. A legal maxim from another jurisdiction encapsulates this sentiment: "When the reason of a rule ceases, so should the rule itself." California Civil Code §3510.
2. The PSC sessions, and particularly the compendium with its case and statute citations, may be largely outdated (and so, ironically, rendered impractical) by the time the inactive member returns to active status. Currency is crucial in law practice, as most lawyers learnt in first year legal writing with its emphasis on shepardizing cases. Currency is yet more crucial today, as technology advances at lightning speed, whether it be law office protocols, e-discovery, or payment platforms and acceptability of payment in crypto currency. What is current today may be outmoded or even forbidden within months.
3. The suggested change would make the rule consistent with the rule on CLE. (After all, PSC is really a species of CLE, as it gives 540 minutes of CLE credit):
 - a) CLE, like the PSC, is geared to active practice;
 - b) CLE is required anew each year to ensure currency; and (especially)
 - c) CLE exempts inactive members [Rule 53.3(A)].

4. The suggested change will ensure that lawyers returning to active status will be current in all areas covered by the PSC as it require the PSC to be completed within a year of changing status. This in turn will benefit clients, who will have yet more assurance that their lawyer is up to date in legal matters, especially ethics; and the courts, which will be spared the necessity of admonishing counsel unaware of a new twist on ethics or procedure (which twist would perhaps not have existed in an earlier iteration of the PSC).

C. EXPEDITED CONSIDERATION IS REQUESTED [Rule 51 (c)(B)(iii)]

I request the suggested change receive expedited consideration if convenient for the Advisory Committee inasmuch as my "due date" [that is, the date by which I must take the PSC under current rules] is 18 March 2023.

D. NO HEARING REQUESTED

I do not desire a hearing. However, if the Committee deems a hearing would help, I will do my best to arrange logistics which will prove challenging as I live on Cape Cod, own no vehicle and live off my diminishing savings.

Thank you.

Sincerely,

William G. Gillespie
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