

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:

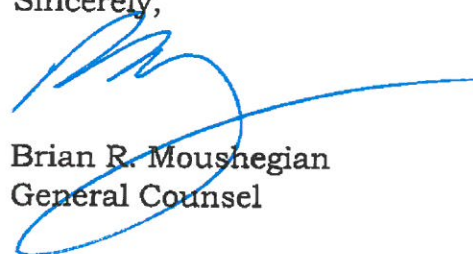
- Amend Rule 37(8) to give the ADO "reciprocal" subpoena power, which would allow the ADO to issue a subpoena in this jurisdiction where a subpoena has been duly approved under the law of another disciplinary jurisdiction;
- Create a "reinstatement form" for applicants for reinstatement to the Bar to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

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To: NH Supreme Court Advisory Committee on Rules

From: Brian R. Moushegian, General Counsel  
Sara S. Greene, Disciplinary Counsel  
NH Supreme Court Attorney Discipline Office

Date: January 27, 2022

Re: NH Supreme Court Rules 37 and 37A

**Rule 37(8): ADO Discovery and Subpoena Power**

Background:

Occasionally, the ADO has the need to issue a subpoena in another jurisdiction. Domesticating a subpoena, depending on the jurisdiction, can involve varying court procedures. For example, many states (though not New Hampshire) have adopted the Uniform Interstate Depositions and Discovery Act (UIDDA). Fortunately for the ADO, the majority of disciplinary agencies have provisions in their rules that allow the discipline agency to domesticate a foreign subpoena issued by another jurisdiction's disciplinary agency. (See Exhibit 1 hereto, Sup. Jud. Ct. R. 4:01, Section 22, Massachusetts's rule for reciprocal subpoena power). The ADO has availed itself of this procedure several times.

New Hampshire, however, has no such "reciprocal subpoena" rule to assist our sister disciplinary agencies in similar efforts. Including such a rule will allow the ADO to domesticate a subpoena duly issued in another jurisdiction for a pending discipline matter.

Current Rule:

*(8) Discovery and Subpoena Power:*

(a) At any stage prior to the filing of a notice of charges, attorneys from the attorney discipline office may issue subpoenas and subpoenas *duces tecum* to summon witnesses with or without documents.

(b) At any stage after the filing of a notice of charges, attorneys from the attorney discipline office, counsel for respondent attorneys and respondent attorneys representing themselves may issue subpoenas and subpoenas *duces tecum* to summon witnesses with or without documents, and may conduct additional discovery, including, but not limited to, interrogatories and depositions. Notice of the issuance of any such subpoena shall be served on the opposing party.

(c) *Access to Court Records*

(1) *General Rule.* At any stage, attorneys from the attorney discipline office may submit a written request seeking access to records relevant to its investigation into a pending disciplinary matter to a clerk of court. If the records requested by the attorney discipline office do not include any confidential documents or confidential information, the clerk shall provide prompt and complete access to the records, and if requested, copies of the relevant documents. If the records requested by the attorney discipline office include any confidential documents or confidential information, the attorney discipline office shall follow the procedures set forth in section (2).

(2) *Access to Confidential Documents and Confidential Information.*

(A) If the attorney discipline office seeks access to confidential or sealed records, the attorney discipline office need not file a motion to intervene, but shall:

- (i) file a written request to gain access to the records explaining how the records are relevant in a pending disciplinary action; and
- (ii) file a motion to seal along with the written request.

(B) The court shall promptly provide to all of the parties in the underlying court action notice and copies of the written request and motion to seal.

(C) The parties in the underlying court action shall have 10 days from the date of the notice to file a written objection to the disclosure of the requested materials.

(D) If none of the parties in the underlying court action object to the disclosure of the requested materials within 10 days of the filing of the written request and if the production of records pursuant to this rule does not contravene any statutes governing the production of confidential materials, the court may disclose the materials to the attorney discipline office. If none of the parties object but the court nevertheless is disinclined to release the records to the attorney discipline office, the court shall hold a non-public hearing, at which the attorney discipline office must demonstrate good cause for access to the records.

(E) If one or more parties in the underlying court action object to the disclosure of the requested materials, the court shall promptly schedule a non-public hearing, at which the attorney discipline office must demonstrate good cause for access to the records.



(F) *Protective Orders*. Whenever the court discloses records pursuant to this rule, the court shall issue a protective order governing the disclosure and use of the records. The protective order shall provide that:

(i) the attorney discipline office shall not disclose such records to any person except as necessary in connection with the prosecution or defense of the disciplinary matter;

(ii) any person to whom disclosure is made shall acknowledge in writing prior to the disclosure that he or she has been made aware of and agrees to comply with the protective order;

(iii) at the conclusion of the disciplinary proceeding, each party shall return to the attorney discipline office that party's copy of the records, whereupon the attorney discipline office shall destroy said records; and

(iv) thereafter, the attorney discipline office shall submit an affidavit to the court stating that said records have been destroyed. The Court may modify the foregoing terms of a protective order, or impose such additional terms as may be necessary in a particular case.

(G) Any and all confidential documents and confidential information obtained by the attorney discipline office pursuant to this rule shall be subject to a protective order, as set forth in section (F) of this rule, and shall be available to the respondent in a disciplinary matter, to the adjudicatory bodies of the attorney discipline system, and to the attorney discipline office's and respondent's potential or actual witnesses, including those witnesses designated as experts, as part of formal and informal disciplinary proceedings. To the extent confidential documents or confidential information obtained pursuant to this rule are utilized during a disciplinary hearing or other proceeding, such hearing or proceeding shall be closed to the public during any disclosure of, testimony or discussion involving the confidential document or confidential information. Such confidential records shall otherwise remain sealed and shall not, absent further court order, become part of the public file maintained by the attorney discipline office.

Proposed Amendment:

The amendment would add language empowering the ADO to domesticate a subpoena from another jurisdiction's attorney discipline office. It would place that provision at subsection (c), and renumber the section addressing court records as subsection (d).

(8) *Discovery and Subpoena Power:*

(a) At any stage prior to the filing of a notice of charges, attorneys from the attorney discipline office may issue subpoenas and subpoenas *duces tecum* to summon witnesses with or without documents.

(b) At any stage after the filing of a notice of charges, attorneys from the attorney discipline office, counsel for respondent attorneys and respondent attorneys representing themselves may issue subpoenas and subpoenas *duces tecum* to summon witnesses with or without documents, and may conduct additional discovery, including, but not limited to, interrogatories and depositions. Notice of the issuance of any such subpoena shall be served on the opposing party.

(c) Whenever a subpoena is sought in this state pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, and where the issuance of a subpoena has been duly approved under the law of the other jurisdiction, attorneys from the attorney discipline office may issue a subpoena as provided in this section to compel the attendance of witnesses and production of documents.

(de) Access to Court Records

(1) *General Rule.* At any stage, attorneys from the attorney discipline office may submit a written request seeking access to records relevant to its investigation into a pending disciplinary matter to a clerk of court. If the records requested by the attorney discipline office do not include any confidential documents or confidential information, the clerk shall provide prompt and complete access to the records, and if requested, copies of the relevant documents. If the records requested by the attorney discipline office include any confidential documents or confidential information, the attorney discipline office shall follow the procedures set forth in section (2).

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(A) If the attorney discipline office seeks access to confidential or sealed records, the attorney discipline office need not file a motion to intervene, but shall:

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(B) The court shall promptly provide to all of the parties in the underlying court action notice and copies of the written request and motion to seal.

(C) The parties in the underlying court action shall have 10 days from the date of the notice to file a written objection to the disclosure of the requested materials.

(D) If none of the parties in the underlying court action object to the disclosure of the requested materials within 10 days of the filing of the written request and if the production of records pursuant to this rule does not contravene any statutes governing the production of confidential materials, the court may disclose the materials to the attorney discipline office. If none of the parties object but the court nevertheless is disinclined to release the records to the attorney discipline office, the court shall hold a non-public hearing, at which the attorney discipline office must demonstrate good cause for access to the records.

(E) If one or more parties in the underlying court action object to the disclosure of the requested materials, the court shall promptly schedule a non-public hearing, at which the attorney discipline office must demonstrate good cause for access to the records.

(F) *Protective Orders.* Whenever the court discloses records pursuant to this rule, the court shall issue a protective order governing the disclosure and use of the records. The protective order shall provide that:

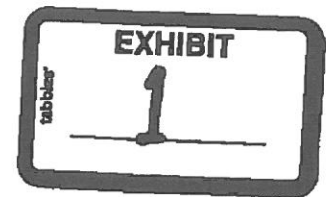
(i) the attorney discipline office shall not disclose such records to any person except as necessary in connection with the prosecution or defense of the disciplinary matter;

(ii) any person to whom disclosure is made shall acknowledge in writing prior to the disclosure that he or she has been made aware of and agrees to comply with the protective order;

(iii) at the conclusion of the disciplinary proceeding, each party shall return to the attorney discipline office that party's copy of the records, whereupon the attorney discipline office shall destroy said records; and

(iv) thereafter, the attorney discipline office shall submit an affidavit to the court stating that said records have been destroyed. The Court may modify the foregoing terms of a protective order, or impose such additional terms as may be necessary in a particular case.

(G) Any and all confidential documents and confidential information obtained by the attorney discipline office pursuant to this rule shall be subject to a protective order, as set forth in section (F) of this rule, and shall be available to the respondent in a disciplinary matter, to the adjudicatory bodies of the attorney discipline system, and to the attorney discipline office's and respondent's potential or actual witnesses, including those witnesses designated as experts, as part of formal and informal disciplinary proceedings. To the extent confidential documents or confidential information obtained pursuant to this rule are utilized during a disciplinary hearing or other proceeding, such hearing or proceeding shall be closed to the public during any disclosure of, testimony or discussion involving the confidential document or confidential information. Such confidential records shall otherwise remain sealed and shall not, absent further court order, become part of the public file maintained by the attorney discipline office.



# **Massachusetts Supreme Judicial Court Rules**

## **Supreme Judicial Court Rule 4:01: Bar discipline**

### **Section 22. Subpoena power**

(1) Upon request by the bar counsel or a respondent lawyer for testimony or the production of evidence at a hearing, or upon request by the bar counsel for testimony or the production of evidence at any stage of an investigation, witnesses may be summoned by subpoenas issued at the direction of a Board member, the chair of a hearing committee, or a special hearing officer. Witnesses shall be examined under oath or affirmation. Testimony may be taken by a hearing committee, a special hearing officer, or a hearing panel outside the Commonwealth if the ends of justice so require. Where appropriate, testimony may be taken within or without the Commonwealth by deposition or by Commission. So far as practicable a stenographic, electronic, or videotape record shall be made and preserved for a reasonable time.

(2) Whenever a subpoena is sought in this state pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, and where the issuance of a subpoena has been duly approved under the law of the other jurisdiction, a member of the Board may issue a subpoena as provided in this section to compel the attendance of witnesses and production of documents.



### **Rule 37(14)(b) Reinstatement Following Suspension of More Than Six Months.**

#### **Background**

Rule 37(14), which governs procedures for attorneys who seek reinstatement (following suspension), or readmission (following disbarment) was significantly revised several years ago. It was broken up into three sections: Rule 37(14)(a) addresses reinstatement after a suspension of six months or less, Rule 37(14)(b) addresses reinstatement after a suspension of over six months, and Rule 37(14)(c) addresses readmission after a disbarment or a resignation while under disciplinary investigation.

Rule 37(14)(b) references a “reinstatement form” as a required filing for an applicant seeking reinstatement. This is a very common requirement in most disciplinary jurisdictions when an applicant seeks to practice law after a suspension or disbarment. Such forms request detailed information about an applicant. Examples from other jurisdictions (Massachusetts, Maine, and Hawaii) are attached hereto as Exhibits 2-4.

However, the reinstatement form was never actually created in New Hampshire. Since the time of the Rule’s amendment, several applicants have applied for reinstatement, inquired about the “form,” only to be told there is none. Disciplinary Counsel Sara Greene can update the Committee further about these issues at the next meeting.

The ADO would like the Rules Advisory Committee to appoint a working subcommittee to draft a proposed reinstatement form for the Committee’s consideration and ultimately the Court’s approval. Supreme Court Clerk Tim Gudas advises that he would like to be part of the subcommittee.

The proposed amendment to this rule will require that any applicant have taken and passed the Multistate Professional Responsibility Examination (MPRE) *within one year* of a motion for reinstatement. There is currently no such time requirement; the current rule requires only that the applicant have passed the MPRE “after entry of the order of suspension.” That means an applicant could be suspended in 2021, take and pass the MPRE in 2022, and apply for reinstatement in 2040, relying on an results from an ethics test taken over 15 years prior. If an applicant’s burden under Rule 37(14)(b) is to demonstrate by clear and convincing evidence, *inter alia*, that (s)he has requisite “learning in the law,” the passing of the MRPE should be reasonably close in time to the request for reinstatement.

#### **Current Rule:**

- (1) An attorney suspended by the court for misconduct, other than for disability, for more than six months shall be reinstated only upon order of the court. No attorney may petition for reinstatement until the period of suspension has expired.
- (2) Petition. An attorney who seeks reinstatement following suspension of more than six months shall file a petition for reinstatement with the court. The petition shall be accompanied

by a completed **reinstatement form** and the requisite filing fee. The petition shall be under oath and shall:

- (A) specify with particularity the manner in which the petitioner has fully complied with the terms and conditions set forth in all prior disciplinary orders; and
- (B) certify that the petitioner has taken the Multistate Professional Responsibility Examination after entry of the order of suspension, and has received a passing grade as established by the board of bar examiners.

(3) Initial Review of Petition and **Reinstatement Form**. The court will review the petition and reinstatement form to determine whether the certifications required by subsection (2) of this rule have been provided and whether the reinstatement form is complete. If so, the court shall refer the petition and reinstatement form to the professional conduct committee, and shall provide a copy of the petition and reinstatement form to the attorney discipline office.

(4) Publication of Notice of Petition. If the court refers the petition to the professional conduct committee, the professional conduct committee shall cause a notice to be published in a newspaper with statewide circulation, a newspaper with circulation in the area of the petitioner's former primary office, and in the New Hampshire Bar News, that the petitioner has moved for reinstatement. The notice shall also be posted on the judicial branch website. The notice shall invite anyone to comment on the petition by submitting said comments in writing to the professional conduct committee within twenty (20) days of publication. All comments shall be made available to the petitioner. Where feasible, the professional conduct committee shall give notice to the original complainant.

(5) Hearing. Upon receipt of the petition, the professional conduct committee may either recommend reinstatement or refer the petition to the hearings committee for prompt appointment of a hearing panel.

(A) The hearing panel chair shall conduct and hold a prehearing conference within thirty (30) days of the appointment of the hearing panel.

(B) The hearings committee shall conduct a hearing within 120 days of the appointment of the hearing panel.

(C) The petitioner shall bear the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competence, and learning in the law required for admission to practice law in this State and that the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive to the public interest.

(D) Attorneys from the attorney discipline office may participate in the hearing to present evidence and to cross-examine the petitioner and any witnesses.



- (E) At the conclusion of the hearing, the hearing panel shall promptly file with the professional conduct committee a report containing its findings and recommendations and the record of the proceedings.
- (6) Review by the Professional Conduct Committee. Following receipt of the report, the professional conduct committee shall:
- (A) review the report of the hearing panel and the record;
  - (B) allow the filing of written memoranda by disciplinary counsel and the petitioner;
  - (C) review the hearing transcript;
  - (D) hold oral argument if requested by a party or ordered by the Committee; and
  - (E) file its own findings and recommendations with the court, together with the record, and provide a copy of the recommendations and findings to the petitioner.
- (7) Final Order by the Court. Following receipt of the recommendation and the record from the professional conduct committee:
- (A) the court shall notify the petitioner and disciplinary counsel that they must, within 30 days of the court's order, identify any legal or factual issues the parties wish the court to review;
  - (B) if neither party identifies an issue for review, the court may act upon the recommendations without further proceedings;
  - (C) if either party identifies an issue for review, the court may issue a scheduling order setting forth a briefing schedule;
  - (D) the court shall, after filing of any briefs and oral arguments, make such order as justice may require.

**Proposed Rule:**

- (1) An attorney suspended by the court for misconduct, other than for disability, for more than six months shall be reinstated only upon order of the court. No attorney may petition for reinstatement until the period of suspension has expired.
- (2) Petition. An attorney who seeks reinstatement following suspension of more than six months shall file a petition for reinstatement with the court. The petition shall be accompanied by a completed **reinstatement form** and the requisite filing fee. The petition shall be under oath and shall:
- (A) specify with particularity the manner in which the petitioner has fully complied with the terms and conditions set forth in all prior disciplinary orders; and
  - (B) certify that the petitioner has taken the Multistate Professional Responsibility Examination after entry of the order of suspension, and within one year of the filing of the

petition for reinstatement and has received a passing grade as established by the board of bar examiners.

(3) Initial Review of Petition and **Reinstatement Form**. The court will review the petition and reinstatement form to determine whether the certifications required by subsection (2) of this rule have been provided and whether the reinstatement form is complete. If so, the court shall refer the petition and reinstatement form to the professional conduct committee, and shall provide a copy of the petition and reinstatement form to the attorney discipline office.

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(B) allow the filing of written memoranda by disciplinary counsel and the petitioner;



- (C) review the hearing transcript;
- (D) hold oral argument if requested by a party or ordered by the Committee; and
- (E) file its own findings and recommendations with the court, together with the record, and provide a copy of the recommendations and findings to the petitioner.

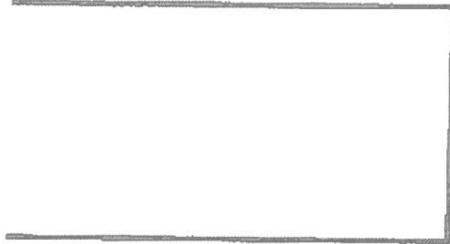
(7) Final Order by the Court. Following receipt of the recommendation and the record from the professional conduct committee:

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- (B) if neither party identifies an issue for review, the court may act upon the recommendations without further proceedings;
- (C) if either party identifies an issue for review, the court may issue a scheduling order setting forth a briefing schedule;
- (D) the court shall, after filing of any briefs and oral arguments, make such order as justice may require.



**COMMONWEALTH OF MASSACHUSETTS**  
**BOARD OF BAR OVERSEERS**  
**OF THE SUPREME JUDICIAL COURT**

**APPENDIX. APPLICATION FOR REINSTATEMENT**



**In Re Application for Reinstatement  
AS AN ATTORNEY AT LAW  
S.J.C. No.**

**REINSTATEMENT QUESTIONNAIRE PART I**

**Filing and Service Instructions**

In accordance with the provisions of Sections 3.62 and 3.63 of the Rules of the Board of Bar Overseers, the petitioner shall complete the Reinstatement Questionnaire setting forth fully and accurately the information requested under the pains and penalties of perjury. Part I of this Questionnaire, as filed with the Board, shall become a part of the record in the reinstatement proceeding.

1. **File with the Court.** The petitioner must file the Petition for Reinstatement with the Clerk of the Supreme Judicial court for Suffolk County. The Reinstatement Questionnaire should not be part of this filing.

2. **File with the Board.** When the Petition for Reinstatement is filed with the Court, the petitioner must also file one copy with the Board of Bar Overseers, along with four copies of Part I only of the Reinstatement Questionnaire and a check in the amount of \$500.

3. **Serve Upon Bar Counsel.** When the Petition for Reinstatement is filed with the Board and the Court, the petitioner must also serve one copy on Bar Counsel, along with the originals of Part I and Part II of the Reinstatement Questionnaire.

4. **Supplementation of Responses.** The petitioner is under a duty seasonably to supplement or amend any prior response that the petitioner knows or has come to know (a) was incorrect when made or (b) was correct when made but is no longer true or complete.

**1. Personal Information**

**A. Full Name:**

**C. Telephone Number(s):**

**B. Current Mailing Address**

**D. E-mail address:**

**2. Professional Status**

**A.** List each jurisdiction, court, and tribunal to which you have been admitted to practice with the dates of each admission. State your current status in each jurisdiction listed and state whether or not the jurisdiction was advised of the disciplinary action or transfer to disability inactive status ordered by the Supreme Judicial Court for the Commonwealth of Massachusetts.

**B.** Describe the misconduct that led to your suspension, disbarment, or resignation from the practice of law. If you were transferred to disability inactive status, describe the physical or mental disability which led to your transfer to disability inactive status. Attach to this Questionnaire a copy of the order of disbarment, suspension, acceptance of resignation, or transfer to disability inactive status entered by the Supreme Judicial Court together with the opinion of the Court or the summary published by the Board of Bar Overseers.

**C.** Attach to this Questionnaire a copy of all orders of reprimand, suspension, disbarment, acceptance of resignation, or transfer to disability inactive status entered by any other jurisdiction or tribunal together with the published opinion or summary.

**D.** If the sanction was imposed following the conviction of a crime, attach a copy of the judgment of conviction. Provide the name and address of your probation or parole officer, if any. If you have been discharged from probation or parole, attach the order or certificate of release.

**3. Conduct since Sanction Imposed**

*Unless otherwise specified, this section pertains to conduct during the period of disbarment, suspension, resignation or disability inactive status*

**A.** Describe in detail your occupation or employment and provide the name and address of each employer, together with the name of each of your immediate supervisor(s), a description of each employment and the dates of each, and the reason(s) for leaving;

**(1)** If self-employed, name and address of each business or occupation, together with a description of each such business or occupation and the dates of each;

**B.** List and describe all charitable endeavors, community work, and other activities in which you have engaged which you consider relevant to your current moral character and fitness to practice law.

**C.** State whether any charges, formal or informal, of fraud, malpractice, or errors or omissions were made, or claimed, against you. For each such charge or claim, state the date it was made, the name and current address of the claimant(s), the substance of the claims or charge, the forum where the charges are being or were considered, if any, and its current status.

**D.** List all claims paid by the Clients' Security Board as restitution on your account. As to each claim, list the name of the claimant, the CSB docket number, the amount of the award, the date of the award, and the date of your reimbursement to the Clients' Security Board. This information may be obtained by calling the Clients' Security Board at (617) 728-8700.



Reinstatement Questionnaire, Part I

- E. Describe all financial or other actions taken by you or on your behalf to make restitution or provide other appropriate compensation or payment to persons injured by your professional misconduct. If you have not made restitution, compensation, or payment, please set forth your reasons for not doing so.
- F. Give the date(s) you took the MPRE and attach a certification that you obtained a passing score to this Questionnaire.
- G. List all courses taken by you to acquire or maintain learning in the law and knowledge of your ethical obligations. As to each, list the name of the course, the school or program sponsoring the course, the date or dates of attendance, and, if applicable, the grade you received in the course. Please attach to the Questionnaire certificates of attendance.
- H. List by name and author, if applicable, all periodicals, newspapers, and books to which you have regularly subscribed or which you have read which you believe have assisted you in acquiring or maintaining learning in the law and knowledge of your ethical obligations.
- I. List every civil or administrative action commenced or pending in any jurisdiction in which you were a party or in which you had or claimed an interest, and for each such action list the date on which it was commenced, the case caption, court, and docket number. Provide a summary of the allegations made in each such action, its final disposition if any, and its current status. If judgment entered against you, state the amount of the judgment and whether or not you have paid the judgment.

Reinstatement Questionnaire, Part I

**J. Criminal, Administrative, or Investigative Proceedings.**

(1) List every matter involving you arrest or prosecution in any jurisdiction for any crime, whether felony or misdemeanor. Identify each charge brought, the disposition of the charge, if any, and its current status.

(2) State whether or not you have been a target of a Federal or State investigation into alleged criminal conduct and state whether or not you gave testimony or information to any such authority under a grant of immunity. If so, please identify the authority conducting each investigation; the name, title, and address of the prosecutor conducting each investigation; and the date and the matter in which you testified.

**K.** State whether you have made any application for reinstatement or original admission as an attorney at law in any jurisdiction, or any application for other license requiring proof of good character for its procurement. For each such application, please state the date of the application, the name and address of the authority to whom it was addressed, whether or not any hearing was held in connection with you application, and the disposition thereof.

**L.** List all procedures or inquiries held concerning your standing as a member of any profession or organization, or holder of any license or office, which involved your censure, removal, suspension, revocation of license, or discipline; and as to each such procedure or inquiry, state the dates, facts, and the disposition thereof, and the name and address of the authority in possession of the record thereof.

**4. Practice after Reinstatement**

**A.** Describe your plans for practicing law if you are reinstated. Include the nature of the intended practice; the type and volume of cases you intend or expect to handle; the field or fields in which you intend to concentrate, if any; whether you intend to be a sole practitioner or to be associated with others; the intended location of your practice; your intended procedures for docket control and office management; and your intended procedures for maintaining client and other trust funds.

**B.** Identify by name and address all persons with whom you plan to associate as well as those on whom you intend to rely as mentors, supervisors, monitors, or accountants if you are reinstated. Explain how you expect each person so identified to function or assist you in connection with your practice of law.

**C.** Describe the efforts you have undertaken to be covered by professional liability insurance if you are reinstated and state the results of those efforts.

**D.** List names, address, and telephone numbers of three references, at least two of whom are members in good standing of the Massachusetts Bar, who would recommend your reinstatement to the Bar of this Commonwealth and who would attest to your character and conduct since disbarment or suspension.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Reinstatement Questionnaire, Part I

**6. Personal Statement**

Provide a concise statement of facts to justify your reinstatement to the Bar of this Commonwealth.

I, \_\_\_\_\_, being duly sworn, say

That all of the information contained in the foregoing Reinstatement Questionnaire is true and correct to the best of my knowledge and that I am aware of my obligation to supplement responses as set forth in the filing and service instructions for the Questionnaire Part I;

That I have fully abided by the terms of the order of discipline or disability inactive status; I have not practiced law, identified myself as "Esq." or "Esquire," or otherwise held myself out as an attorney during the term of my disbarment, resignation, suspension, or disability inactive status; I have not listed myself as a lawyer on any sign, letterhead or stationery, or in any directory, or in any electronic or computer-accessed media; I have not engaged in paralegal work during the term of my disbarment, resignation, suspension, or disability inactive status; and I have not been employed by a lawyer in any capacity during said term, except as authorized by the Supreme Judicial Court on [date] or as described above.

\_\_\_\_\_  
(signature)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:



**COMMONWEALTH OF MASSACHUSETTS  
BOARD OF BAR OVERSEERS  
OF THE SUPREME JUDICIAL COURT**



**In Re Application for Reinstatement  
AS AN ATTORNEY AT LAW  
S.J.C. No.**

54

**REINSTATEMENT QUESTIONNAIRE PART II**

**Filing and Service Instructions**

In accordance with the provisions of Sections 3.62 and 3.63 of the Rules of the Board of Bar Overseers, the petitioner shall complete the Reinstatement Questionnaire, setting forth fully and accurately the information requested under the pains and penalties of perjury. Part I of this Questionnaire, as filed with the Board, shall become part of the record in the reinstatement proceeding.

**1. File with the Court.** The petitioner must file the Petition for Reinstatement with the Clerk of the Supreme Judicial court for Suffolk County. The Reinstatement Questionnaire should not be part of this filing.

**2. File with the Board.** When the Petition for Reinstatement is filed with the Court, the petitioner must also file one copy with the Board of Bar Overseers, along with four copies of Part I only of the Reinstatement Questionnaire and a check in the amount of \$500.

**3. Serve Upon Bar Counsel.** When the Petition for Reinstatement is filed with the Board and the Court, the petitioner must also serve one copy on Bar Counsel, along with the originals of Part I and Part II of the Reinstatement Questionnaire.

**4. Supplementation of Responses.** The petitioner is under a duty seasonably to supplement or amend any prior response that the petitioner knows or has come to know (a) was incorrect when made or (b) was correct when made but is no longer true or complete.

**1. Personal Information**

**A. Full Name:**

**C. Social Security Number:**

**A. B. Current Mailing Address and  
Street Address:**

**D. Date of Birth:**

**E. Marital Status:**

**Reinstatement Questionnaire, Part II**

**F For each of your dependents, state the full name, address, date of birth, and relationship:**

**G. List all residences maintained by you during the period of discipline or disability inactive status, with the names and addresses of landlords, if any.**

**2. Financial Information**

**A. List your gross monthly salary, commissions, or earnings from each employment, occupation, or business that you have engaged in during the period of your disbarment, suspension, resignation, or disability inactive status.**

**B. List your monthly income from all sources other than employment, occupation, or business, including gifts and loans, and the sources from which all such earnings and income were derived, during the period of your disbarment, suspension, resignation, or disability inactive status, or during the eight (8) years preceding the filing of the petition for reinstatement, whichever is less.**

**C. List all monthly expenses during the period of your disbarment, suspension, resignation, or disability inactive status, or during the eight (8) years preceding the filing of the petition for reinstatement, whichever is less.**

**D. Are you subject to an order or agreement to pay child and /or spousal support? If yes, attach a copy of the support order or agreement and proof that such payments are current.**

**E. Since the date of your disbarment, suspension, resignation, or transfer to disability inactive status, have you commenced proceedings in any capacity in bankruptcy or given an assignment for the benefit of creditors? If so, please give the case name(s), docket number(s), the name and address of assignee, and identify the court(s) where the proceedings related to such action were commenced, and describe the status of each.**

## Reinstatement Questionnaire, Part II

### F. Tax Returns

- (1) State whether or not you have filed all State and Federal income tax returns for the previous eight (8) years.
- (2) Attach to Part II (not Part I) of this Questionnaire copies of all Federal income tax returns filed by you or on your behalf in any capacity for eight (8) years preceding the filing of the petition for reinstatement or for all tax years including and since the date of your suspension, disbarment, resignation, or transfer to disability inactive status, whichever is less.
- (3) State whether or not you will provide the Board or Bar Counsel upon demand the authorization required by governmental taxing authorities to release the original returns.

### G. Assets

- (1) List all real estate which you owned or record or in which you have or had a beneficial interest at any time from the date of the order of disbarment, resignation, suspension, or transfer to disability inactive status to the present. For each such property, list its location, and current fair market value, or, if disposed of, the fair market value as of the date of the order of discipline or transfer to disability inactive status, the date of its disposition, and the consideration paid.
- (2) List all other assets of a value of or exceeding \$1,000 to which you have or held title or in which you have had a beneficial interest at any time during the period of disbarment, resignation, suspension, or disability inactive status. For each, identify the nature of the asset, its location, and its current value, or, if disposed of, the value of the asset as of the date of the order imposing discipline or transferring you to disability inactive status, the date of disposition of the asset, and the amount received for it.

### H. Financial Obligations

- (1) List all your financial obligations not previously listed, above, as of the date of the filing of the petition for reinstatement. For each such obligation, list the name and address of the creditor or obligee, the amount of the obligation, the date the obligation was incurred, whether the obligation is fixed or disputed, and whether any agreement or judgment exists regarding the obligation. Please attach a copy of any such agreement or judgment. If no writing exists regarding the agreement for payment, please provide the name and address of the individual with whom the agreement was made and set forth the terms of the agreement and the date on which it was made. If the creditor is either the Massachusetts Department of Revenue (DOR) or the Internal Revenue Service (IRS),

## Reinstatement Questionnaire, Part II

please provide a release on a form approved by the IRS and the DOR which will permit the Office of Bar Counsel and the Board of Bar Overseers to obtain information regarding your tax or support obligations.

(2)(a) List the names of all financial institutions in which you are or were signatory to accounts, safe deposit boxes, deposits or loans during the period of discipline or disability inactive status.

(b) Please state the number of each account, box, deposit, or loan; the date each account, box, deposit, or loan was opened, approved, or made; and the date each account, box, or loan was closed, discharged, or paid.

### 3. Professional Status Information

List the names and addresses of all persons who complained or testified against you in the proceeding which resulted in your resignation, disbarment, or suspension in this Commonwealth and in any other jurisdiction or court.

### 4. Emotional Disorder/Addiction/Substance Abuse Information

If you have been incapacitated from employment or from carrying out employment due to any physical or emotional impairment, alcoholism, use of prescription or non-prescription drugs, or other reason since the effective date of the discipline; or if you are seeking reinstatement from an order transferring you to disability inactive status; or if you raised in mitigation during any proceeding regarding your license to practice law or any other profession a claim that your physical or mental condition caused or contributed to the alleged misconduct.

Describe the nature of the impairment or disability, its effect on your ability to obtain or maintain employment, and the treatment sought to address the impairment or disability. Provide the name and address of each institution and provider who has provided or who is providing treatment or consultation to you, the dates of treatment, and your current diagnosis or prognosis.

### Additional Statement:

Provide a statement as to any other matter not previously described in the Questionnaire which should, in the interest of full disclosure, be brought to the attention of the Board of Bar Overseers in considering your petition for reinstatement.

I, \_\_\_\_\_, being duly sworn, state as follows:

That all of the information contained in the foregoing Reinstatement Questionnaire is true and correct to the best of my knowledge and that I am aware of my obligation to supplement responses as set forth in the filing and service instructions for the Questionnaire Part II; That I authorize all providers who have examined or treated me and all institutions in which I have been examined or treated for any physical or mental disorder or addiction since the date of the order imposing discipline or transferring me to disability inactive status to provide to agents and employees of the Office of Bar Counsel and the Board of Bar Overseers all hospital and

Reinstatement Questionnaire, Part II

medical records, reports, treatment notes, and information regarding care, consultation, evaluation, diagnosis and prognosis, and I will cooperate with the Office of Bar Counsel and the Board of Bar Overseers in providing such further information and authorizations as required to release information to the Office of Bar Counsel and the Board of Bar Overseers;

That I further authorize all financial institutions listed in response to question 2(H)(2) to provide to agents or employees of the Office of Bar Counsel and the Board of Bar Overseers copies of statements of account, canceled checks, box records, and loan records, and I will cooperate with the Office of Bar Counsel and the Board of Bar Overseers in providing such further information and authorizations as required to release information to the Office of Bar Counsel and the Board of Bar Overseers.

\_\_\_\_\_  
(signature)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_  
Notary Public

(SEAL) My commission expires: \_\_\_\_\_

**REINSTATEMENT QUESTIONNAIRE**  
**M. BAR R. 29(c)**



Pursuant to Maine Bar Rule 29(c), in order to complete processing of petitions for reinstatement to practice law the petitioner shall complete this questionnaire understanding that complete and accurate answers are required. This completed questionnaire shall be incorporated into the petition and become a part of the record in any reinstatement hearing(s) conducted under Maine Bar Rule 29(g).

**PLEASE TYPE OR PRINT ALL ANSWERS AND INFORMATION FOR ITEMS #1- #20**

**1. PERSONAL INFORMATION**

Name: \_\_\_\_\_ Bar No. \_\_\_\_\_

Other names used past or present: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Marital Status: \_\_\_\_\_

Residential Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Numbers: ( ) \_\_\_\_\_ Cell: ( ) \_\_\_\_\_

Email Address: \_\_\_\_\_

Current (or most recent) Employer's Name and Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Numbers: ( ) \_\_\_\_\_ Cell: ( ) \_\_\_\_\_

Email Address: \_\_\_\_\_

**2. EDUCATION**

COLLEGES AND LAW SCHOOLS ATTENDED	GRADUATION DATE	DEGREES AWARDED
-----------------------------------	-----------------	-----------------

_____	_____	_____
_____	_____	_____
_____	_____	_____

If no degree was awarded, what was the reason for leaving that institution?

\_\_\_\_\_



**3. JURISDICTIONS WHERE YOU HAVE BEEN ADMITTED TO PRACTICE LAW**

**JURISDICTION**

**DATE OF ADMISSION**


**4. OCCUPATION FOLLOWING PERIOD OF DISBARMENT/SUSPENSION**

**EMPLOYER**

**HIRE DATE**

**SUPERVISOR**

**TERMINATION DATE  
& REASON YOU LEFT**


**Responses to Items 5 – 17 shall be provided on  
separate documents and attached to this questionnaire.**

- 5. List any incapacity for holding employment caused by physical reasons, alcoholism, drug addiction or mental illness since the date of your disbarment/suspension which could affect your present fitness to practice law.**
- 6. Provide a statement showing your approximate monthly earnings and other income, and the sources from which all such earnings and income were derived during the period following your disbarment/suspension.**
- 7. Provide a statement showing all residences maintained by you during the period following your disbarment/suspension, with the names and addresses of landlords, if any.**
- 8. Provide a statement showing the dates, general nature, and final disposition (with copies) of every civil action or administrative hearing, in any jurisdiction, during the period following your disbarment/suspension in which you were either a party, plaintiff, or defendant or in which you had claimed an interest, together with dates of filing of complaints, titles of courts and the names and addresses of attorneys for said parties, the trial judge or judges, and the names and addresses of all witnesses who testified in such actions.**
- 9. Provide a statement showing all your outstanding financial obligations at the date of the filing of the petition for reinstatement together with the dates when such obligations were incurred and the names and addresses of all creditors.**

10. Provide a statement showing the dates, general nature and ultimate disposition (with copies) of every matter involving your summons, arrest or prosecution in any jurisdiction during the period following your disbarment/suspension for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecutors and trial judges.
11. Provide a statement as to whether or not any applications by you were made during the period following your disbarment/suspension for reinstatement or original admission as an attorney at law in any jurisdiction, or any applications for license requiring proof of good character for its procurement and as to each such application, the dates, names and addresses of the authority to whom it was addressed and the disposition thereof.
12. Provide a statement concerning any procedure of inquiry, during the period following your disbarment/suspension, concerning your standing as a member of any profession or organization, or as holder of any license or office, and the name and address of the authority in possession of the record thereof. Provide a copy of any decision or order issued as a result of any such matter, including any and all written document(s) causing or in any way relating to or explaining any termination.
13. Provide a statement as to whether or not any charges for fraud were made or claimed against you during the period following your disbarment/suspension whether formal or informal, together with the dates and names and addresses of persons making such charges.
14. Provide a statement of any financial or other action taken by you in the nature of restitution or other appropriate relief to individuals injured by your attorney misconduct for which you were disbarred/suspended.  
*NOTE: Attorneys petitioning for reinstatement solely from an administrative non-disciplinary suspension may disregard question 14.*
15. Provide a concise and informative statement of facts concerning the issues and factors set forth in Maine Bar Rule 29(e) which you believe justify and support your reinstatement to the bar of the state of Maine.
16. State what evidence will be presented by you to demonstrate that you have the competency, proficiency in law and the moral qualifications required for admission to practice law in Maine and that your resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice or the public interest.
17. If reinstated, list all jurisdictions in which you intend to practice to law.
18. List any discipline or other sanction of any kind involving your misconduct or improper performance that was imposed upon you by any agency in any jurisdiction subsequent to your disbarment/suspension:<sup>1</sup>

JURISDICTION	MISCONDUCT	OFFICIAL ACTION	ACTION DATE
_____	_____	_____	_____
_____	_____	_____	_____

19. List names, addresses and telephone numbers of four (4) separate and unrelated references who would testify or comment as to your character and conduct since the period following your disbarment/suspension.

<sup>1</sup> A certified copy of any official action taken as a result of misconduct in any jurisdiction shall be attached to this questionnaire.

Name: \_\_\_\_\_ Telephone \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_ Telephone \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_ Telephone \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_ Telephone \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**20. Provide a statement on a separate sheet concerning any other matter which you desire to be considered.**

**CERTIFICATION**

I affirm that the facts as stated above and within the attached (# ) sheets are all accurate and true statements.

Dated: \_\_\_\_\_

Signature of Petitioner

Subscribed and sworn to be true before me at \_\_\_\_\_

City/State

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Day Month Year

Signature of Notary

My Commission Expires \_\_\_\_\_  
Notary stamp preferred.

[note to Applicant: complete form and replace any matters in [brackets] with responsive information.]

[further note: this Petition is to be public record; the separate Answers document is sealed/confidential – per DBR 20(g), it is Applicant's responsibility to identify, and provide unredacted copies of, any exhibits that contain HCRR confidential information, along with redacted copies of the same documents for inclusion in the public record.]

**DISCIPLINARY BOARD  
HAWAII SUPREME COURT**



In re Application for Reinstatement of:

[NAME], Applicant

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

[NAME],

Respondent.

DB case no.: \_\_\_\_\_

*Underlying discipline info:*

ODC case no(s): \_\_\_\_\_

SCAD case no.: \_\_\_\_\_

**PETITION FOR REINSTATEMENT**

[Name]

[Address]

[Phone number]

[email address (optional)]

[Bar number]

**DISCIPLINARY BOARD  
HAWAII SUPREME COURT**

In re Application for Reinstatement of:

[NAME], Applicant

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

[NAME],

Respondent.

DB case no.: \_\_\_\_\_

*Underlying discipline info:*

ODC case no(s): \_\_\_\_\_

SCAD case no.: \_\_\_\_\_

**PETITION FOR REINSTATEMENT**

[Name], ("Applicant"), respectfully submits this Petition pursuant to Rules of the Hawai'i Supreme Court ("RSCH") Rule 2.17, and Disciplinary Board Rules ("DBR"), Rule 30, and respectfully requests that [he/she] be reinstated to the practice of law.

1. The date of entry of the Order [type and duration of discipline] is \_\_\_\_\_
2. The date of entry of the [title of document] from the practice of law before the U.S. District Court for the District of Hawai'i is [date].
3. Attached to this Petition and made a part hereof as Exhibit A is a certified copy of the Order [type and duration of discipline] issued by the Supreme Court of Hawai'i in Office of Disciplinary Counsel v. [Name], SCAD-\_\_ - \_\_\_\_, and as Exhibit B is a certified copy of the Order of the U.S. District Court for the District of Hawai'i. [include as additional exhibits any other orders of discipline imposed by any other jurisdictions to which Applicant has been subject ]
4. The period required by RSCH Rule 2.17(b) has elapsed as the [type and duration of discipline] Order became effective as of [date], and at least [time period required under RSCH Rule 2.17] has elapsed.

5. Applicant has complied with the provisions of RSCH Rule 2 and the Disciplinary Board Rules. Applicant mailed notices and submitted an Affidavit as required. Attached as Exhibit C is a copy of the Affidavit of [Name] filed on [date] submitted relative to RSCH Rule 2.16.

6. Applicant has complied with the provisions of the Order [type and duration of discipline] and any other requirements imposed by the Hawai'i Supreme Court.

7. As to the facts and circumstances justifying reinstatement, Applicant incorporates the information contained in the attached Questionnaire and the Exhibits, together with the following summary. There are numerous facts and circumstances demonstrating that sufficient and reasonable justification exists to permit Applicant back into the community of lawyers.

THEREFORE, Applicant respectfully requests that reinstatement proceedings be instituted and that Applicant be reinstated to the practice of law on the basis that the facts and circumstances demonstrate, in this particular case, that Applicant is rehabilitated, fit to practice law, and has the necessary competence and skill to practice law in conformity with the standards required.

DATED: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Applicant



**DISCIPLINARY BOARD  
HAWAII SUPREME COURT**

In re Application for Reinstatement of:

[NAME], Applicant

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

[NAME],

Respondent.

CONFIDENTIAL

DB case no.: \_\_\_\_\_

*Underlying discipline info:*

ODC case no(s): \_\_\_\_\_

SCAD case no.: \_\_\_\_\_

**VERIFIED ANSWERS TO QUESTIONNAIRE OF [NAME] IN RELATION TO  
INSTANT PETITION FOR REINSTATEMENT TO THE PRACTICE OF LAW**

Applicant, [Name], hereby submits this Verified Answers to Questionnaire pursuant to DBR Rule 30, in support of the instant Petition for Reinstatement to the bar. This information is required by RSCH Rule 2.17(b)(6) and is to be submitted under seal.

Applicant hereby attests to and submits the following information:

1. Applicant's current residence address and telephone number.

Answer: \_\_\_\_\_

2. The address of each of Applicant's places of residence during the period of discipline, along with the dates which Applicant resided at each address.

Answer: \_\_\_\_\_

3. The name, address and telephone number of each of Applicant's employers, associates, or partners during the period of discipline, including the dates of each employment and positions held.

Answer: \_\_\_\_\_

4. The names of all supervisors and the reasons for leaving the employment, association, or partnership.

Answer: \_\_\_\_\_

5. The case caption, general nature and disposition of every civil and criminal action initiated, pending, or resolved during the period of discipline to which the Applicant was a party or claimed an interest.

Answer: \_\_\_\_\_

6. A statement of monthly earnings and other income during the period of discipline, including the source of the earnings/income.

Answer: \_\_\_\_\_

7. A statement of assets and financial obligations during the period of discipline, including the dates acquired or incurred and the names and addresses of all creditors.

Answer: \_\_\_\_\_

8. A statement verifying that Applicant has made court-ordered restitution and has reimbursed the Disciplinary Board for all costs ordered, including those incurred under RSCH Rule 2.20, if any, and the Lawyers' Fund for Client Protection of the Hawai'i Supreme Court for monies paid out on account of the Applicant's conduct, together with interest at the Hawai'i statutory judgment rate, and the amounts which have been paid.

Answer: \_\_\_\_\_

9. A statement as to whether during the period of discipline the Applicant applied for reinstatement in any other jurisdiction and the results of any such proceedings.

Answer: \_\_\_\_\_

10. A statement identifying any other licenses or certificates for business or occupation applied for during the period of discipline.

Answer: \_\_\_\_\_

11. The names and addresses of all financial institutions at which Applicant had, or was a signatory to, accounts, safety deposit boxes, deposits or loans during the period of discipline.

Answer: \_\_\_\_\_

(Note: written authorization for the Office of Disciplinary Counsel to secure any financial records relating to those accounts, safety deposit boxes, deposits, or loans is required pursuant to RSCH Rule 2.17(b)(6)(L).) Applicant is required to include an executed authorization with this Application.

12. Copies of Applicant's state and federal income tax returns for the three years preceding the period of discipline and during the period of discipline. (Written authorization for the

Office of Disciplinary Counsel to secure certified copies of the originals is required pursuant to RSCH Rule 2.17(b)(6)(M).)

Answer: \_\_\_\_\_

(Note: Applicant is required to submit a completed IRS form 4506 to the Internal Revenue Service requesting that copies of the required returns be sent to Petitioner. Applicant is also required to submit Hawai'i Tax form L-72 to the State of Hawai'i Department of Taxation requesting that copies of the required returns be sent to Petitioner. Finally, Applicant is required to enclose copies of these submitted requests and any equivalent document from any state, territory or U.S. possession to which Applicant has filed tax returns, with this Application.

13. Any additional information which Applicant believes to be pertinent to a demonstration of rehabilitation, fitness to practice law, competence, and compliance with all applicable disciplinary orders and rules (including, but not limited to, any community activities in which Applicant is involved, any educational activities which Applicant has undertaken, as well as any other activities relevant to a consideration of whether Applicant should be reinstated to the practice of law).

Answer: \_\_\_\_\_

#### VERIFICATION

I, [Name] hereby declare under penalty of perjury that the responses set forth in the foregoing Questionnaire of Applicant are in all respects true and correct.

DATED: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Applicant

Subscribed and sworn to before  
me this [date].

\_\_\_\_\_  
[Name of Notary Public]  
Notary Public, State of Hawai'i  
My commission expires: [date]

**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.

(ba) 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.

(cb) 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.

(de) 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 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 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.

(i~~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, 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.

(j~~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.

(k~~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.

(l~~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.

(m~~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.



(~~n~~<sup>o</sup>) 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~~<sup>a</sup>) 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)~~



**New Hampshire Supreme Court  
Professional Conduct Committee**  
*a committee of the attorney discipline system*

David M. Rothstein, Chair  
Heather E. Krans, Vice Chair  
Elaine Holden,\* Vice Chair  
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***Donais, Craig S. advs. Attorney Discipline Office - 2020-011***

**Order on Respondent's Motion to Reconsider  
Order on Grievant's Request to Inspect File**

At its meeting on October 20, 2020, the Professional Conduct Committee ("PCC") deliberated two matters. One was a motion by the Respondent, Craig S. Donais, for reconsideration of a prior order of the Committee. Mr. Donais had asked the Committee to terminate the proceedings now before the Complaint Screening Committee ("CSC"), and the PCC denied the motion. Another concerned a request by the Grievant, Natalie Anderson through her representative, Andre Blasor, to inspect a previously dismissed matter involving Mr. Donais which has not yet been destroyed pursuant to Supreme Court Rule 37(20)(c).

**Motion to Reconsider**

Mr. Donais asks the PCC to reconsider its decision to deny his motion to terminate the proceedings before the CSC. Ms. Anderson, through Mr. Blasor, objects.

In his initial motion, and the motion to reconsider, Mr. Donais alleges

that the CSC has abdicated its responsibility to screen the pending grievance. He cites the amount of time the grievance has been before the CSC, which is roughly a year, and the extensions of time the CSC has granted the Grievant. Mr. Donais also refers to the voluminous filings of Mr. Bisasor on behalf of Ms. Anderson. Mr. Bisasor counters that the PCC lacks authority to remove the matter from the CSC, and states that there is not a record on which the PCC could conclude that it should remove the matter from the CSC.

The majority of grievances are resolved by the CSC within ninety days of when they were received by the Attorney Discipline Office ("ADO"). Some take longer to resolve. This matter is taking much longer. To the extent that the PCC has the authority to grant Mr. Donais the relief he seeks, the PCC lacks a basis in the record Mr. Donais has placed before it to grant that relief. The PCC does, however, note that the charge of the CSC is to determine whether there is a reasonable likelihood that Ms. Anderson's grievance alleges professional misconduct by clear and convincing evidence, Sup. Ct. R. 37(5)(a)(7), and that it should aim to make that determination as expediently as it reasonably can.

The motion to reconsider is denied.

#### Access to File

According to the pleadings, Mr. Donais was the Respondent in a matter dismissed three years ago. Neither Ms. Anderson nor Mr. Bisasor were involved in that matter. Nonetheless, Ms. Anderson requested the opportunity to inspect the file, and although the matter was dismissed more than three

years ago, it had not been destroyed, pursuant to Supreme Court Rule 37(20)(c). The PCC ordered that it not be destroyed and sought input on the means by which Ms. Anderson could inspect it. This issue is complicated by the fact that the ADO is closed, by virtue of the Supreme Court's COVID-19 emergency order, that is, members of the public are not generally authorized to enter the ADO.

The PCC considered whether, in light of the present situation, it might be appropriate to grant Ms. Anderson access to an electronic copy of the file. It asked the ADO to weigh in on that option. The ADO took no position, but indicated it is possible to allow electronic access. Mr. Bisasor, on behalf of Ms. Anderson, seeks an electronic copy of the file. Mr. Donais objects. His objection focuses the PCC's attention on Supreme Court Rule 37(20)(b), which states that such a file is to be made "available for public inspection." Mr. Donais argues that there is no authority for a person to possess a copy of the file, electronic or otherwise; it can, as the language states, be inspected. Further, Mr. Donais argues, and the ADO agrees, that the dismissed case has no apparent relevance to the matter pending before the CSC.

The PCC has no basis to determine whether the older case is relevant, nor is that a material issue. As the PCC reads the confidentiality rules, relevance is not a requisite to the ability to inspect a file. However, the PCC agrees with Mr. Donais that the rule does not clearly authorize the person seeking to inspect the file to possess it, copy it, or save it to their computer. Accordingly, the PCC will not allow the ADO to transmit the file to Ms.

Anderson or Mr. Bisasor by electronic means.

Within fifteen days of this order, the ADO shall afford Mr. Donais access to the dismissed case to determine whether he believes any material should be redacted. For the sake of expediency – and because Mr. Donais is not a member of the public seeking to inspect the file – the ADO can transmit the file to Mr. Donais by electronic means if he or his counsel request.

Within thirty days after Mr. Donais reviews the file, the ADO shall afford Ms. Anderson the opportunity to inspect it. This inspection shall occur by appointment at the ADO. Mr. Bisasor and Ms. Anderson must follow all orders and directives of the ADO, including all COVID-19 safety precautions, and any security measures deemed appropriate by the ADO.

The file may be inspected. Mr. Bisasor and Ms. Anderson may look at it. They may take notes. They may not copy it, photograph it, scan it, or otherwise attempt to remove the file or an image of the file from the ADO.

If Mr. Bisasor or Ms. Anderson wish to present any portion of this file to the CSC, they may, within seven days of their inspection, file a motion before the PCC explaining why any portion of this file should be provided to the CSC. Mr. Donais shall have ten days to object to any such motion.

*/s/ David M. Rothstein*

Date: October 28, 2020

David M. Rothstein  
Chair

cc: Brian R. Moushegian, General Counsel  
Mark P. Cornell, Deputy General Counsel  
Russell F. Hilliard, Esquire  
Andre Bisasor  
Complaint Screening Committee



NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE  
*a committee of the attorney discipline system*



David M. Rothstein, Chair  
Heather E. Krans, Vice Chair  
Elaine Holden, \* Vice Chair  
\* non attorney member  
Barbara J. Guay, Legal Assistant

*Donais, Craig S. advs. Attorney Discipline Office 2020-011*

Order

The issue before the Committee is the request of the Complainant, Natalie Anderson, through her attorney-in-fact, Andre Bisasor, to review a file located at the Attorney Discipline Office. The file relates to a grievance against Attorney Donais that was dismissed.

In a prior order, the Committee stated that the Complainant and Mr. Bisasor could inspect the file at the ADO at a mutually agreeable time. Emails indicate that the ADO tried to make these arrangements. Mr. Bisasor, instead of seizing the opportunity to review the file, responded that medical conditions and his distance from the ADO in Concord prevented this from occurring.

The Committee invited the ADO and Attorney Donais to weigh in on the matter. The ADO suggested that the file could be sent to the Complainant via an encrypted PDF. Attorney Donais objected to such an accommodation on three grounds. First, as he had previously argued, the Supreme Court Rules do not allow the ADO to send a copy of the file outside the office in any format. Second, the Complainant offered nothing to substantiate the claim of a medical

condition. Third, the Complainant does not live far from Concord and had apparently travelled a greater distance in furtherance of unrelated litigation.

The Committee discussed this matter at its meeting on November 17, 2020. It found, as it had before, that under Supreme Court Rule 37(20)(b), this file is available for "public inspection." It affirmed its prior decision that "inspection" means the file can be viewed at the ADO. The rule strikes an appropriate balance between the public's ability to inspect the file and the attorney's rights of confidentiality with respect to the documents in it. The Committee does not construe it to mean that the file can be transmitted to a member of the public for inspection outside the office, via encrypted PDF, or otherwise.

To the extent that the Complainant seeks to make a case for an exceptional accommodation or exemption, the Committee was not persuaded. Neither the Complainant nor her attorney-in-fact described a medical condition that would prevent their travel to Concord. The Committee noted that Mr. Biasor apparently lives in Chelmsford, Massachusetts, which is closer to Concord (approximately fifty miles) than are several towns and cities in New Hampshire. A New Hampshire resident who lives in Keene or Portsmouth would have to travel a greater distance to inspect a file at the ADO. Moreover, the Complainant instituted attorney discipline proceedings against Attorney Donalds knowing that if the complaint was docketed, and referred to Disciplinary Counsel, and scheduled for a hearing on its merits, her and Mr. Biasor would have had to travel to Concord to prosecute it. Indeed, attorneys,

complainants and witnesses from New Hampshire and Massachusetts do this all the time.

For these reasons, the Committee's prior order on access to this file stands. The Complainant and Mr. Bisasor can access to the file under the terms of that order.

There is an ancillary question of whether proceedings before the Screening Committee are stayed. This Committee was asked to intercede in the matters before the Screening Committee, and it declined to do so. Whether a matter before the Screening Committee is stayed is for that committee to decide.

/s/ *David M. Rothstein*

Dats: November 19, 2020

\_\_\_\_\_  
David M. Rothstein  
Chair

cc: Brian R. Moushegian, General Counsel  
Mark P. Cornell, Deputy General Counsel  
Russell F. Hilliard, Esquire  
Andre Bisasor  
Complaint Screening Committee

**Rule 37A(III)(a)(2) – Formal Proceedings; Format of Pleadings and Documents**

Background:

Rule 37A(III) governs formal disciplinary proceedings, i.e., the litigation phase of a discipline matter that has been referred from the Complaint Screening Committee to Disciplinary Counsel. These Rules, however, are not exhaustive in that they do not address all litigation tools and procedural requirements. For example, the Rule contains no 10-day deadline for responding to a motion, no references to motions to compel, etc.

This flexibility is consistent with the notion that disciplinary matters are *sui generis*, and not properly characterized as solely civil in nature. Nonetheless, there are instances where the absence of certain procedural rules in Rule 37 has caused significant delay in proceedings and waste of judicial resources. Recently, a Respondent simply ignored discovery requests from the ADO over a year after a Notice of Charges issued. After the ADO's motion to compel was granted by the Hearing Panel Chair, and an Order issued, the Respondent violated the Order. He then failed to appear for a duly noticed deposition. This was a case that eventually led to a 9-day hearing with 13 witnesses. This Respondent had filed an Answer (and thus did not default on the charging document), but essentially ceased participating in the process.

Respondents in disciplinary matters have a duty to cooperate with the discipline authority under Rule 8.1. Though the disciplinary rules need not exhaustively parallel civil procedure rules, the ADO believes that it should have the power to file a motion for conditional default where a Respondent simply ceases to cooperate in the discovery process. This procedure would be that currently set forth in Superior Court Rule 29(d), and would include the time frame therein to allow a Respondent to cure the conditional default and avoid a final default.

Current Rule:

Rule 37A(III)(b)(5)(F) – *Discovery*

(5) Discovery.

(A) Discovery shall be available to the disciplinary counsel. Discovery shall also be available to the respondent, provided that an answer has been filed. All such requests shall be in writing.

(B) On written request the following information, if relevant or reasonably calculated to lead to the discovery of admissible evidence in the matter, and if within the possession, custody or control of the disciplinary counsel, the respondent or respondent's counsel, is subject to discovery and shall be made available for inspection and copying as set forth in this rule:

(i) A writing or any other tangible object, including those obtained from or belonging to the respondent;

(ii) Signed written statements, or taped statements, if any, by any witness, including the respondent;

- (iii) Results or reports of mental or physical examinations and of scientific tests or experiments made in connection with the matter;
- (iv) Names, addresses and telephone numbers of all persons known to have relevant information based on personal knowledge about the matter, including a designation by the disciplinary counsel and respondent as to which of those persons will be called as witnesses;
- (v) Police reports and any investigation reports generated by any agency other than the attorney discipline office;
- (vi) Names and address of each person expected to be called as an expert witness, the expert's qualifications, the subject matter on which the expert will testify, a copy of all written reports submitted by the expert or, if none, a statement of facts and opinions to which the expert will testify and a summary of the grounds for each opinion; and
- (vii) If disciplinary counsel or the respondent are unable to agree on discovery issues, a request must be made for a pre-hearing conference.

(C) This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or that party's attorney or agents in connection with a disciplinary proceeding. Nor does it require discovery of statements, signed or unsigned, made by respondent to respondent's attorney or that attorney's agents. This rule does not authorize discovery of any internal materials or documents prepared by the attorney discipline office.

(D) Depositions shall be permitted in any matter to preserve the testimony of a witness likely to be unavailable for hearing due to death, incapacity or if otherwise agreed to by the parties. If disciplinary counsel or the respondent deem it necessary to take any other depositions, a request must be made for a pre-hearing conference.

(E) Discovery shall be made available within thirty (30) days after receipt of a written request therefor. A party's obligation to provide discovery is a continuing one. If, subsequent to compliance with a request for discovery, a party discovers additional names or statements of witnesses or other information reasonably encompassed by the initial request for discovery, the original discovery response shall be promptly supplemented accordingly. In any case in which a pre-hearing conference has been held, the case management order shall set forth the time period within which all discovery shall be completed.

(F) Any discoverable information which is not timely furnished either by original or supplemental response to a discovery request may, on application of the aggrieved party, be excluded from evidence at hearing. The failure of the disciplinary counsel or respondent to disclose the name and provide the report or summary of any expert who will be called to testify in accordance with prior agreement of the parties or as provided in the case management order at least twenty (20) days prior to the hearing date shall result in the exclusion of the witness, except on good cause shown.



Proposed Amendment:

(F) Any discoverable information which is not timely furnished either by original or supplemental response to a discovery request may, on application of the aggrieved party, be excluded from evidence at hearing. The Attorney Discipline Office may move for conditional default if a Respondent fails to timely furnish discovery or appear at a duly noticed deposition, by complying with the procedure for conditional default as set forth in the Rules for Superior Courts. The failure of the disciplinary counsel or respondent to disclose the name and provide the report or summary of any expert who will be called to testify in accordance with prior agreement of the parties or as provided in the case management order at least twenty (20) days prior to the hearing date shall result in the exclusion of the witness, except on good cause shown.

**Annulments: Rule 37A(V)**

**Background:**

The Professional Conduct Committee (“PCC”) recently considered a request to annul previous discipline by an attorney who had received a public censure in 2011 for violating Rule of Professional Conduct 1.3 (Diligence) by failing to cure a conditional default and thereby allowing a final default judgment to be entered. The PCC denied the request to annul, finding that Rule 37(V)’s plain language allows annulments only for admonitions (under previous rules) and reprimands. The PCC’s Order dated November 19, 2020 is attached hereto as Exhibit 7. The Order states, in pertinent part, “[t]he Committee suggests that the ADO considers proposing a change to the language of Rule 37A(V), to broaden its discretion to consider annulment in a slightly larger range of circumstances.”

The ADO’s proposed revision would allow individuals to move to annul public censures in addition to reprimands, but would lengthen the time period an individual must wait to request annulment for public censures to 10 years.

Public censures are generally imposed for negligent conduct that has caused some form of harm (but not serious harm). They are not imposed for knowing or intentional misconduct, which would generally result in suspension or disbarment. That said, public censures are a more serious sanction than a reprimand. Requiring individuals to wait the additional time before seeking an annulment for a public censure gives the ADO and the PCC a window of time to ensure the individual has not engaged in any further misconduct during the 10 year period.

**Current Rule:**

**(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.

(d) Effect of Annulment.

Upon entry of the order, the respondent shall be treated in all respects as if any admonition or reprimand had not been rendered, except that, upon conviction of any other violation of the rules of professional conduct after the order of annulment has been entered, the previous admonition, or reprimand may be considered by the professional conduct committee or the supreme court in determining the discipline to be imposed.

(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.

(f) Disclosure of Annulled Matter.

Upon issuance of an order of annulment, the component parts of the attorney discipline systems shall not thereafter disclose the record of the complaint which resulted in a finding of no misconduct, admonition, or reprimand, except as permitted by section (V)(d) of this rule, and the respondent shall be under no obligation thereafter to disclose the admonition or reprimand.

(g) Denial of Request for Annulment.

Upon denial of an order of annulment, the respondent may appeal to the supreme court within thirty (30) days of the date of receipt of the denial. The appeal shall not be a mandatory appeal. Upon such appeal, the burden shall be upon the respondent to show that the professional conduct committee's exercise of its discretion in denying the order of annulment is unsustainable.

Proposed Amendment:

The ADO proposes the following amendment to subsection (V)(a) of Rule 37A:

(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. A person who has been issued a public censure may at any time after ten (10) years from the date of the public censure apply to the professional conduct committee for an order to annul the public censure.

This proposed amendment would not create any need to amend Rule 37.

NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE

*a committee of the attorney discipline system*

David M. Rothstein, Chair  
Heather E. Krans, Vice Chair  
Elaine Holden, Vice Chair  
    *" non attorney member "*  
Barbara J. Guay, Legal Assistant



*Hatem, Michael D. advs. Attorney Discipline Office - #09-023*

ORDER ON REQUEST TO ANNUL

Michael D. Hatem moved to annul a censure in the above-numbered matter. The Attorney Discipline Office objected, citing Supreme Court Rule 37A(V)(a), which states that only that misconduct which resulted in a sanction of a reprimand, or lower, is eligible for annulment. Mr. Hatem conceded the point but argued that Supreme Court Rule 37A(V)(b) allowed the Committee to annul misconduct that resulted in a censure. Rule 37A(V)(b) states that findings of misconduct cannot be annulled "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." He reasons that the provision affords the Committee the power to annul misconduct which is more serious than that which would be resolved with a reprimand.

The Professional Conduct Committee deliberated the matter at its November 17, 2020 meeting. It agreed with Mr. Hatem that conduct resulting in a reprimand would be unlikely to have any of the features of the misconduct described on Rule 37A(V)(b). However, the Committee also noted the terms of



Rule 37A(V)(a), which states, "[a] person who has been issued an admonition (under prior rules), or reprimand" may petition for annulment. That language is too clear and unambiguous for the Committee to overlook. The rule affords no discretion to consider annulment of a censure. This is unfortunate in Mr. Hatem's case because, not only has a great deal of time passed since his misconduct occurred, but that misconduct did not appear to possess any of the characteristics of the conduct described in Rule 37A(V)(b), and the 2005 case which the Committee had considered as an aggravating factor has, itself, now been annulled.

The Committee suggests that the ADO considers proposing a change to the language of Rule 37A(V), to broaden its discretion to consider annulment in a slightly wider range of circumstances. As the rule currently stands, the Committee agrees with the ADO's position, and denies Mr. Hatem's petition to annul.

November 19, 2020

/S/ David M. Rothstein/  
David M. Rothstein  
Chair

cc: Brian R. Moushegian, General Counsel  
Michael D. Hatem Esquire  
File