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Table 2's Presentation on the  
Attorney Discipline Office

November 2, 2022

## Table of Contents

Summary Overview.....	1
Rules 37 and 37A of the NH Supreme Court Rules.....	4
Grievance Process Chart.....	59
ADO Presentation.....	60
2021 ADO Annual Report.....	73
NH LAP Power Point & Information .....	84
NH Bar Association Member Benefits Overview .....	89
Panelist Biographies.....	93

## The New Hampshire Attorney Discipline Process

All of us have heard *of it*... none of us want to hear *from it*: the Attorney Discipline Office (“ADO”). Whether it’s seeing the envelope with the ADO return address or the ADO phone number come up on your phone, it likely engenders a feeling of unease. But what actually happens when a grievance has been filed against an attorney?

### What is the Attorney Discipline System?

According to its website, the New Hampshire Supreme Court Attorney Discipline System “exists to consider and provide a full and fair evaluation of grievances against attorneys.” Under New Hampshire Supreme Court Rule 37, any attorney admitted to practice law in this State, is specially admitted for a particular proceeding, or otherwise offers legal advice in this State, and even a non-lawyer representative permitted to represent others in Court, is subject to the disciplinary jurisdiction of the attorney discipline system.

Rule 37(1)(c) sets for the grounds for discipline:

The right to practice law in this State is predicated upon the assumption that the holder is fit to be entrusted with professional matters and to aid in the administration of justice as an attorney and as an officer of the court. The conduct of every recipient of that right shall be at all times in conformity with the standards imposed upon members of the bar as conditions for the right to practice law.

Acts or omissions by an attorney individually or in concert with any other person or persons which violate the standards of professional responsibility that have been and any that may be from time to time hereafter approved or adopted by this court, shall constitute misconduct and shall be grounds for discipline whether or not the act or omission occurred in the course of an attorney-client relationship.

The purpose of the Attorney Discipline System is realized through the work of the ADO, which facilitates the consideration of each grievance filed through a series of steps collectively known as The Grievance Process, as outlined under Rules 37 and 37A. The ADO consists of a disciplinary counsel, performing prosecutorial functions and a general counsel, evaluating grievances and determining appropriate paths for each (as described below). Rule 37(6)(b) and (c).

### What happens after a Grievance is Filed?

Step 1: When a grievance is filed against an attorney, the initial step is an evaluation by ADO General Counsel, which may include asking the respondent attorney to respond to the grievance and other additional requests for information. The General Counsel may either decide not to docket, i.e. no further action is taken, or to docket. If the General Counsel concludes there is a possible violation of the Rules of Professional Conduct, the matter is docketed, becomes a “Complaint” and is moved to Step 2.

Step 2: Once a Complaint is docketed, a formal answer is required. General Counsel will investigate further resulting in either a dismissal, resolution by stipulation, or a move to Step 3.

Step 3: If the General Counsel decides to proceed with a Complaint, it is submitted to the Complaint Screening Committee. This Committee is made up of five lawyers and four non-lawyers and meets once a month to consider whether there is sufficient evidence of a violation of the Rules of Professional Conduct to warrant proceeding further with the matter. The Complaint Screening Committee may dismiss the Complaint, ask for more information, offer diversion to the respondent attorney, or determine that an evidentiary hearing is necessary and refer the matter to Disciplinary Counsel to proceed with Step 4.

Step 4: Upon receipt, Disciplinary Counsel conducts yet further investigation and legal analysis to determine the level of proof for any alleged violation. Disciplinary Counsel may then move to dismiss the Complaint, ruled upon by the Professional Conduct Committee, enter into a stipulation resolving the matter, or issue a formal Notice of Charges against the attorney and a request for hearing, leading to Step 5.

Step 5: The Hearing Committee receives the request for hearing and appoints a hearing panel from the Committee members. A panel is made up of three to five members, with at least one non-lawyer member. The hearing panel hears evidence, makes findings of fact and conclusions of law in a written report, and provides a recommendation to the Professional Conduct Committee to either confirm its decision or dismiss the Complaint.

Step 6: The Professional Conduct Committee is made up of eight lawyers and four non-lawyers. Meeting once a month, it considers hearing panel reports and memoranda submitted by respondent attorneys and Disciplinary Counsel, and may also hold oral argument. It then considers the entire record to either dismiss the complaint, find rule violations and impose disciplinary action including reprimand, public censure, or a suspension of not more than six months, or, in the most egregious cases, file a recommendation with the New Hampshire Supreme Court for suspension exceeding six months, or disbarment. All appeals are heard by the New Hampshire Supreme Court.

### Attorney Discipline System 2021 Annual Report – Interesting Statistics

In 2021:

- 174 grievances were filed with the ADO. Of those, 21 were docketed by General Counsel.
  - Of the 147 grievances that were not docketed, 46 requests for reconsideration were received and considered by the Complaint Screening Committee. 4 requests were granted – one for further investigation, three were offered diversion.
- Of the 21 docketed complaints, 12 were referred to Disciplinary Counsel for further action.
- Of the 12 referrals, Disciplinary Counsel issued Notice of Charges to two attorneys, which covered several consolidated actions.
- The PCC recommended that the Supreme Court disbar two attorneys in 2021, and one recommendation to deny a resignation request.
- The Supreme Court disbarred three lawyers and suspended four lawyers on an interim basis; the Court also granted two requests for reinstatement.

Other interesting stats:

- The highest percentage of grievance arises out of family law and estate planning.
- Just as many grievances were filed by an opposing party as a client, at 28% each, while referrals from the Court and other attorneys both came in at 14.3% of filed grievances.

- The highest percentage of grievances filed, 38.9%, were filed against those in practice between 31 and 35 years.
- Most common violations: all three fall under Rule 1, competent, diligence, and communication. Making a false statement of material fact under Rule 8 also was cited often.

Resources Available:

- New Hampshire Lawyers' Assistance Program: Operating under Supreme Court Rule 58, NH Lawyers Assistance provides "confidential help with any issue that may be negatively impacting the ability to practice." NHLAP employees are prohibited from reporting professional misconduct. Under Rule 37.
- New Hampshire Bar Association, Dispute Resolution Committee: "assist(s) in the efficient and unbiased resolution of disputes, free of charge, between clients and their lawyers, and lawyers and other lawyers, which do not rise to the level of an ethical violation of the New Hampshire Rules of Professional Conduct."
- New Hampshire Bar Association, Attorney Discipline Defense Referrals: Run through the NH Bar's Lawyer Referral Service, it provides confidential referrals to attorneys experienced in defending attorney discipline and ethics issues, for attorneys who have received an ADO Complaint, or are concerned about a grievance being filed.
- New Hampshire Bar Association, Ethics Committee: provided opinions, guidelines, practical tips and offers a "Helpline" to discuss *proposed* conduct.
- Law Pay: available through the New Hampshire Bar Association, guarantees compliance with IOLTA guidelines.

# Rules of The Supreme Court of the State of New Hampshire

## Rule 37. ATTORNEY DISCIPLINE SYSTEM

(1) Attorney Discipline in General:

(a) Components: The attorney discipline system consists of the following component parts:

- (1) professional conduct committee;
- (2) hearings committee;
- (3) complaint screening committee;
- (4) attorney discipline office.

(b) Jurisdiction: Any attorney admitted to practice law in this State, and any attorney specially admitted by a court of this State for a particular proceeding, and any attorney not admitted in this State who practices law or renders or offers to render any legal services in this State, and any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1, is subject to the disciplinary jurisdiction of this court and the attorney discipline system.

Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt. Suspension or disbarment of an individual subject to the attorney discipline system shall not terminate jurisdiction of this court.

(c) Grounds for Discipline: The right to practice law in this State is predicated upon the assumption that the holder is fit to be entrusted with professional matters and to aid in the administration of justice as an attorney and as an officer of the court. The conduct of every recipient of that right shall be at all times in conformity with the standards imposed upon members of the bar as conditions for the right to practice law.

Acts or omissions by an attorney individually or in concert with any other person or persons which violate the standards of professional responsibility that have been and any that may be from time to time hereafter approved or adopted by this court, shall constitute misconduct and shall be grounds for discipline whether or not the act or omission occurred in the course of an attorney-client relationship.

(d) Priority of Discipline Matters: Matters relating to discipline of an attorney shall take precedence over all other civil cases in this court.

(e) Professional Continuity Committee and New Hampshire Lawyers Assistance Program Exemption: For the purposes of Rule 8.3 of the rules of professional conduct, information received by members of the New Hampshire Bar Association during the course of their work on behalf of the professional continuity committee or the New Hampshire Lawyers Assistance Program which is indicative of a violation of the rules of professional conduct shall be deemed privileged to the same extent allowed by the attorney-client privilege.

(f) Disciplinary matters may be handled by attorneys of the Attorney Discipline Office fulfilling functions of either general counsel or disciplinary counsel, as the general counsel may from time to time assign.

(2) Definitions:

(a) Appeal: "Appeal" means an appeal to this court by a respondent or disciplinary counsel of a decision of the professional conduct committee imposing a reprimand, public censure or a suspension of six (6) months or less. An appeal shall not be a mandatory appeal. See Rule 3. An appeal shall be based on the record before the professional conduct committee and shall be limited to issues of errors of law and unsustainable exercises of discretion.

(b) Attorney: Unless otherwise indicated, "Attorney," for purposes of this rule, means any attorney admitted to practice in this State, any attorney specially admitted to practice by a court of this State, any attorney not admitted or specially admitted in this State who provides or offers to provide legal services in this State or any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1.

(c) Complaint: "Complaint" means a grievance that, after initial review, has been determined by the attorney discipline office to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint as set forth in Supreme Court Rule 37A, and that is docketed by the attorney discipline office, or a complaint that is drafted and docketed by the attorney discipline office after an inquiry by that office. If after docketing, the attorney discipline office or the complaint screening committee determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

(d) Disbarment: "Disbarment" means the termination of a New Hampshire licensed attorney's right to practice law in this State and automatic expulsion from membership in the bar of this State. A disbarred attorney may only apply for readmission to the bar of this State upon petition to this court, after having complied with the terms and conditions set forth in the disbarment order promulgated by the court which shall include all requirements applicable to applications for admission to the bar, including passing the bar examination and a favorable report by the professional conduct committee and the character and fitness committee.

(e) Disciplinary Counsel: "Disciplinary Counsel" means the attorney or attorneys responsible for the prosecution of disciplinary proceedings before the court, the professional conduct committee and any hearings committee panel. Disciplinary counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, such part-time attorney or attorneys as may from time to time be deemed necessary, and such other attorneys of the attorney discipline office as may from time to time be designated to assist disciplinary counsel.

(f) Grievance: "Grievance" means a written submission filed with the attorney discipline office to call to its attention conduct that the grievant believes may constitute misconduct by an attorney. A grievance that is determined, after initial screening, not to be within the jurisdiction of the attorney discipline system and/or not to meet the requirements for docketing as a complaint shall not be docketed and shall continue to be referred to as a grievance. A grievance that is determined, after initial screening, to be within the jurisdiction of the attorney discipline system and to meet the requirements for docketing as a complaint shall be docketed as a complaint and shall be referred to thereafter as a complaint; provided, however, that if the attorney discipline office or the complaint screening committee later determines that the docketed complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

(g) Public Censure: "Public Censure" means the publication by the court or the professional conduct committee, in appropriate New Hampshire publications including a newspaper of general statewide circulation, and one with general circulation in the area of respondent's primary office, as well as the New Hampshire Bar News, of a summary of its findings and conclusions relating to the discipline of an attorney, as defined in section (2)(b) of this rule.

(h) Referral: "Referral" means a grievance received by the attorney discipline office from any judge or from any member of the bar of New Hampshire, in which the judge or attorney indicates that he or she does not wish to be treated as a grievant.

(i) Reprimand: "Reprimand" means discipline administered by the professional conduct committee after notice of charges and after a hearing before a hearings committee panel and the right to request oral argument to the professional conduct committee, in those cases in which misconduct in violation of the rules of professional conduct is found. A reprimand is administered by letter issued by the chair of the professional conduct committee, subject to an attorney's right to appeal such discipline to the court.

(j) Suspension: "Suspension" means the suspension of an attorney's right to practice law in this State, for a period of time specified by the court or by the professional conduct committee. Suspension by the professional conduct committee may not exceed six (6) months. The suspended attorney shall have the right to resume the practice of law, after the expiration of the suspension period, upon compliance with the terms and conditions set forth in the suspension order promulgated by the court or the professional conduct committee and pursuant to the procedure set forth in section 14 regarding reinstatement.

### (3) Professional Conduct Committee:

(a) The court shall appoint a committee to be known as the professional conduct committee which shall consist of twelve members, one of whom shall be designated by the court as the chair. Two members of the professional conduct committee shall be designated by the court as vice chairs, to act in the absence or disability of the chair. One of the vice chairs must be an attorney, and the other must be a non-



attorney. At least four of the members of the professional conduct committee shall be non-attorneys. The court shall attempt to appoint members of the professional conduct committee from as many counties in the State as is practicable; and one of the members shall be designated pursuant to section (3)(d), and shall have both the special term of office and the additional special responsibilities set forth therein.

In the event that any member of the professional conduct committee has a conflict of interest or is otherwise disqualified from acting with respect to any proceeding before the professional conduct committee, the court may, upon request or upon its own motion, appoint another person to sit on such proceeding and such temporary replacement, rather than the disqualified member, shall be considered a professional conduct committee member for quorum and voting purposes in connection with such investigation or proceeding.

(b) Initial appointments shall be for staggered terms: four members for three years; four members for two years; and four members, including the member designated pursuant to section (3)(d), for one year. Thereafter the regular term of each member, except the member designated pursuant to section (3)(d), shall be three years. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor. A member shall not serve for more than three consecutive full terms but may be reappointed after a lapse of one year. The committee shall act only with the concurrence of a majority of its members present and voting, provided however, that six members shall constitute a quorum. The chair of the committee, or any member performing the duties of the chair, shall only vote on matters relating to specific complaints in the event of a tie among the members present and voting. No professional conduct committee member shall serve concurrently as a member of the hearings committee or the complaint screening committee.

(c) The professional conduct committee shall have the power and duty:

(1) To appoint a disciplinary counsel and a general counsel and such deputy and assistant disciplinary counsel and general counsel as may from time to time be required to properly perform the functions hereinafter prescribed. To appoint other professional staff, including auditors, and clerical staff whether full-time or part-time. To appoint independent bar counsel if needed.

(2) To consider hearing panel reports and written memoranda of disciplinary counsel and respondents. To conduct oral arguments in which disciplinary counsel and each respondent are given ten (10) minutes to address the findings and rulings contained in the hearing panel reports. After consideration of oral arguments, hearing panel reports, transcripts of hearings before hearing panels and memoranda, to determine whether there is clear and convincing evidence of violations of the rules of professional conduct. To remand complaints to hearing panels for further evidentiary proceedings. To dismiss grievances or complaints, administer a reprimand, public censure or a suspension not to exceed six (6) months.

(3) To attach such conditions as may be appropriate to any discipline it imposes.

(4) To divert attorneys out of the attorney discipline system as appropriate and on such terms and conditions as is warranted.

- (5) To institute proceedings in this court in all matters which the professional conduct committee has determined warrant the imposition of disbarment or of suspension for a period in excess of six (6) months.
- (6) To consider and act upon requests by disciplinary counsel or respondents to review a decision by the complaint screening committee to refer a complaint to disciplinary counsel for the scheduling of a hearing.
- (7) To consider and act upon requests from disciplinary counsel to dismiss a matter prior to a hearing if disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing.
- (8) To consider and act upon requests for reconsideration of its own decisions.
- (9) To consider and act upon requests for protective orders.
- (10) To propose rules of procedure not inconsistent with the rules promulgated by this court.
- (11) To be responsible for overseeing all administrative matters of the attorney discipline system.
- (12) To require a person who has been subject to discipline imposed by the professional conduct committee to produce evidence of satisfactory completion of the multistate professional responsibility examination, in appropriate cases.
- (13) To educate the public on the general functions and procedures of the attorney discipline system.
- (14) Upon its approval of the annual report prepared by the attorney discipline office, to file a copy of the report with the chief justice of the supreme court and to make copies of the report available to the public.
- (15) To issue discretionary monetary sanctions against a disciplined attorney in the form of the assessment of costs and expenses pursuant to Rule 37(19).

Any attorney aggrieved by a finding of professional misconduct or by a sanction imposed by the professional conduct committee shall have the right to appeal such finding and sanction to this court; disciplinary counsel shall have the right to appeal a sanction. Such appeals shall not be mandatory appeals. Such rights must be exercised within thirty (30) days from the date on the notice of the finding and sanction. In the event that a timely request for reconsideration pursuant to Supreme Court Rule 37A(VI) is filed, the right to appeal the finding of professional misconduct and/or the sanction shall be exercised within thirty (30) days from the date of the letter notifying the attorney of the professional conduct committee's decision on the request for reconsideration. Successive requests for reconsideration shall not stay the running of the appeal period. The manner of the appeal shall be based on the record before the professional conduct committee. The findings of the professional conduct committee may be affirmed, modified or reversed.

(d) Board of Governor's Representative: The vice president of the New Hampshire Bar Association, upon appointment by the court, shall represent the board of governors of

the association as a member of the professional conduct committee for a one-year term commencing on August 1st following the election as such vice president and he or she shall have the following additional responsibilities:

- (1) To render such assistance as the professional conduct committee directs in the preparation and review of the attorney discipline system budget.
- (2) To assist in monitoring the financial affairs and budgetary process of the attorney discipline system during the fiscal year.
- (3) To coordinate the assessment and collection of expenses to be reimbursed by disciplined attorneys.
- (4) Consistent with the rule of confidentiality applicable to the work of the attorney discipline system, to serve as liaison between the professional conduct committee and the board of governors of the New Hampshire Bar Association.
- (5) To assist in the communication to members of the New Hampshire Bar Association of a general understanding of the work of the professional conduct committee, consistent with the rule of confidentiality applicable to attorney discipline system proceedings.

If the vice president of the New Hampshire Bar Association has a conflict preventing his or her appointment to the professional conduct committee, the court shall appoint another member of the board of governors in his or her stead.

(4) Hearings Committee:

- (a) The court shall appoint an appropriate number of attorneys and non-attorneys to a committee known as the hearings committee of the attorney discipline system. One member of the committee shall be designated by the court as the chair and one member shall be designated as vice chair to act in the absence or disability of the chair.
- (b) Initial appointments shall be for staggered terms: one third of the members for three years; one third of the members for two years and one third of the members for one year. Thereafter, the regular term of each member shall be three years. A member selected to fill a vacancy shall hold office for the unexpired term of his or her predecessor. A member shall not serve more than three consecutive full terms but may be reappointed after a lapse of one year. No hearings committee member shall serve concurrently as a member of the professional conduct committee or the complaint screening committee.
- (c) The hearings committee shall have the power and duty:
  - (1) To be appointed as necessary by the hearings committee chair to individual hearing panels to rule on pre-hearing motions, conduct hearings on formal charges and make findings of fact, conclusions and recommendations in written reports to the professional conduct committee for findings of misconduct and sanctions or for dismissal of the complaint with findings of no misconduct. The individual hearing panels shall consist of

a maximum of five (5) persons and a minimum of three (3) persons. There shall be no less than one public non-attorney member on each hearing panel.

(2) To conduct hearings in conformance with standards set forth in Rule 37A.

(3) To make all findings by clear and convincing evidence.

(4) To submit all written reports to the professional conduct committee no more than sixty (60) days after the close of each hearing.

(d) Appointment to each individual hearing panel shall be made by the chair of the hearings committee. Each panel shall consist of a maximum of five (5) hearings committee members and a minimum of three (3) members. Each hearing panel shall have at least one (1) non-attorney member. The chair of the hearings committee shall designate one member of each panel as the chair and a separate member of the panel as the reporter responsible for preparation of the report to the professional conduct committee.

(5) Complaint Screening Committee:

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

(b) The complaint screening committee shall have the power and duty:

(1) To consider and act on requests for reconsideration filed by grievants following a decision by general counsel not to docket a matter, to divert attorneys out of the system, or to dismiss a complaint after investigation.

(2) To consider and act on reports by staff members of the attorney discipline office with respect to docketed complaints.

(3) To remove complaints from the docket if it determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing.

- (4) To dismiss complaints with a finding of no professional misconduct.
- (5) To dismiss complaints for any other reason. If the committee determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.
- (6) To divert attorneys out of the attorney discipline system when appropriate and subject to the attorney complying with the terms of diversion. All diversion would be public unless the complaint screening committee determined that a given matter should remain non-public based on one or more of the following issues: health, finances, family considerations or highly personal matters. If a respondent declines to accept diversion or violates the terms of a written diversion agreement, the complaint in such cases shall be acted upon as if diversion did not exist.
- (7) To refer complaints to disciplinary counsel for the scheduling of a hearing only where there is a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence.
- (8) To consider and act upon requests for reconsideration of its own decisions, subject to the further right of disciplinary counsel or respondents to request that the professional conduct committee review a decision to refer a complaint to disciplinary counsel for the scheduling of a hearing.
- (c) Meetings of the complaint screening committee shall be in the nature of deliberations and shall not be open to the public, respondents, respondents' counsel, or the complainant. Records and reports of recommendations made shall in all respects be treated as work product and shall not be made public or be discoverable. However, the decision of the committee shall be public.

(6) Attorney Discipline Office:

(a) The professional conduct committee shall appoint:

- (1) a disciplinary counsel and such deputy and assistants as may be deemed necessary whether full-time or part-time;
- (2) a general counsel and such deputy and assistants as may be deemed necessary whether full-time or part-time; and
- (3) other professional staff, including auditors, and clerical staff as may be necessary whether full-time or part-time.

(b) Disciplinary counsel shall perform prosecutorial functions and shall have the power and duty:

- (1) To review complaints referred by the complaint screening committee for hearings.
- (2) To contact witnesses, conduct discovery and prepare the complaints for hearings before a panel of the hearings committee.
- (3) To try cases before panels of the hearings committee.

(4) To present memoranda to and appear before the professional conduct committee for oral argument.

(5) To represent the attorney discipline office and, in appropriate cases, the professional conduct committee in matters filed with the supreme court.

(6) To assist general counsel in performing the duties of general counsel as needed.

(c) General counsel shall perform a variety of legal services and functions and shall have the power and duty:

(1) To receive, evaluate, docket and investigate professional conduct complaints.

(2) To remove complaints from the docket if it determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the requirements for docketing.

(3) To dismiss complaints with a finding of no professional misconduct.

(4) To dismiss complaints for other good cause. If the general counsel determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.

(5) To divert attorneys out of the attorney discipline system when appropriate and subject to the attorney complying with the terms of diversion. All diversion would be public unless the general counsel determined that a given matter should remain non-public based on one or more of the following issues: health, finances, family considerations or highly personal matters. If a respondent declines to accept diversion or violates the terms of a written diversion agreement, the complaint in such cases shall be acted upon as if diversion did not exist.

(6) To present complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason or referral to disciplinary counsel for a hearing.

(7) To assist disciplinary counsel in performing the duties of disciplinary counsel as needed.

(8) To perform legal services as required for the committees of the attorney discipline system.

(9) To oversee and/or perform administrative functions for the attorney discipline system including but not limited to maintaining permanent records of the operation of the system, preparation of the annual budget, and preparation of an annual report summarizing the activities of the attorney discipline system during the preceding year.

(7) Immunity:

Each person shall be immune from civil liability for all statements made in good faith to any committee of the attorney discipline system, the attorney discipline office, the attorney general's office, or to this court given in connection with any investigation or proceedings under this rule pertaining to alleged misconduct of an attorney. The protection of this immunity does not exist as to: (a) any statements not made in good

faith; or (b) any statements made to others. See section (20)(k). The committees' members, staff, counsel and all others carrying out the tasks and duties of the attorney discipline system shall be immune from civil liability for any conduct arising out of the performance of their duties.

(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.

(9) Attorneys Convicted of Serious Crime:

(a) Upon the filing with the court of a certified copy of any court record establishing that an attorney has been convicted of a serious crime as hereinafter defined, the court may enter an order suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. Any order of suspension entered pursuant to this provision shall be effective immediately.



(b) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(c) A certified copy of any court record establishing the conviction of an attorney for any "serious crime" shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction. The certified copy shall constitute evidence sufficient to issue an order of immediate suspension under subparagraph (a) without further hearing.

(d) Upon the receipt of a certificate of conviction of an attorney for a "serious crime," the court may, and shall if suspension has been ordered pursuant to subsection (a) above, institute a formal disciplinary proceeding by issuing an order to the attorney to show cause why the attorney should not be disbarred as a result of the conviction. If the court determines that no such good cause has been shown, the court shall issue an order of disbarment, or such other discipline as the court shall deem appropriate. If the court determines that the attorney has shown cause why disbarment may not be appropriate, the court shall refer the matter to the professional conduct committee, in which the sole issue to be determined shall be the extent of the final discipline to be imposed. Provided, however, that final discipline will not be imposed until all appeals from the conviction are concluded.

(e) Upon receipt of a certificate of conviction of an attorney for a crime not constituting a "serious crime," the court shall refer the matter to the attorney discipline office for such action as it deems appropriate. Referral to the attorney discipline office hereunder does not preclude the court from taking whatever further action it deems appropriate.

(f) An attorney suspended under the provisions of subsection (a) above may be reinstated upon the filing of a certificate demonstrating that the underlying conviction for a serious crime has been reversed but the reinstatement will not terminate any proceeding then pending against the attorney.

(g) Any attorney who has been convicted of a crime in this state or in any other state shall notify the court, in writing, within ten (10) days of sentencing on said conviction. The notice shall inform the court of the crime, the criminal statute violated, the court of conviction, the date of conviction, and the sentence imposed. The clerk of any court within the State in which an attorney is convicted of any crime shall, within ten (10) days of said conviction, transmit a certificate thereof to this court.

(h) Upon being advised that an attorney has been convicted of a crime within this State, the attorney discipline office shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate to this court in accordance with the provisions of subsection (g) above. If the certificate has not been forwarded by the clerk or if the conviction occurred in another jurisdiction, it shall be the responsibility of the attorney discipline office to obtain a certificate of conviction and to transmit it to this court.

(i) Whenever an attorney is indicted or bound over for any felony, the court shall take such actions as it deems necessary, including but not limited to the suspension of the attorney.

(9-A) Proceedings Where an Attorney is Alleged to have Engaged in Conduct that Poses a Substantial Threat of Serious Harm.

(a) The attorney discipline office may file a petition for interim suspension or other relief in this court alleging that an attorney has engaged in conduct that poses a substantial threat of serious harm to the public.

(b) The term “substantial threat of serious harm” encompasses any non-serious crime, conduct, or course of conduct that substantially impairs the attorney’s ability to continue to practice in conformity with the Rules of Professional Conduct and Rule 50, or creates a substantial risk of harm to the public if the attorney is not suspended on an interim basis.

(c) The petition must state with particularity the conduct alleged as well as why the interim suspension is necessary to prevent a threat of serious harm to the public. The attorney discipline office shall serve the petition on the attorney by first-class mail, and service shall be deemed complete upon mailing. Service upon the respondent attorney at the latest address provided to the New Hampshire Bar Association shall be deemed to be sufficient. The attorney shall have twenty (20) days from the date of mailing to respond. If the attorney contests the interim suspension, the court will convene a hearing before a judicial referee or a hearing panel of the professional conduct committee. If the attorney consents to the interim suspension, the court may issue an order of interim suspension which will be effective immediately. If the attorney fails to respond to the petition, the allegations of the petition shall be deemed to be admitted, and no hearing shall be required.

(d) The hearing on the petition shall be recorded. The parties shall have thirty (30) days to prepare for the hearing, but no continuance of the hearing shall be granted absent extraordinary circumstances. The attorney discipline office shall have the burden to prove the need for interim suspension by clear and convincing evidence. The referee or panel may consider whether measures short of interim suspension adequately safeguard the public against the threat of substantial harm.

(e) After the hearing, the referee or panel shall issue a recommendation with regard to the need for interim suspension within ten (10) days, and shall forward that recommendation, with the record of the hearing, to the court. The court shall review the recommendation and the record. It may enter an order of interim suspension, dismiss the petition for interim suspension, issue an order directing the attorney to abide by specific conditions in lieu of interim suspension, or remand the matter for further proceedings. Any order issued by the court shall be effective immediately, and shall remain in effect unless it is modified by the court, or it is superseded by an order stemming from disciplinary proceedings arising out of the same or related conduct.

(9-B) Summary Suspension Procedure.

(a) In cases alleging serious misconduct, failure of an attorney under investigation to comply with a subpoena validly issued under Rule 37(8) or failure of an attorney under investigation to respond to requests for information by attorneys from the attorney discipline office made in the course of investigating a docketed matter may be grounds for summary suspension as set forth herein.

(b) "Serious misconduct," for purposes of this Rule, is any misconduct involving (1) mishandling or misappropriation of client or third party property or funds or (2) any other misconduct which by itself could result in a suspension or disbarment.

(c) The attorney discipline office may file a petition for summary suspension with this court, with copies to the subject attorney, which sets forth the violation of this section, supported by an affidavit of the attorney discipline office affirming the facts set forth in subsection (d). Upon such filing, this court may enter an order of summary suspension and may order such emergency relief as this court deems necessary to protect the public.

(d) The affidavit in support of the petition for summary suspension shall affirm:

(1) that the lawyer was served with the subpoena or was mailed the request(s) for information at the latest address provided to the New Hampshire Bar Association;

(2) that the lawyer was afforded a reasonable period of time for compliance with the request for information or the subpoena, and has failed to comply, to answer, or to appear; and

(3) that the subpoena or request for information was accompanied by a statement advising the attorney that failure to comply with the subpoena or request for information may result in summary suspension without further hearing.

(4) Notice of intent to seek summary suspension was both sent by certified mail and was provided in hand to the attorney or attempted in hand without success, despite reasonable efforts.

(e) Any suspension under the provisions of subsection (c) above shall be immediately effective upon entry of the suspension order and shall be subject to the provisions of Rule 37(16)(g).

(f) An attorney suspended under the provisions of subsection (c) above may request a hearing by the deadline set forth in the order of suspension. The hearing shall be conducted by a judicial referee or a hearing panel, and shall occur within ten (10) days of the effective date of the suspension. The judicial referee or hearing panel shall issue a report within ten (10) days of the hearing recommending whether the suspension should be lifted.

(g) If an attorney cures the failure to comply with the subpoena or other request for information, the attorney may file a petition for reinstatement with this court. The petition shall be accompanied by an affidavit of compliance stating the extent to which he or she

has complied with the subpoena or request for information. A copy of the petition and affidavit shall be sent to the attorney discipline office, which may file a response to the petition and affidavit within 10 days. The court may take such action on the petition as it deems appropriate.

(h) If not reinstated pursuant to Rule 37(9-B)(f) or (g), the attorney shall become subject to the provisions of Rule 37(17).

(i) A lawyer suspended in another jurisdiction pursuant to a procedure similar to that set forth herein may be suspended in this jurisdiction on a reciprocal basis as provided in Rule 37(12).

#### (10) Proceedings Where An Attorney Is Declared To Be Incompetent Or Is Alleged To Be Incapacitated:

(a) Whenever an attorney has been judicially declared incompetent or voluntarily or involuntarily committed to a mental health facility, the court, upon proper proof of the fact, may enter an order suspending such attorney from the practice of law until the further order of the court. A copy of such order shall be served upon such attorney, the attorney's guardian and such other persons and in such manner as the court may direct.

(b) Whenever any committee of the attorney discipline system or the attorney discipline office shall petition the court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental or physical infirmity or illness or because of addiction to drugs or intoxicants, the court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the court shall designate. If, upon due consideration of the matter, the court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending the attorney on the ground of such disability for an indefinite period and until the further order of the court, and any pending disciplinary proceeding against the attorney may be held in abeyance.

The court shall provide for such notice to the respondent attorney of proceedings in the matter as it deems proper and advisable and shall appoint an attorney to represent the respondent if he or she is without adequate representation.

(c) If, during the course of a disciplinary proceeding, the respondent attorney contends that he or she is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent attorney to adequately defend himself or herself, the court thereupon shall enter an order immediately suspending the respondent attorney from continuing to practice law until a determination is made of the respondent attorney's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of subsection (b) of this section.

If, in the course of a proceeding under this section or in a disciplinary proceeding, the court shall determine that the respondent attorney is not so incapacitated, it shall take

such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent attorney.

(d) Any attorney suspended under the provisions of this section may apply for reinstatement following the expiration of one year from the date of suspension or at such other time as the court may direct in the order of suspension or any modification thereof. Such application shall be granted by the court upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fit to resume the practice of law. Upon such application, the court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the court shall designate. At its discretion, the court may direct that the expense of such an examination shall be paid by the attorney.

Whenever an attorney has been suspended by an order in accordance with the provisions of subsection (a) of this section and, thereafter, in proceedings duly taken, the attorney has been judicially declared to be competent, the court may dispense with further evidence that the disability has been removed and may direct reinstatement upon such terms as it deems proper and advisable.

(e) In a proceeding seeking an order of suspension under this section, the burden of proof shall rest with the moving party. In a proceeding seeking an order terminating a suspension under this section, the burden of proof shall rest with the suspended attorney.

(f) The filing of an application for reinstatement by an attorney suspended for disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which the attorney has been examined or treated since the suspension and shall furnish to the court written consent to each to divulge such information and records as requested by the attorney discipline system or the court appointed medical experts.

#### (11) Resignation By Attorney Under Disciplinary Investigation:

(a) An attorney who is the subject of an investigation into allegations of misconduct may file a request to resign by delivering to the professional conduct committee an affidavit stating that he or she desires to resign and that:

(1) the resignation is freely and voluntarily rendered; he or she is not being subjected to coercion or duress; he or she is fully aware of the implications of submitting the resignation;

(2) he or she is aware that there is presently pending an investigation into allegations that he or she has been guilty of misconduct the nature of which shall be specifically set forth;

(3) he or she acknowledges that the material facts upon which the complaint is predicated are true; and

(4) he or she submits the resignation because he or she knows that if charges were predicated upon the misconduct under investigation they could not be successfully defended.

(b) Upon receipt of the required affidavit, the professional conduct committee shall file it with the court, along with its recommendation, and the court may take such action as it deems necessary.

(c) The contents of affidavit of an attorney filed in support of his or her resignation from the bar shall not be disclosed publicly or made available for use in any other proceeding except on order of the court.

(12) Reciprocal Discipline:

(a) Upon being disciplined in another jurisdiction, an attorney admitted to practice in this State shall immediately notify the attorney discipline office of the discipline. Upon notification from any source that an attorney admitted to practice in this State has been disciplined in another jurisdiction, the attorney discipline office shall obtain a certified copy of the disciplinary order and shall file it with the court.

(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this State has been disciplined in another jurisdiction, the court may enter a temporary order imposing the identical or substantially similar discipline or, in its discretion, suspending the attorney pending the imposition of final discipline. The court shall forthwith issue a notice directed to the attorney and to the attorney discipline office containing:

(1) A copy of the order from the other jurisdiction; and

(2) An order directing that the attorney or attorney discipline office inform the court within thirty (30) days from service of the notice, of any claim by the lawyer or professional conduct committee predicated upon the grounds set forth in subparagraph (d), that the imposition of the identical or substantially similar discipline in this State would be unwarranted and the reasons for that claim.

(c) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this State shall be deferred until the stay expires.

(d) Upon the expiration of thirty (30) days from service of the notice pursuant to subparagraph (b), the court shall issue an order of final discipline imposing the identical or substantially similar discipline unless the attorney or attorney discipline office demonstrates, or the court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) The imposition of the same or substantially similar discipline by the court would result in grave injustice; or

(3) The misconduct established warrants substantially different discipline in this State.

(e) If the court determines that one of the factors set forth in paragraph (d) is present, the court shall refer the matter to the professional conduct committee for its recommendation regarding the discipline to be imposed.

(13) Disbarred or Suspended Attorney:

(a) A disbarred or suspended attorney may be ordered by the court, or by the professional conduct committee when an attorney is suspended by it for a period not to exceed six (6) months, to notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of the disbarment or suspension and consequent inability to act as an attorney after the effective date of the disbarment or suspension and shall advise said clients to seek other legal counsel.

(b) A disbarred or suspended attorney may be ordered by the court, or by the professional conduct committee when an attorney is suspended by it for a period not to exceed six (6) months, to notify, by registered or certified mail, return receipt requested, each client who is involved in litigated matters or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment or suspension and consequent inability to act as an attorney after the effective date of the disbarment or suspension. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move pro se in the court or agency in which the proceeding is pending, for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

(c) The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period between the entry date of the order and its effective date, the disbarred or suspended attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(d) In addition, the court, or the professional conduct committee in cases where it issued a suspension order, may order that within thirty (30) days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with the court an affidavit showing: (1) that he or she has fully complied with the provision of the order and with this section; and (2) that he or she has served a copy of such affidavit upon the professional conduct committee. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where

communications may thereafter be directed, as well as a list of all other jurisdictions in which the disbarred or suspended attorney is a member of the bar.

(e) A disbarred or suspended attorney shall keep and maintain records of the various steps taken under this section so that, upon any subsequent proceeding instituted by or against him or her, proof of compliance with this rule and with the disbarment or suspension order will be available.

(14) Reinstatement and Readmission:

(a) Reinstatement Following Suspension of Six Months or Less. An attorney who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated by the professional conduct committee following the end of the period of suspension upon the filing of a motion for reinstatement. The motion for reinstatement shall be filed with the professional conduct committee and served upon disciplinary counsel and shall be accompanied by:

(1) an affidavit stating that he or she has fully complied with the requirements of the suspension order and has paid any required fees and costs; and

(2) evidence that he or she has satisfactorily completed the Multistate Professional Responsibility Examination since his or her suspension.

(b) Reinstatement Following Suspension of More Than Six Months.

(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.

(c) Readmission Following Disbarment or Resignation While Under Disciplinary Investigation.

(1) Timing and Other Restrictions. The following restrictions apply to any New Hampshire licensed attorney who has been disbarred by the court or who has resigned while under disciplinary investigation and who wishes to apply for readmission:

(A) the attorney may not apply for readmission until the expiration of seven years from the effective date of the disbarment or resignation.

(B) If the attorney has been disbarred in New Hampshire as a result of having been disbarred in another jurisdiction, see Supreme Court Rule 37(12) (“Reciprocal Discipline”), he or she must be readmitted to practice law in the other jurisdiction prior to applying for readmission in New Hampshire.

(C) An attorney applying for readmission following disbarment may not apply for admission by motion pursuant to New Hampshire Supreme Court Rule 42(XI).

(2) Petition. An attorney who seeks readmission following disbarment or resignation while under disciplinary investigation shall file a petition for readmission with the court. The petition shall be under oath and shall:

(A) specify with particularity the manner in which the petitioner has fully complied with all of the terms and conditions set forth in all prior disciplinary orders;

(B) certify, if the attorney was disbarred in New Hampshire as a result of having been disbarred in another jurisdiction, that he or she has been readmitted to practice law in the other jurisdiction prior to applying for readmission in New Hampshire;

(C) certify that the petitioner has taken the New Hampshire Bar Examination within one year of the filing of the petition and has received a passing grade as established by the Board of Bar Examiners; and

(D) certify that the petitioner has taken the Multistate Professional Responsibility Examination after entry of the order of disbarment, and has received a passing grade as established by the Board of Bar Examiners.

(3) Initial Review of Petition. The court will review the petition to determine whether the certifications required by subsection (2) of this rule have been provided. If so, the court shall refer the petition to the professional conduct committee and the office of bar admissions character and fitness committee for the formation of a special committee on readmission to consider the petition and to make a recommendation to the court. The court shall provide a copy of the petition for readmission to the attorney discipline office.

(4) The petitioner's application to take the bar examination, including the petition and questionnaire for admission to the New Hampshire Bar, and all non-privileged documents on file with the office of bar admissions relating to the petition and questionnaire, shall be provided to the attorney discipline office. All documents on file with the office of bar admissions relating to the petition and questionnaire for admission to the New Hampshire Bar shall remain confidential and not available for public inspection, subject to the exceptions listed in Supreme Court Rule 42(IV)(g), until they are submitted as exhibits at the hearing before the special committee on readmission.

(5) The Special Committee on Readmission. Upon receipt of the petition, the chair of the professional conduct committee and the chair of the character and fitness committee shall promptly select members of each committee to serve on the special committee on readmission. Three members of the professional conduct committee and three members of the character and fitness committee shall serve on the special committee. One of the six members of the special committee shall be a layperson. The special committee shall select a chair.

(6) Publication of Notice of Petition. The special committee on readmission 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 readmission. 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 special committee on readmission shall give notice to the original complainant.

(7) Hearing Before Special Committee on Readmission.

(A) The special committee chair shall conduct and hold a prehearing conference within thirty (30) days of the appointment of the special committee on readmission.

(B) The special committee on readmission shall conduct a hearing within 120 days of the formation of the special committee.

(C) The petitioner shall bear the burden of demonstrating by clear and convincing evidence that he or she has the 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) The petitioner shall also bear the burden of demonstrating by clear and convincing evidence that he or she has good moral character and fitness. See Supreme Court Rule 42B.

(E) The special committee on readmission shall hold a hearing on the record and, for good cause, may order that the hearing or portions of the hearing be closed to the public, and, for good cause, may order that exhibits be sealed.

(F) Attorneys from the attorney discipline office and/or the office of bar admissions may participate in the hearing to present evidence and to cross-examine the petitioner and any witnesses.

(G) At the conclusion of the hearing, the special committee shall provide a copy of its written findings and recommendation to the petitioner. Unless the petitioner withdraws the petition within thirty days of the date of the written findings and recommendations, the report together with the record, shall be filed with the court.

(8) Final Order by the Court. Following receipt of the recommendation and the record from the special committee on readmission:

(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 issues 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 and any other matters as shall be deemed desirable or necessary;

(D) the court shall, after filing of any briefs and oral arguments, make such order as justice may require.

(15) Readmission after Resignation:

(a) A New Hampshire licensed attorney who has resigned, and who was not the subject of an investigation into allegations of misconduct at or subsequent to the time of resignation, may file a motion for readmission with the supreme court accompanied by evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness. If the evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness, are satisfactory to the court, the court may order readmission effective upon payment by the applicant of all bar dues and other fees, including public protection fund fees, that the applicant would have been responsible for paying had the applicant remained an active member of the bar from the date of resignation until the date of readmission. In addition, the court may condition readmission upon completion of such continuing legal education as the court may order.

(b) If the evidence of continuing competence and learning in the law is not satisfactory to the court, the court shall refer the motion for readmission to the professional conduct committee for referral to a panel of the hearings committee. The hearing panel shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competency and learning in law required for readmission. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the professional conduct committee. The professional conduct committee shall review the report of the hearings committee panel,

the record and the hearing transcript and shall file its own recommendations and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument, if any, the court shall enter a final order. No order of the court granting readmission shall be effective prior to payment by the applicant of all bar dues and other fees, including public protection fund fees, that the applicant would have been responsible for paying had the applicant remained an active member of the bar from the date of resignation until the date of readmission. In addition, the court may condition readmission upon completion of such continuing legal education as the court may order.

(c) If the evidence of continuing moral character and fitness is not satisfactory to the court, the court shall order the applicant to file with the committee on character and fitness and with the clerk of the supreme court the petition and questionnaire referred to in Supreme Court Rule 42(5)(e). Further proceedings shall be governed by Rule 42. No order of the court granting readmission shall be effective prior to payment by the applicant of all bar dues and other fees, including public protection fund fees, that the applicant would have been responsible for paying had the applicant remained an active member of the bar from the date of resignation until the date of readmission. In addition, the court may condition readmission upon completion of such continuing legal education as the court may order.

(16) Procedure:

(a) Either a respondent attorney or disciplinary counsel may appeal findings of the professional conduct committee and the imposition of a reprimand, public censure or a suspension of six (6) months or less by filing a notice of appeal with the supreme court. The appeal shall not be a mandatory appeal. If the appeal is accepted by the court, the court may affirm, reverse or modify the findings of the professional conduct committee.

The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.

(b) The professional conduct committee shall initiate disciplinary proceedings requesting a discipline of greater than six (6) months in this court by filing the professional conduct committee's recommendation and the record of the proceedings with this court.

(c) Following receipt of the recommendation and the record, this court shall serve the respondent attorney with the recommendation at the latest address provided to the New Hampshire Bar Association. Simultaneously, the court shall notify the parties that the parties must, within 30 days of this court's order thereon, identify any legal or factual issues the parties wish this court to review. Thereafter, this court may issue a scheduling order setting forth a briefing schedule and any other matters as shall be deemed desirable or necessary. There shall not be a de novo evidentiary hearing. In matters resolved by dispositive stipulation, this paragraph shall not apply, though the

court retains discretion to reject any dispositive stipulation in whole or in part, or to identify legal or factual issues it wishes the parties to address.

(d) The court may make such temporary orders as justice may require either with or without a hearing. Respondent attorney shall be entitled to be heard after any ex parte order.

(e) The court shall, after filing of any briefs and oral arguments, make such order as justice may require.

(f) The court may suspend attorneys or disbar New Hampshire licensed attorneys or publicly censure attorneys upon such terms and conditions as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession. The court may remand the matter to the professional conduct committee for such other discipline as the court may deem appropriate.

(g) In the event of suspension or disbarment, a copy of the court's order or the professional conduct committee's order, shall be sent to the clerk of every court in the State and to each State in which the respondent attorney is admitted to practice. The professional conduct committee shall continue to be responsible to insure respondent attorney's compliance with the order of suspension or disbarment, in the case of a New Hampshire licensed attorney, and to notify the court as to any violations for such action as the court deems necessary.

(h) In addition to the procedure described herein, the court may take such action on its own motion as it deems necessary.

(i) Appeals to the court shall be in the form prescribed by Rule 10, unless otherwise ordered by the court. Such appeals shall be based on the record and there shall not be a de novo evidentiary hearing.

#### (17) Appointment of Counsel to Protect Clients' Interests:

(a) Whenever an attorney is suspended, disbarred, dies or whose whereabouts are unknown, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the court, upon proper proof of the fact, may appoint an attorney or attorneys to make an inventory of the files of said attorney and to take such action as seems indicated to protect the interests of clients of said attorney as well as the interest of said attorney.

(b) Any attorney so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order appointing the attorney to make such inventory.

(c) Any attorney so appointed shall be entitled to reasonable compensation and reimbursement for expenses incurred.

#### (18) Refusal of Grievant or Complainant to Proceed, Compromise, Etc.:

Neither unwillingness nor neglect of the grievant or complainant to sign a grievance or complaint or to prosecute a charge, nor settlement, compromise or restitution shall by itself justify abatement of an investigation into the conduct of an attorney.

(19) Monetary Sanctions: Expenses Relating to Discipline Enforcement:

(a) All expenses incurred by the attorney discipline system in the investigation and enforcement of discipline may, in whole or in part, be assessed to a disciplined attorney to the extent appropriate.

(b) Following any assessment, the professional conduct committee shall send a written statement of the nature and amount of each such expense to the disciplined attorney, together with a formal demand for payment. The assessment shall become final after 30 days unless the disciplined attorney responds in writing, listing each disputed expense and explaining the reasons for disagreement. If the parties are unable to agree on an amount, the professional conduct committee may resolve and enforce the assessment by petition to the superior court in any county in the state.

(c) A final assessment shall have the force and effect of a civil judgment against the disciplined attorney. The professional conduct committee may file a copy of the final assessment with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures.

(d) The superior court may increase the assessment to include any taxable costs or other expenses incurred in the resolution or enforcement of any assessment. Such expenses may include reasonable attorney's fees payable to counsel retained by the committee to resolve or recover the assessment.

(e) Any monetary assessment made against a disciplined attorney shall be deemed to be monetary sanctions asserted by the professional conduct committee or the applicable court against such attorney.

(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.

(21) Confidentiality and Public Access -Matters Initiated Before April 1, 2000:

Applicability Note: Section 21 shall apply to records and proceedings in matters initiated before April 1, 2000.

All records and proceedings involving allegations of misconduct by an attorney shall be confidential and shall not be disclosed except:

(a) When disciplinary counsel issues a notice of charges, in which case the notice, the file (other than work product and internal memoranda), the proceedings before the committees (other than deliberations), and the decision shall be public; or

(b) When the professional conduct committee files a petition with the supreme court in which case, except as provided in section (11) regarding resignations, the pleadings, all information admitted at the proceedings, the proceedings themselves (other than deliberations of the supreme court), and the decision, shall be public; or

(c) When an attorney seeks reinstatement or readmission pursuant to section (14), in which case the proceedings before the hearings committee panel and the professional conduct committee and the court shall be conducted the same as prescribed in subsections (a) and (b); or

(d) When the respondent attorney, prior to the issuance of a notice of charges as prescribed in subsection (a), requests that the matter be public, in which case the entire

file, other than the work product and internal memoranda, of the attorney discipline system, shall be public; or

(e) 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, in which case the entire file pertaining to the crime or the public discipline, other than the work product and internal memoranda, of the attorney discipline system shall be public.

(22) Copy of Rule:

A copy of Supreme Court Rules 37 and 37A shall be provided to all grievants, complainants, and respondent attorneys.

## **Rule 37A. RULES AND PROCEDURES OF ATTORNEY DISCIPLINE SYSTEM**

### **(I) General Provisions**

(a) Jurisdiction: The jurisdiction of the attorney discipline system shall be as set forth in Supreme Court Rule 37(1)(b).

(b) Construction: This rule is promulgated for the purpose of assisting the grievant, complainant, respondent, counsel and the committees of the attorney discipline system to develop the facts relating to, and to reach a just and proper determination of matters brought to the attention of the attorney discipline system.

(c) Definitions: Subject to additional definitions contained in subsequent provisions of this rule which are applicable to specific questions, or other provisions of this rule, the following words and phrases, when used in this rule, shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:

**Answer:** The response filed by, or on behalf of, the respondent to a complaint or a notice of charges.

**Attorney:** Unless otherwise indicated, "Attorney," for purposes of this rule, means any attorney admitted to practice in this State, any attorney specially admitted to practice by a court of this State, any attorney not admitted or specially admitted in this State who provides or offers to provide legal services in this State or any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1.

**Complaint:** A grievance that, after initial review, has been determined by the attorney discipline office to be within the jurisdiction of the attorney discipline system and to meet the prerequisites for docketing as a complaint as set forth in section (II)(a)(3)(B) of this rule, and that is docketed by the attorney discipline office, or a complaint that is drafted and docketed by the attorney discipline office after an inquiry by that office. If after docketing, the attorney discipline office general counsel or the complaint screening committee determines that a complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the prerequisites for docketing set forth in sections II(a)(3)(B)(i)-(iv) of this rule, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

**Conventionally:** The filing of a grievance with the attorney discipline office in paper form, delivered to the attorney discipline office in person, by United States mail, or by other means.

**Court:** The New Hampshire Supreme Court.

**Disbarment:** The termination of a New Hampshire licensed attorney's right to practice law in this State and automatic expulsion from membership in the bar of this State. A disbarred attorney may only apply for readmission to the bar of this State upon petition to the court, after having complied with the terms and conditions set forth in the

disbarment order promulgated by the court which shall include all requirements applicable to applications for admission to the bar, including passing the bar examination and a favorable report by the professional conduct committee and the character and fitness committee.

**Disciplinary Counsel:** The attorney responsible for the prosecution of disciplinary proceedings before any hearings committee panel, the professional conduct committee and the supreme court. Disciplinary counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, such part-time attorney or attorneys as may from time to time be deemed necessary, and such other attorneys of the attorney discipline office as may from time to time be designated to assist disciplinary counsel.

**Disciplinary Rule:** Any provision of the rules of the court governing the conduct of attorneys or any rule of professional conduct.

**Discipline:** Any disciplinary action authorized by Rule 37(3)(c), in those cases in which misconduct in violation of a disciplinary rule is found warranting disciplinary action.

**Diversion:** Either a condition attached to discipline imposed by the professional conduct committee; or a referral, voluntary in nature, when conduct does not violate the rules of professional conduct; or non-disciplinary treatment by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee as an alternative to discipline for minor misconduct.

**Electronically:** The filing of a grievance with the attorney discipline office in electronic form through the attorney discipline office website.

**Electronic Signature:** A signature, other than an inked signature, as set forth in sections II(a)(3)(B)(iii)(1) and (2).

**Formal Proceedings:** Proceedings subject to section (III) of this rule.

**General Counsel:** The attorney responsible for (a) receiving, evaluating, docketing and investigating grievances filed with the attorney discipline office; (b) dismissing or diverting complaints on the grounds set forth in Rule 37(6)(c) or presenting complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason or referral to disciplinary counsel for a hearing; (c) assisting disciplinary counsel in the performance of the duties of disciplinary counsel as needed; (d) performing general legal services as required for the committees of the attorney discipline system; and (e) overseeing and performing administrative functions for the attorney discipline system. General counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, and such part-time attorney or attorneys as may from time to time be deemed necessary, and such other attorneys of the attorney discipline office as may from time to time be designated to assist general counsel.

**Grievance:** "Grievance" means a submission filed conventionally or electronically with the attorney discipline office to call its attention to conduct that the grievant believes may constitute misconduct by an attorney. A grievance that is determined, after initial screening, not to be within the jurisdiction of the attorney discipline system and/or not to

meet the prerequisites for docketing as a complaint shall not be docketed and shall continue to be referred to as a grievance. A grievance that is determined, after initial screening, to be within the jurisdiction of the attorney discipline system and to meet the prerequisites for docketing as a complaint shall be docketed as a complaint and shall be referred to thereafter as a complaint; provided, however, that if the attorney discipline office general counsel or complaint screening committee later determines that the docketed complaint is not within the jurisdiction of the attorney discipline system and/or does not meet the prerequisites for docketing set forth in sections II(a)(3)(B)(i)-(iv) of this rule, it shall be removed from the docket and it shall thereafter be treated for all purposes as a grievance that has not been docketed as a complaint.

**Hearing Panel:** A hearing panel comprised of members of the hearings committee.

**Inquiry:** A preliminary investigation of a matter begun by the attorney discipline office on its own initiative to determine whether a complaint should be docketed.

**Investigation:** Fact gathering by the attorney discipline office with respect to alleged misconduct.

**Minor Misconduct:** Conduct, which if proved, violates the rules of professional conduct but would not warrant discipline greater than a reprimand. Minor misconduct (1) does not involve the misappropriation of client funds or property; (2) does not, nor is likely to, result in actual loss to a client or other person of money, legal rights or valuable property rights; (3) is not committed within five (5) years of a diversion, reprimand, censure, suspension or disbarment of the attorney for prior misconduct of the same nature; (4) does not involve fraud, dishonesty, deceit or misrepresentation; (5) does not constitute the commission of a serious crime as defined in Rule 37(9)(b); and (6) is not part of a pattern of similar misconduct.

**Notice of Charges:** A formal pleading served under section (III)(b)(2) of this rule by disciplinary counsel.

**Public Censure:** The publication by the court or the professional conduct committee, in appropriate New Hampshire publications, including a newspaper of general statewide circulation, and one with general circulation in the area of respondent's primary office, as well as the New Hampshire Bar News, of a summary of its findings and conclusions relating to the discipline of an attorney, as defined in this section.

**Referral:** A grievance received by the attorney discipline office from any New Hampshire state court judge or from any member of the bar of New Hampshire, in which the judge or attorney indicates that he or she does not wish to be treated as a grievant.

**Reprimand:** Discipline administered by the professional conduct committee after notice of charges and after a hearing before a hearings committee panel and the right to request oral argument to the professional conduct committee in those cases in which misconduct in violation of the rules of professional conduct is found. A reprimand is administered by letter issued by the chair of the professional conduct committee, subject to an attorney's right to appeal such discipline to the court.

**Suspension:** The suspension of an attorney's right to practice law in this State, for a period of time specified by the court or by the professional conduct committee.

Suspension by the professional conduct committee may not exceed six (6) months. The suspended attorney shall have the right to resume the practice of law, after the expiration of the suspension period, upon compliance with the terms and conditions set forth in the suspension order promulgated by the court or the professional conduct committee and pursuant to the procedure set forth in section (II)(c)(2) regarding reinstatement.

(d) Grounds for Discipline: The various matters specified in Supreme Court Rule 37(1)(c), the disciplinary rules or decisional law shall be grounds for discipline.

(e) Types of Discipline and Other Possible Action

(1) Misconduct under Supreme Court Rule 37(1)(c), the disciplinary rules or decisional law shall be grounds for any of the following:

(A) Disbarment - by the court.

(B) Suspension for more than six months - by the court.

(C) Suspension for six months or less - by the professional conduct committee or the court.

(D) Public Censure - by the professional conduct committee or the court.

(E) Reprimand - by the professional conduct committee.

(F) Monetary Sanctions Pursuant to Rule 37(19) – by the professional conduct committee or the court.

(2) The attorney discipline office general counsel, the complaint screening committee or the professional conduct committee may divert a matter involving minor discipline, in lieu of discipline, subject to compliance with the terms of a written agreement. The professional conduct committee may require an attorney to participate in a diversion program as a condition of discipline. Any component of the attorney discipline system may refer to a diversion program, on a voluntary basis, an attorney who engages in conduct that does not violate the rules of professional conduct but which should be addressed as a corrective matter.

(f) Subsequent Consideration of Disciplinary Action

The fact that an attorney has been the subject of disciplinary action by the professional conduct committee, may (together with the basis thereof) be considered in determining the extent of discipline to be imposed, in the event additional charges of misconduct are subsequently brought and proven by clear and convincing evidence against the attorney.

(g) Diversion

Diversion may be either mandatory, a voluntary referral or a discretionary referral for minor misconduct.

(1) Mandatory diversion involving required participation in a diversion program may occur in some cases as part of discipline imposed by the professional conduct committee.

(2) Voluntary referral to a diversion program may occur when the conduct of an attorney may come to the attention of any of the committees or personnel involved in the attorney discipline system but the conduct does not violate the rules of professional conduct. The referral would be voluntary and may occur in situations where there is reason to believe that the attorney's conduct may lead to violations of the rules of professional conduct if corrective action is not taken by the attorney.

(3) Discretionary diversion as an alternative to a formal sanction for minor misconduct may occur if:

(A) The misconduct appears to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee to be the result of poor office management, chemical dependency, behavioral or health-related conditions, negligence or lack of training or education; and

(B) There appears to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney similar to that which gave rise to the diversion.

(C) If the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee offers a written diversion agreement to an attorney, the attorney shall have thirty (30) days to accept and execute the diversion agreement.

(D) An attorney may decline to accept and execute a diversion agreement in which case the pending complaint shall be processed by the attorney discipline system in the same manner as any other matter.

(4) Diversion agreements shall be in writing and shall require the attorney to participate, at his or her own expense, in a remedial program acceptable to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee which will address the apparent cause of the misconduct. Remedial programs may include but are not limited to: law office assistance; chemical dependency treatment; counseling; voluntary limitation of areas of practice for the period of the diversion agreement; or a prescribed course of legal education including attendance at legal education seminars. A diversion agreement shall require the attorney to admit the facts of the complaint being diverted and to agree that, in the event the attorney fails to comply with the terms of the diversion agreement, the facts shall be deemed true in any subsequent disciplinary proceedings.

(5) The fact that a diversion has occurred shall be public in all matters. Written diversion agreements shall also be public unless the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee votes to make it non-public based on one or more of the following: health, personal finances, family considerations or other highly personal matters.



(6) If an attorney fails to comply with the terms of a written diversion agreement, the agreement shall be terminated and the complaint shall be processed by the attorney discipline system in the same manner as any other matter.

(7) If an attorney fulfills the terms of a written diversion agreement, the complaint shall be dismissed and written notice shall be sent to both the attorney and the complainant.

(8) The attorney discipline office shall a) prepare diversion agreements setting forth the terms determined by the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee; b) monitor the progress of the attorney participating in the diversion program to insure compliance; and c) notify the complaint screening committee or the professional conduct committee whenever there is a voluntary or involuntary termination of the written diversion agreement or upon successful completion of the diversion program.

#### (h) Public Announcements

The attorney discipline office may, from time to time, publicly announce the nature, frequency and substance of diversion (unless made non-public) and sanctions imposed by the attorney discipline system. Unless a grievance or complaint has already been made available for public inspection in accordance with Supreme Court Rule 37, such announcements shall not disclose or indicate the identity of any respondent attorney without the prior approval of the supreme court and prior notice to the respondent (giving said attorney an opportunity to be heard thereon) or without a written waiver from the attorney.

#### (i) Period of Limitation

(1) Except as provided in subsection (3), no formal disciplinary proceedings shall be commenced unless a grievance is filed with the attorney discipline office in accordance with section (II)(a) or a complaint is generated and docketed by the attorney discipline office under section (II)(a)(5)(B) of this rule within two (2) years after the commission of the alleged misconduct; except when the acts or omissions that are the basis of the grievance were not discovered and could not reasonably have been discovered at the time of the acts or omissions, in which case, the grievance must be filed within two (2) years of the time the grievant discovers, or in the exercise of reasonable diligence should have discovered, the acts and omissions complained of.

(2) Misconduct will be deemed to have been committed when every element of the alleged misconduct has occurred, except, however, that where there is a continuing course of conduct, misconduct will be deemed to have been committed beginning at the termination of that course of conduct.

(3) If a grievance is filed after the period prescribed in subsection (1) has expired, the attorney discipline office may elect to commence formal proceedings in the following cases:

(A) if based on charges which include commission of a "serious crime," as defined in Supreme Court Rule 37(9)(b), or conduct which would be a material element of a "serious crime," or

(B) if based on charges which do not include conduct described in (A) but which include as a material element fraud or fraudulent misrepresentation, dishonesty, deceit, or breach of a fiduciary duty, but only if commenced within one (1) year after actual discovery of the misconduct by the aggrieved party.

(4) The period of limitation does not run:

(A) during any time the attorney is outside this jurisdiction with a purpose to avoid commencement of proceedings, or wherein the attorney refuses to cooperate with an investigation into alleged misconduct, or

(B) during any period in which the attorney has engaged in active concealment of the alleged misconduct, provided that the period begins to run when the concealment is discovered by the aggrieved party or the attorney discipline office.

(5) If, while proceedings of any kind are pending against the attorney in any court or tribunal and arising out of the same acts or transactions that provide the basis for the allegations of misconduct, the limitations period prescribed in subsection (1) expires, a grievance or referral may nonetheless be filed with the attorney discipline office so long as it is filed within one year after final conclusion of those proceedings notwithstanding the expiration of the period of limitation.

(j) Status of Complainants. Complainants are not parties to informal or formal disciplinary proceedings. Complainants lack standing to file pleadings or object to motions or recommendations of disposition of disciplinary matters.

(k) Disciplinary matters may be handled by attorneys of the Attorney Discipline Office fulfilling functions of either general counsel or disciplinary counsel, as the general counsel may from time to time assign.

## (II) Investigations and Informal Proceedings

### (a) Preliminary Provisions

#### (1) Responsibility of Attorney Discipline Office

The attorney discipline office, through general counsel, shall investigate all matters involving alleged misconduct of attorneys which fall within the jurisdiction of the attorney discipline system and which satisfy the requirements of this rule.

#### (2) Initiation of Investigation Process

(A) Grievance. Any person may file a grievance with the attorney discipline office to call to its attention the conduct of an attorney that he or she believes constitutes misconduct which should be investigated by the attorney discipline office, subject to section II(a)(3)(B)(ii). If necessary, the general counsel or his or her deputy or assistant will assist the grievant in reducing the grievance to writing.

In accordance with a judge's obligation under canon 3 of the code of judicial conduct to report unprofessional conduct of any attorney of which the judge is aware, a judge of the supreme, superior, district or probate courts of New Hampshire, may refer any

matter to the attorney discipline office which he or she believes may constitute misconduct by an attorney that should be investigated by the attorney discipline office. In accordance with an attorney's obligation under Rule 8.3 of the rules of professional conduct to report unprofessional conduct of an attorney of which he or she has knowledge, a member of the bar of New Hampshire, may refer any matter to the attorney discipline office which he or she believes may constitute misconduct by an attorney that should be investigated by the attorney discipline office. Except as otherwise provided, a referral from a court or attorney shall be treated as a grievance. Upon receipt of a referral, if the attorney discipline office shall determine that the referring judge or attorney does not wish to be treated as a grievant, and, if it is determined after initial screening that the grievance is within the jurisdiction of the attorney discipline office and meets the prerequisites for docketing as a complaint as set forth in section (II)(a)(3)(B), the attorney discipline office shall process the grievance as an attorney discipline office generated complaint.

(B) Attorney Discipline Office-Initiated Inquiry. The attorney discipline office may, upon any reasonable factual basis, undertake and complete an inquiry, on its own initiative, of any other matter within its jurisdiction coming to its attention by any lawful means. Unless the attorney discipline office later docketed a complaint against an attorney in accordance with section (II)(a)(5)(B), all records of such an inquiry shall be confidential.

(C) Filing. A grievance shall be deemed filed when received conventionally or electronically by the attorney discipline office.

### (3) Procedure after Receipt of Grievance

(A) Initial Screening of Grievance. General counsel shall review each grievance upon receipt to determine whether the grievance is within the jurisdiction of the attorney discipline system and whether the grievance meets the prerequisites for docketing as a complaint.

When necessary, general counsel may request additional information or documents from the grievant. Except for good cause shown, failure of a grievant to provide such additional information and/or documents within twenty (20) days may result in general counsel processing the grievance based on the then existing file, or dismissing the complaint without prejudice.

Upon receipt of the above information, general counsel may allow a respondent up to thirty (30) days to file a voluntary response if it is deemed necessary to assist in the evaluation process.

Extensions of time are not favored.

(B) Prerequisites for Docketing Grievance as a Complaint. A grievance shall be docketed as a complaint if it is within the jurisdiction of the attorney discipline system and it meets the following prerequisites:

(i) Violation Alleged. It contains: (a) a brief description of the legal matter that gave rise to the grievance; (b) a detailed factual description of the respondent's conduct; (c) the relevant documents that illustrate the conduct of the respondent, or, if the grievant is unable to provide such documents, an explanation as to why the grievant is unable to

do so; and (d) whatever proof is to be provided, including the name and addresses of witnesses to establish a violation of a disciplinary rule.

(ii) Standing. With the exception of an attorney discipline office-initiated inquiry or a referral by a judge or attorney, it must be filed by a person who is directly affected by the conduct complained of or who was present when the conduct complained of occurred, and contain a statement establishing these facts.

(iii) Oath or Affirmation. It is typed or in legible handwriting and, with the exception of an attorney discipline office-initiated inquiry or a referral by a judge or attorney, manually or electronically signed by the grievant under oath or affirmation. The following language, or language that is substantially equivalent, must appear above the grievant's signature: "I hereby swear or affirm under the pains and penalties of perjury that the information contained in this grievance is true to the best of my knowledge."

An electronically signed Oath or Affirmation shall be considered a signed original if presented by the grievant in either one of two ways: (1) the typed symbol /s/ followed by the typed name of the registered filer submitting the document (example: /s/ John Smith); or (2) a graphic representation of the filer's actual signature.

(iv) Limitation Period. It was filed with the attorney discipline office within the period of limitation set forth in section (I)(i).

(v) Sufficiency of Allegations. The attorney discipline office may decide not to docket a grievance as a complaint if it determines, based on its evaluation of the grievance that there is no reasonable likelihood that a hearing panel would find clear and convincing evidence that the respondent attorney violated the rules of professional conduct.

(C) Treatment of Grievance Not Within Jurisdiction of Attorney Discipline System or Failing to Meet Complaint Prerequisites. A grievance that is not within the jurisdiction of the attorney discipline system or that does not meet the prerequisites for docketing as a complaint as set forth in section (II)(a)(3)(B) shall not be docketed and shall be dismissed in accordance with section (II)(a)(4).

#### (4) Disposition of Grievance after Initial Screening.

(A) Lack of Jurisdiction. If the attorney discipline office determines that the person who is the subject of the grievance is not a person subject to the rules of professional conduct, general counsel shall return the grievance to the grievant with a cover letter explaining the reason for the return and advising the grievant that the attorney discipline office will take no action on the grievance. The person who is the subject of the grievance shall not be notified of it. No file on the grievance will be maintained. The attorney discipline office may bring the matter to the attention of the authorities of the appropriate jurisdiction, or to any other duly constituted body which may provide a forum for the consideration of the grievance and shall advise the grievant of such referral.

(B) Failure to Meet Complaint Prerequisites. If the attorney discipline office determines that a grievance fails to meet the prerequisites for docketing as a complaint, it shall so advise the grievant in writing. The attorney who is the subject of the grievance shall be provided with a copy of the grievance and the response by general counsel, and shall be given an opportunity to submit a reply to the grievance within thirty (30) days from

the date of the notification or such further time as may be permitted by general counsel. The attorney's reply shall be filed in the record, which shall be available for public inspection in accordance with Rule 37(20).

(C) Reconsideration of Attorney Discipline Office's Decision. A grievant may file a written request for reconsideration of the attorney discipline office's decision that the grievance is not within the jurisdiction of the attorney discipline system or does not meet the prerequisites for docketing as a complaint, but said request must be filed within ten (10) days of the date of the written notification. A request for reconsideration of the attorney discipline office's decision shall automatically stay the period in which the attorney may file a reply as provided for by section (II)(a)(4)(B). Any such request for reconsideration that is timely filed shall be presented by general counsel to the complaint screening committee which shall affirm the decision of the attorney discipline office or direct that the grievance be docketed as a complaint and processed in accordance with the following paragraph. If the decision of the attorney discipline office is affirmed, the attorney who is the subject of the grievance shall be given the opportunity to submit a reply to the grievance within thirty (30) days from the date of the complaint screening committee's action on the request for reconsideration or such further time as may be ordered by that committee.

#### (5) Docketing of Grievance as Complaint; Procedure Following Docketing of Complaint.

(A) Docketing of Grievance as Complaint. If general counsel determines that a grievance is within the jurisdiction of the attorney discipline office and meets the prerequisites for docketing as a complaint as set forth in section (II)(a)(3)(B), he or she shall docket it as a complaint.

(B) Drafting and Docketing of Attorney Discipline Office-generated Complaint. If, after undertaking and completing an inquiry on its own initiative, the attorney discipline office determines that there is a reasonable basis to docket a complaint against a respondent, a written complaint shall promptly be drafted and docketed.

(C) Request for Answer to Complaint. After a complaint is docketed, general counsel shall promptly forward to the respondent a copy of the complaint and a request for an answer thereto or to any portion thereof specified by the general counsel. Unless a shorter time is fixed by the general counsel and specified in such notice, the respondent shall have thirty (30) days from the date of such notice within which to file his or her answer with the attorney discipline office. The respondent shall serve a copy of his or her answer in accordance with section (VII) of this rule. If an answer is not received within the specified period, or any granted extension, absent good cause demonstrated by the respondent, general counsel may recommend to the complaint screening committee that the issue of failing to cooperate be referred to disciplinary counsel who shall prepare a notice of charges requiring the respondent to appear before a panel for the hearings committee and to show cause why he or she should not be determined to be in violation of Rules 8.1(b) and 8.4(a) of the rules of professional conduct for failing to respond to general counsel's request for an answer to the complaint.

#### (6) Investigation.

Either prior to or following receipt of the respondent's answer, general counsel and his or her deputies and assistants shall conduct such investigation as may be appropriate.

Upon completion of the investigation, general counsel may (1) dismiss or divert a complaint on the grounds set forth in Rule 37(6)(c); or (2) present the complaint to the complaint screening committee with recommendations for diversion as provided in section (l)(g), dismissal for any reason or referral to disciplinary counsel for a hearing.

At any time while general counsel is investigating a docketed complaint, the respondent may notify general counsel that the respondent waives the right to have the matter considered by the complaint screening committee and consents to the matter being referred to disciplinary counsel for a hearing. Agreement by the respondent to referral for a hearing shall not be considered an admission of misconduct or a waiver of any defenses to the complaint.

Meetings of the complaint screening committee shall be in the nature of deliberations and shall not be open to the public, respondents, respondents' counsel, or the complainant. Records and reports of recommendations made shall in all respects be treated as work product and shall not be made public or be discoverable. However, the decision of the complaint screening committee shall be public.

(7) Action By the Attorney Discipline Office General Counsel or the Complaint Screening Committee.

(A) Diversion. In any matter in which the attorney discipline office general counsel or the complaint screening committee determines that diversion is appropriate, it shall be structured consistent with the provisions of section (l)(g).

(B) Dismissal For Any Reason. In any matter in which the Attorney Discipline Office General Counsel or the complaint screening committee determines that a complaint should be dismissed, either on grounds of no professional misconduct or any other reason, general counsel or the committee shall dismiss the complaint and it shall notify the complainant and the respondent in writing and the attorney discipline office shall close its file on the matter.

(C) Formal Proceedings. If the respondent agrees with the recommendation of the Attorney Discipline Office General Counsel to refer a complaint to disciplinary counsel, or the complaint screening committee determines that formal proceedings should be held, the complaint shall be referred to disciplinary counsel for the issuance of notice of charges and the scheduling of a hearing on the merits before a panel of the hearings committee or, alternatively, for waiver of formal proceedings by respondent and the filing of stipulations as to facts, rule violations and/or sanction.

(b) Abatement of Investigation.

(1) Refusal of Grievant/Complainant or Respondent to Proceed, Etc.

Neither unwillingness nor neglect of the grievant or complainant to prosecute a charge, nor settlement, compromise, or restitution, nor failure of the respondent to

cooperate, shall, by itself, justify abatement of an investigation into the conduct of an attorney or the deferral or termination of proceedings under this rule.

(2) Complaint Related to Pending Civil Litigation or Criminal Matter.

(A) General Rule. The processing of a complaint involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation need not but may be deferred at any stage pending determination of such litigation.

(B) Effect of Determination. The acquittal of a respondent on criminal charges or a verdict or judgment in the respondent's favor in civil litigation involving substantially similar material allegations shall not, by itself, justify termination of a disciplinary investigation predicated upon the same material allegations.

(c) Resignation by a New Hampshire Licensed Attorney under Disciplinary Investigation.

(1) Recommendation to the Court. Upon receipt by any component part of the attorney discipline system of an affidavit from a New Hampshire licensed attorney who intends to resign pursuant to the rules of the court, it shall refer the matter to the professional conduct committee, to review the affidavit and such other matters as it deems appropriate to determine either (i) to recommend to the court that the resignation be accepted and to recommend any terms and conditions of acceptance it deems appropriate, or (ii) to recommend to the court that the resignation not be accepted with the reasons therefore. The professional conduct committee shall submit the affidavit and its recommendation to the court, and the proceedings, if any, before the court shall be conducted by disciplinary counsel.

(2) Notification of Grievant. In the event the court accepts the resignation of a respondent and removes the respondent on consent, the professional conduct committee by means of written notice shall notify the grievant of such action.

(III) Formal Proceedings  
Preface

As good cause appears and as justice may require, the professional conduct committee may waive the application of any rule under this section.

(a) Preliminary Provisions.

(1) Representation of Respondent.

When a respondent is represented by counsel in a formal proceeding, counsel shall file with the hearings committee and disciplinary counsel a written notice of such appearance, which shall state such counsel's name, address, and telephone number, the name and address of the respondent on whose behalf counsel appears, and the caption of the subject proceedings. If the appearance is filed after a hearing panel has submitted its reports and recommendations to the professional conduct committee, the notice of the appearance shall be filed with the professional conduct committee rather than the hearings committee. In any proceeding where counsel has filed a notice of

appearance pursuant to this section, any notice or other written communication required to be served on or furnished to the respondent shall also be served on or furnished to the respondent's counsel (or one of such counsel if the respondent is represented by more than one counsel) in the same manner as prescribed for the respondent, notwithstanding the fact that such communication may be furnished directly to the respondent.

(2) Format of Pleadings and Documents.

Pleadings or other documents filed in formal proceedings shall comply with and conform to the rules from time to time in effect for comparable documents in the court.

(3) Avoidance of Delay.

All formal proceedings under this rule shall be as expeditious as possible. In any matter pending before the hearings committee, only the chair of the panel assigned to hear the matter may grant an extension of time, and only upon good cause shown. In any matter pending before the professional conduct committee, only the chair of the committee may grant an extension of time, and only upon good cause shown. Application for such an extension shall be made, in advance, and in writing where practicable, to the appropriate chair.

(4) Additional Evidence.

Whenever, in the course of any hearing under this rule, evidence shall be presented upon which another charge or charges against the respondent might be made, it shall not be necessary to prepare or serve an additional notice of charges with respect thereto, but the hearing panel may, after reasonable notice to the respondent and disciplinary counsel and an opportunity to answer and be heard, proceed to the consideration of such additional charge or charges as if they had been made and served at the time for service of the notice of charges, and may render its decision upon all such charges as may be justified by the evidence in the case.

(aa) Stipulations

(1) Dispositive Stipulations as to Facts, Rule Violations and Sanction

(A) The respondent and the attorney discipline office may enter into a stipulation to facts, rule violations, and sanction disposing of all issues at any time after a file has been referred to disciplinary counsel by the complaint screening committee.

(B) If a dispositive stipulation is reached before a hearing panel has been appointed, the stipulation shall be filed with and reviewed by the professional conduct committee. If a dispositive stipulation is reached after a hearing panel has been appointed, it shall be filed with and reviewed by the hearing panel.

(2) Partial Stipulations

(A) A partial stipulation to resolve some but not all issues of fact, rule violation and sanction may be entered into by the parties at any time after a file has been referred to disciplinary counsel by the complaint screening committee.



(B) A partial stipulation shall be filed with a hearing panel. If a hearing panel has not been appointed, one shall be appointed prior to the filing of the partial stipulation.

(C) The hearing panel shall review the partial stipulation and approve, conditionally approve or reject the partial stipulation in accordance with Rule 37A(III)(aa)(3). A partial stipulation approved by the hearing panel shall be deemed binding on all matters stipulated therein.

(D) Upon the hearing panel's review of a partial stipulation, any remaining contested issues of facts, rule violations and sanction shall be heard by the hearing panel pursuant to Rule 37A(III)(b) and (c).

### (3) Review of Stipulation to Facts, Rule Violations and/or Sanction

(A) The professional conduct committee or the hearing panel (the "reviewing body") shall review a stipulation based solely on the record agreed to by the respondent and disciplinary counsel. Either party may request to appear before the reviewing body to address the stipulation, or the reviewing body may, in its discretion, direct the parties to appear before it to address the stipulation. The oral proceedings on stipulations shall not be recorded or transcribed and shall not become part of the record.

(B) The reviewing body may accept, reject, or conditionally accept the stipulation and shall issue a written order or report, as appropriate, with supporting grounds.

(C) If the reviewing body accepts the stipulation in its entirety, the reviewing body shall adopt all findings of fact and conclusions of law in the stipulation.

(D) If the reviewing body rejects the stipulation in its entirety, the rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible into evidence in any disciplinary, civil or criminal proceeding.

(E) The reviewing body may conditionally approve a stipulation upon agreement by the respondent and disciplinary counsel to a different sanction, probation, or other term the reviewing body deems necessary to accomplish the purposes of lawyer discipline.

(i) The conditionally approved stipulation is deemed approved by the reviewing body, if within 21 days of service of the reviewing body's order or report, or within additional time granted by the reviewing body, both parties consent in writing to the conditional terms of the order.

(ii) Absent such consent, the parties may amend and resubmit the stipulation to the reviewing body or, alternatively, disciplinary counsel may file a notice of charges or otherwise proceed.

(iii) Absent consent or amendment and resubmission of the stipulation, the stipulation has no force or effect and neither it nor the fact of its execution is admissible into evidence in any disciplinary, civil or criminal proceeding.

### (b) Institution of Proceedings.

#### (1) General.

Upon receipt of a file referred by the attorney discipline office general counsel or the complaint screening committee, disciplinary counsel may engage in such additional preparation to allow counsel to formalize allegations into a notice of charges. The notice of charges shall be served on the respondent by certified mail, return receipt requested, unless some other type of service is authorized upon application to the chair of the professional conduct committee. Throughout the proceedings, disciplinary counsel shall exercise independent professional judgment. Nevertheless, disciplinary counsel shall keep the complainant apprised of developments in the matter and consider input from the complainant.

(2) Notice of Charges; Initial Disclosure

The notice of charges shall set forth the allegations of misconduct against the respondent and the disciplinary rules alleged to have been violated. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel and to present evidence in respondent's own behalf. At the time of filing the notice of charges or as soon thereafter as is practicable, disciplinary counsel shall provide respondent with bates-stamped copies of all relevant documents (excluding work product and internal memoranda of the attorney discipline office).

(3) Answer.

(A) General Rule. The respondent shall answer the notice of charges by serving and filing an answer with disciplinary counsel within thirty (30) days after service of the notice of charges. Should the respondent fail to file an answer, the allegations set forth in the notice of charges shall be deemed to be admitted.

(B) Contents of Answer. The answer shall be in writing, and shall respond specifically to each allegation of the notice of charges and shall assert all affirmative defenses.

(4) Assignment for Hearing.

Upon receiving an answer from the respondent, or the expiration for the thirty (30) day period for a respondent to file an answer, it shall be the duty of disciplinary counsel to request that the chair of the hearings committee appoint a hearing panel.

(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.

#### (6) Pre-Hearing Conference.

(A) A pre-hearing conference shall be held in all matters. The pre-hearing conference shall be held by the hearing panel chair no earlier than sixty (60) days after an Answer has been filed. At least fourteen (14) days written notice of the date of the conference shall be given. Attendance is mandatory by all parties at the conference. A pre-hearing conference may be held by telephone call where appropriate. No transcript shall be made of the pre-hearing conference.

(B) At the pre-hearing conference, the hearing panel chair shall address the following matters:

(i) The formulation and simplification of issues;

(ii) Admissions and stipulations of the parties with respect to allegations, defenses and any aggravation or mitigation;

(iii) The factual and legal contentions of the parties;

(iv) The identification and limitation of witnesses, including character and expert witnesses;

(v) Rulings on discovery disputes, deadlines for the completion of discovery, including the timely exchange of expert reports, and a ruling on any requests to take depositions;

(vi) The hearing date and its estimated length;

(vii) Deadline for exchanging of proposed exhibits; deadline for objections to exhibits; exhibits not objected to shall be deemed stipulated exhibits; and

(viii) Any other preliminary issues or matters which may aid in the disposition of the case.

(C) Within fourteen (14) days following the pre-hearing conference, the hearing panel chair shall issue a case management order, designated as such in the caption, memorializing any agreements by the parties and any determinations made respecting any matters considered at the conference. The case management order, which constitutes part of the record, shall be sent to the disciplinary counsel and the respondent.

(D) At the pre-hearing conference the hearing panel chair shall schedule a date for the hearing of the case within ninety (90) days after the date of the conference, except for good cause shown.

#### (7) Further Review.

If at any point prior to the hearing on the merits, disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing, he or she shall submit a written report to the professional conduct committee requesting that the matter be dismissed either with a finding of no professional misconduct or on some other basis.

#### (c) Conduct of Hearings.

(1) General Rule.

The hearing panel chair shall conduct the hearing. A record shall be required and a transcript provided to the respondent, disciplinary counsel and the professional conduct committee. A transcript may be provided to the complainant if requested. A copy of the transcript may be obtained from the stenographer by anyone else at the expense of the person requesting it, and it shall thereafter be provided within a reasonable time. The respondent may have the right to be represented by counsel, and respondent and disciplinary counsel shall present their evidence. The hearing shall be public.

(2) Limiting Number of Witnesses.

The hearing panel may limit the number of witnesses who may be heard upon any issue before it to eliminate unduly repetitious or cumulative evidence.

(3) Additional Evidence.

At the hearing the hearing panel may, if it deems it advisable, authorize either the respondent or disciplinary counsel to file specific post-hearing documentary evidence as part of the record within such time as shall be fixed by the hearing panel chair.

(4) Oral Examination.

Witnesses shall be examined orally by disciplinary counsel or the respondent calling the witnesses as well as by the members of the hearing panel. Witnesses whose testimony is to be taken, including the complainant and the respondent, shall be sworn, or shall affirm, before their testimony shall be deemed evidence in any proceeding or any questions are put to them. Cross-examination of witnesses, including the complainant and respondent, shall be allowed but may be limited by the hearing panel chair if such cross-examination is not assisting the hearing panel in developing facts relating to, or reaching a just and proper determination of, the matters before the hearing panel.

(5) Admissibility of Evidence.

(A) General Rule. All evidence which is deemed by the hearing panel chair to be relevant, competent and not privileged shall be admissible in accordance with the principles set out in section (I)(b) of this rule. Except as provided above, the formal rules of evidence shall not apply.

(B) Pleadings. The notice of charges and answer thereto shall, without further action, be considered part of the record.

(6) Reception and Ruling on Evidence.

When objections to the admission or exclusion of evidence are made the grounds shall be stated concisely. Formal exceptions are unnecessary. The hearing panel chair shall rule on the admissibility of all evidence.

(7) Copies of Exhibits.

When exhibits of a documentary character are received in evidence, copies shall, unless impracticable, be furnished to each member of the hearing panel present at the hearing, as well as to opposing counsel or the other party. Legible copies shall be admissible, unless otherwise required by the hearing panel chair.

(8) Photographing, Recording and Broadcasting.

(A) The hearing panel should permit the media to photograph, record and broadcast all proceedings that are open to the public. The hearing panel may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence. Except as specifically provided in this rule, or by order of the hearing panel, no person shall within the hearing room take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of any proceeding.

(B) Reporters hired by the hearings committee to record hearings pursuant to this rule and authorized recorders are not prohibited by this rule from making voice recordings for the sole purpose of discharging their official duties.

(C) Proposed Limitations on Coverage by the Electronic Media. Any party to a formal proceeding – or any other interested person – shall notify the hearings committee at the inception of a matter, or as soon as practicable, if that person intends to ask the hearing panel to limit electronic media coverage of any proceeding that is open to the public. Failure to notify the hearings committee in a timely fashion may be sufficient grounds for the denial of such a request. In the event of such a request, the hearings committee or hearing panel shall either deny the request or issue an order notifying the parties to the proceeding and all other interested persons that such a limitation has been requested, establish deadlines for the filing of written objections by parties and interested persons, and order an evidentiary hearing during which all interested persons will be heard. The same procedure for notice and hearing shall be utilized in the event that the hearing panel sua sponte proposes a limitation on coverage by the electronic media. A copy of the order shall, in addition to being incorporated in the case docket, be sent to the Associated Press, which will disseminate the order to its members and inform them of upcoming deadlines/hearing.

(D) Advance Notice of Requests for Coverage. Any requests to bring cameras, broadcasting equipment and recording devices into a hearing room for coverage of any proceedings shall be made as far in advance as practicable. If no objection to the requested electronic coverage is received by the hearings committee or hearing panel, coverage shall be permitted in compliance with this rule. If an objection is made, the media will be so advised and the panel will conduct an evidentiary hearing during which all interested parties will be heard to determine whether, and to what extent, coverage by the electronic media or still photography will be limited.

(E) Pool Coverage. The hearing panel retains discretion to limit the number of still cameras and the amount of video equipment in the hearing room at one time and may require the media to arrange for pool coverage. The panel will allow reasonable time prior to a proceeding for the media to set up pool coverage for television, radio and still photographers providing broadcast quality sound and video.

(1) It is the responsibility of the news media to contact the attorney discipline office in advance of a proceeding to determine if pool coverage will be required. If the hearing panel has determined that pool coverage will be required, it is the sole responsibility of the media, with assistance as needed from the attorney discipline office, to determine which news outlet will serve as the “pool.” Disputes about pool coverage will not be resolved by the hearing panel. Access may be curtailed if pool agreements cannot be reached.

(2) In the event of multiple requests for media coverage, because scheduling renders a pool agreement impractical, the attorney discipline office retains the discretion to rotate media representatives into and out of the courtroom.

(F) Live Feed. Except for good cause shown, requests for live coverage should be made at least five (5) days in advance of a proceeding.

(G) Exhibits. For purposes of this rule, access to exhibits will be at the discretion of the hearing panel. The panel retains the discretion to make one “media” copy of each exhibit available in the attorney discipline office.

(H) Equipment. Exact locations for all video and still cameras, and audio equipment within the hearing room will be determined by the hearing panel. Movement in the hearing room is prohibited, unless specifically approved by the panel.

(1) Placement of microphones in the hearing room will be determined by the hearing panel. An effort should be made to facilitate broadcast quality sound. All microphones placed in the hearing room will be wireless.

(2) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash equipment and other supplemental lighting or sound equipment is prohibited unless otherwise approved by the hearing panel.

(I) Restrictions. Unless otherwise ordered by the hearing panel, the following standing orders shall govern.

(1) No flash or other lighting devices will be used.

(2) Set up and dismantling of equipment is prohibited when the proceedings are in session.

(3) No camera movement during the proceedings.

(4) No cameras permitted behind the respondent's table.

(5) Broadcast equipment will be positioned so that there will be no audio recording of conferences between attorney and client or among counsel and the hearing panel at the bench. Any such recording is prohibited.

(6) Photographers and videographers must remain a reasonable distance from parties, counsel tables, alleged victims, witnesses and families unless the hearing participant voluntarily approaches the camera position.

(7) All reporters and photographers will abide by the directions of the hearing room officers at all times.

(8) Broadcast or print interviews will not be permitted inside the hearing room before or after a proceeding.

(9) Photographers, videographers and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings.

(10) Appropriate dress is required.

(d) Concluding Procedures

(1) Report of Hearing Panel. After hearing the evidence, the hearing panel shall make a written report of its findings of fact which shall be signed by the hearing panel chair. The hearing panel shall include its recommendations whether its factual findings support a conclusion that the rules of professional conduct were violated by clear and convincing evidence and, if so, an appropriate sanction. The report shall be submitted to the professional conduct committee no more than sixty (60) days after the close of each hearing. If the hearing panel is not unanimous in any recommendations it may make, a minority report may also be submitted to the professional conduct committee. Copies of all hearing panel reports shall be sent to disciplinary counsel, the complainant and the respondent at the same time they are sent to the professional conduct committee. At any time during the hearing panel proceedings, respondent and disciplinary counsel may request approval of a partial or dispositive stipulation. The hearing panel shall forward to the committee any stipulations approved by the hearing panel. Such approved stipulations shall accompany the hearing panel's written report on contested issues of fact, rule violation and sanction.

(2) Professional Conduct Committee. Within fifteen (15) days of the date of the hearing panel report or reports, disciplinary counsel and respondent may file stipulations with proposed resolutions for the committee's review and approval and may submit memoranda addressing any issues in the hearing panel reports, stipulations, or raised during the hearings.

(A) Whether memoranda are filed or not, either disciplinary counsel or respondent may during the same fifteen (15) day period request oral argument before the professional conduct committee to address any issues in the hearing panel reports, stipulations or record agreed to by the parties. The committee may, in its discretion, direct the parties to appear before it to address any issues raised in dispositive or partial stipulations, as set forth in Rule37A(III)(aa)(C).

(B) Unless waived, oral arguments will be conducted to allow disciplinary counsel and each respondent ten (10) minutes to address the findings and rulings contained in the hearing panel reports.

(C) After consideration of dispositive or partial stipulations, oral arguments, hearing panel reports and memoranda, if any, and transcripts of hearings before the hearing panel, the professional conduct committee shall determine whether there is clear and



convincing evidence of violations of the rules of professional conduct. In making such determination, the committee shall:

(i) Review the hearing panel's report addressing any contested matters of fact and law. The committee shall uphold the hearing panel's findings of fact unless clearly erroneous or manifestly in error. The committee shall review the hearing panel's conclusions of law and recommendation of sanction de novo.

(ii) Review all stipulations in accordance with Rule 37A(III)(aa)(C) and issue orders thereon. The committee shall state in its order the basis for rejection of any stipulation and shall remand remaining contested issues.

(D) After such determination, the professional conduct committee may:

(i) dismiss complaints, administer a reprimand, public censure or a suspension not to exceed six (6) months;

(ii) attach such conditions as may be appropriate to any discipline it imposes;

(iii) divert attorneys out of the attorney discipline system as appropriate and on such terms and conditions as is warranted; and

(iv) recommend the imposition of disbarment or of suspension for a period in excess of six (6) months by filing such recommendation with this court as provided in Rule 37(16);

(v) assess to a disciplined attorney to the extent appropriate, in whole or in part, expenses incurred by the attorney discipline system in the investigation and enforcement of discipline. An assessment made under this section shall have the same force, effect and characterization and shall be subject to the same procedures for finalization, resolution and enforcement as an assessment under Rule 37(19).

(E) If neither disciplinary counsel nor the respondent requests oral argument, the professional conduct committee may direct the parties to appear before it on stipulations and shall make its decision in all matters based on the hearing panel report, the hearing transcript, and any memoranda that may be filed or, for stipulations, on the record agreed to by the parties and any oral statements presented by the parties.

### (3) Form of Sanctions.

In the event that the professional conduct committee determines that the proceeding should be concluded by reprimand, public censure or a suspension of six (6) months or less, it shall give written notice thereof to the respondent, disciplinary counsel and the complainant.

The reprimand, public censure or suspension shall state the charges that were sustained, any charges that were dismissed and the respondent's right to appeal to the supreme court.

Any public censure or suspension issued by the professional conduct committee that becomes final and not subject to further appeal shall be sent to newspapers of general circulation, one with statewide circulation, and one with circulation in the area of respondent's primary office, as well as to the New Hampshire Bar News for publication.

In the event the professional conduct committee finds a violation of the rules of professional conduct but determines that a recommendation should be filed with the supreme court for a sanction of greater than a six (6) month suspension, it shall give notice of its findings and its recommendation on sanction to the respondent, disciplinary counsel and the complainant, and it shall file such recommendation with the Supreme Court.

(4) Appeal of Sanction of Reprimand, Censure or Suspension of (6) Months or Less.

(A) Either a respondent attorney or disciplinary counsel may appeal findings of the professional conduct committee and the imposition of a reprimand, public censure or a suspension of six (6) months or less by filing a notice of appeal with the supreme court in accordance with Rule 10, unless otherwise ordered by the court. The appeal shall not be a mandatory appeal. The appeal shall be public.

(B) The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.

(IV) Confidentiality and Public Access

The duties of confidentiality in and rights of public access to disciplinary proceedings are detailed in Supreme Court Rule 37(20) and (21).

(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.

(VI) Request for Reconsideration

(a) Request. A request for reconsideration shall be filed with the committee that issued the decision within ten (10) days of the date on that committee chair's written confirmation of any decision of the committee; provided, however, that a request for reconsideration of a decision of the attorney discipline office general counsel shall be filed with the complaint screening committee within ten (10) days of the date on the decision. The request shall state, with particular clarity, points of law or fact that have been overlooked or misapprehended and shall contain such argument in support of the request as the party making such request desires to present.

(b) Answer. No answer to a request for reconsideration shall be required unless specifically ordered by the committee considering the matter, but any answer or response must be filed within ten (10) days of the date on the notification of the request.

(c) Committee Action. If a request for reconsideration is granted, the committee considering the request, may reverse the decision or take other appropriate action, with or without a hearing.

(d) Effect of Request. The filing of an initial request for reconsideration of a sanction issued by the professional conduct committee shall stay the thirty (30) day period for filing an appeal pursuant to Supreme Court Rule 37(3)(c).

#### (VII) Service of Copies

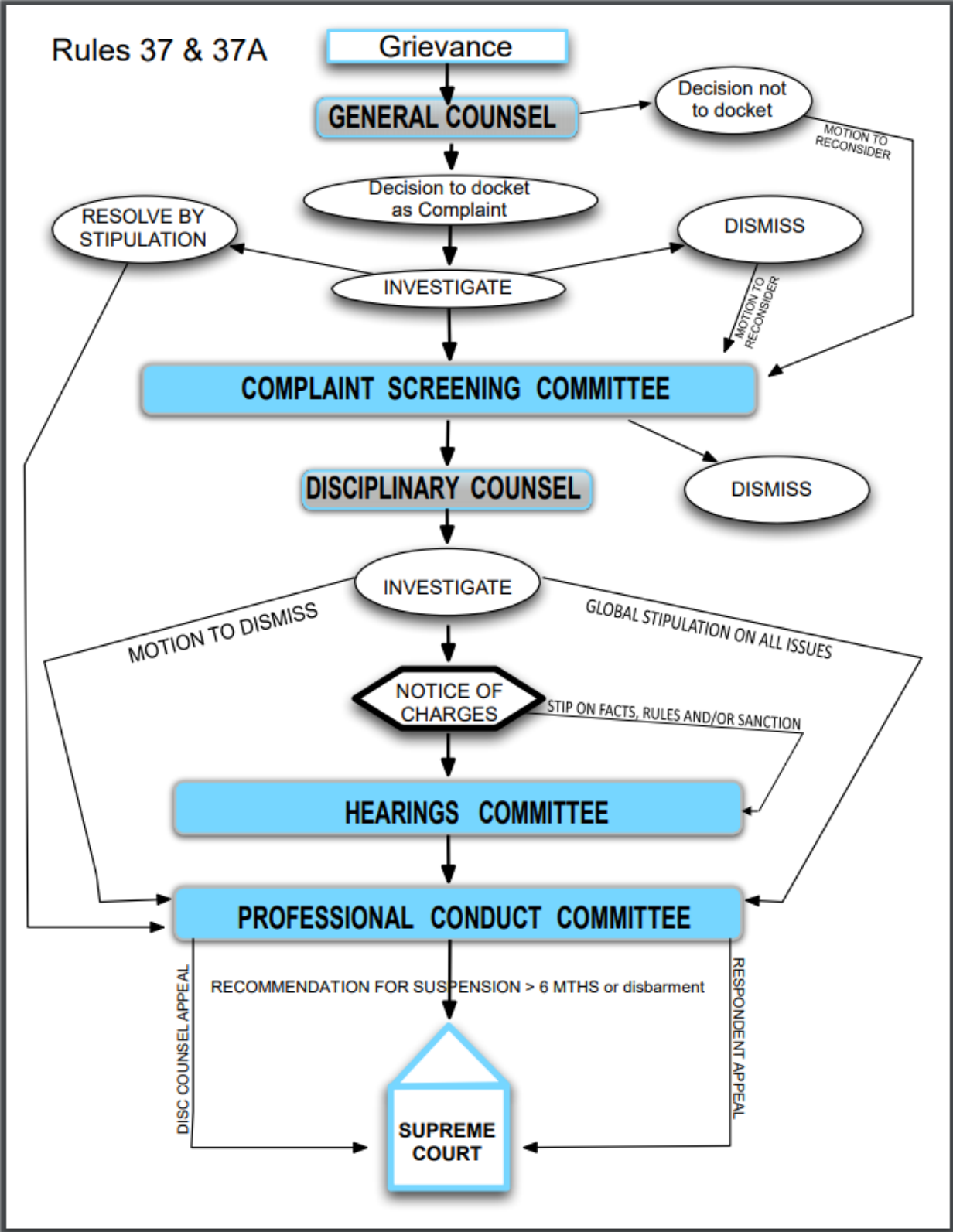
(a) Copies of all pleadings filed and communications addressed to the attorney discipline office or any committee of the attorney discipline system by the grievant or complainant shall be furnished forthwith to each respondent who is the subject of the grievance or complaint. All such pleadings and communications shall contain a statement of compliance herewith.

(b) Copies of all pleadings filed and communications addressed to the attorney discipline office or any committee of the attorney discipline system by the respondent who is the subject of the grievance or complaint shall be furnished forthwith to the grievant or complainant and to any other attorney who is the subject of the grievance or complaint. All such pleadings and communications shall contain a statement of compliance herewith.

(c) Copies of all pleadings filed and communications addressed to the hearings committee or any panel thereof or to the professional conduct committee by disciplinary counsel shall be furnished forthwith to the grievant or complainant and to the respondent who is the subject of the grievance or complaint. All such pleadings and communications shall contain a statement of compliance herewith. The requirements of this section shall not apply in any matter in which the disciplinary counsel is representing the professional conduct in the supreme court or elsewhere.

(d) Service on a person who is personally represented by counsel shall be made on counsel. This section does not prohibit that service also be made on the person represented by counsel. Service may be personal or by first class mail.

# New Hampshire Supreme Court Attorney Discipline Office

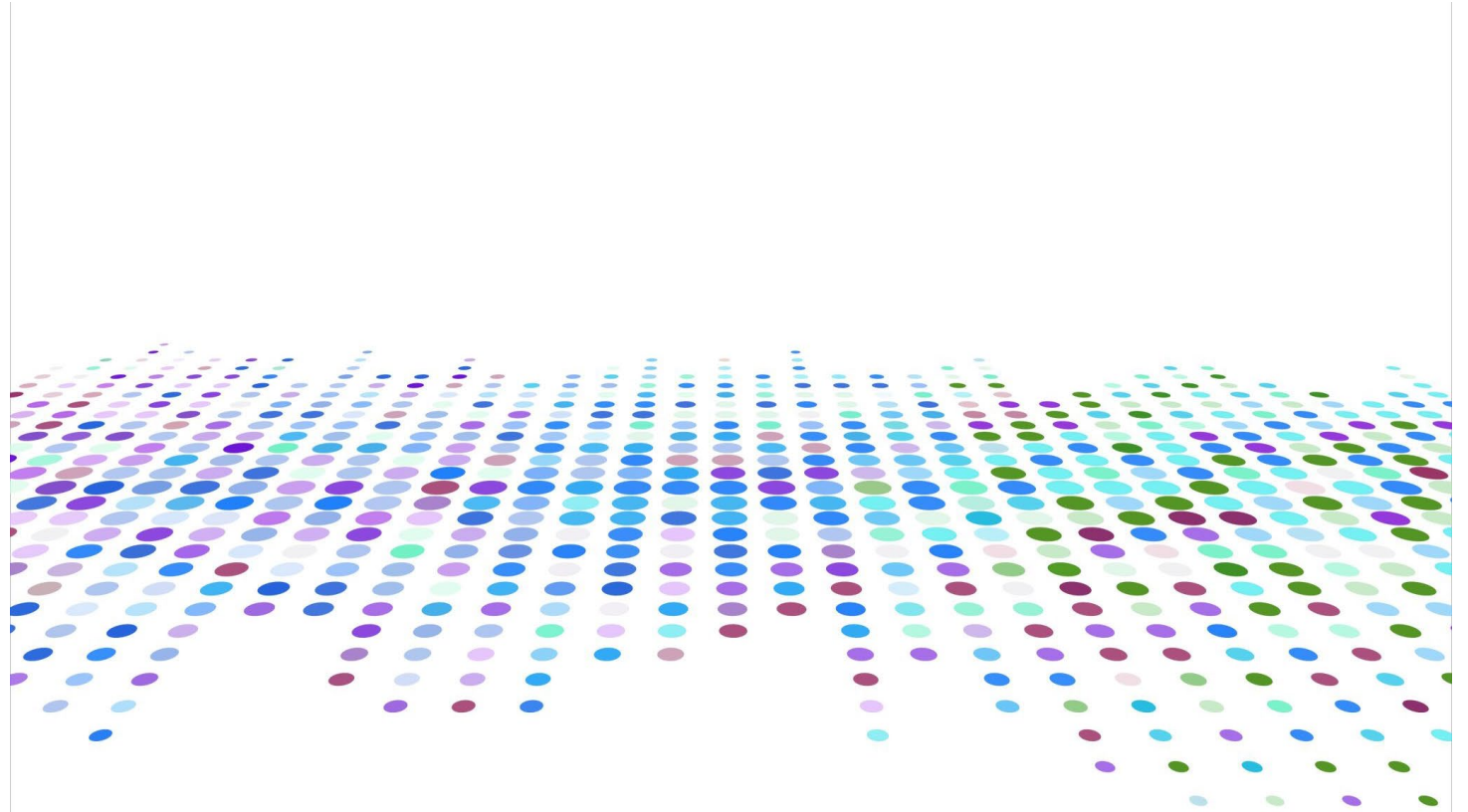


# THE NH ATTORNEY DISCIPLINE SYSTEM- HOW TO RESPOND TO A GRIEVANCE AND TIPS TO AVOID THE MOST COMMON RULE VIOLATIONS

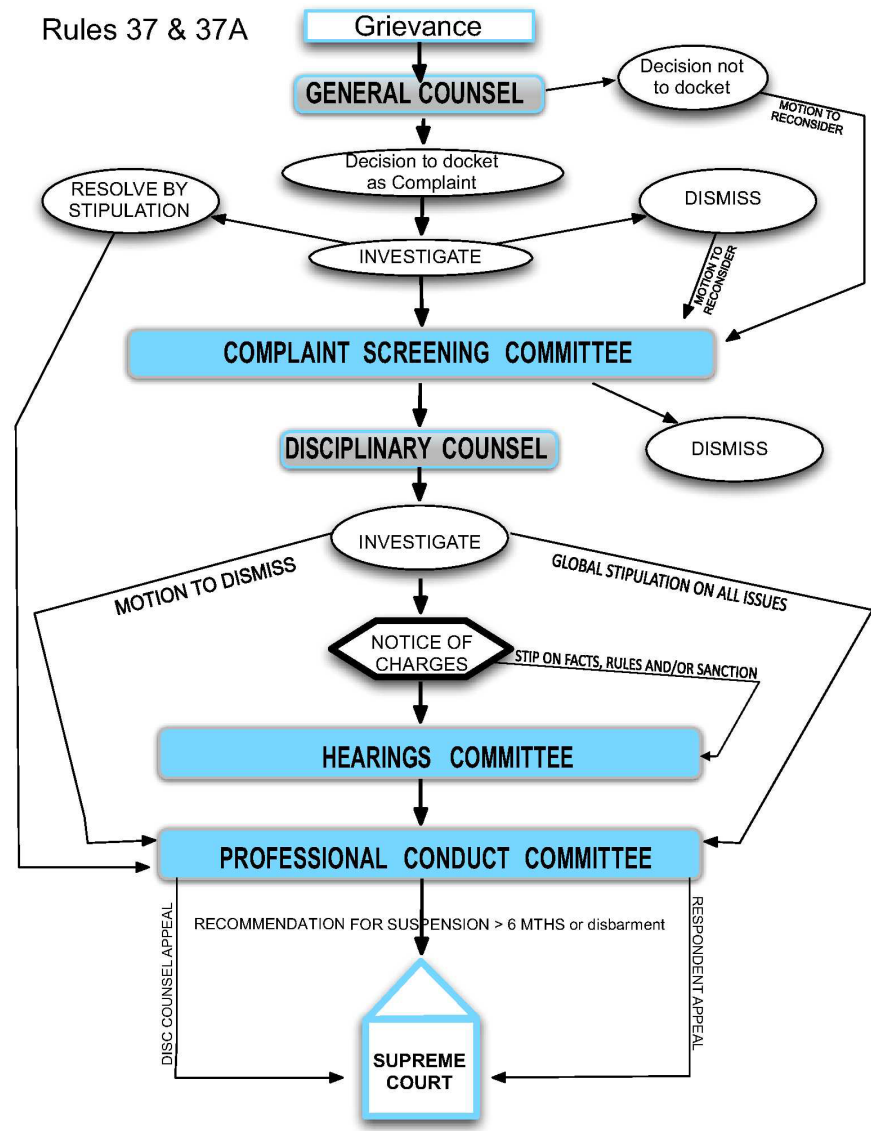
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Mark P. Cornell, Esquire  
Deputy General Counsel

Andrea Q. Labonte, Esquire  
Assistant General Counsel



Rules 37 & 37A



# DOS AND DON'TS OF RESPONDING TO A GRIEVANCE

1. **Don't Panic.**
2. Review Supreme Court Rules 37 and 37A
3. If a grievance is filed by a current client, then **Get Out!**
4. Notify your insurance carrier.
5. Wait until a response is requested.
6. Voluntary responses are not as voluntary as you might think.
7. Extensions of time are not favored.



# WHAT TO PUT IN A RESPONSE

- Figure out what Rules are being implicated, even if they have not been listed in the grievance.
- Respond to factual allegations.
  - Tell your side of the story.
  - Dispute what complainant said.
  - Client Confidences – Read Rule 1.6(b).
- Brief argument as to why there was not a rule violation.
- Own up to any errors, even if they do not rise to a rule violation.
- Include relevant documents.

# THE STANDARD FOR NON-DOCKETING A GRIEVANCE OR DISMISSING COMPLAINT:

No reasonable likelihood that a hearing panel would find clear and convincing evidence that the respondent attorney violated the rules of professional conduct.

# WHAT TO DO IF THE GRIEVANCE IS DOCKETED

Don't Panic. – Docketed does not mean you are going to disciplinary counsel.

Get counsel (even if just a colleague).

Query: Was your voluntary response enough? If not, what can you add?

You don't need to have the last word.

Requests for reconsideration.

# COMPLAINT STATISTICS 2019-2021

## Underlying Legal Matter of Docketed Complaints

- Family Law
- Criminal
- Probate/Estate Planning
- Civil Litigation

## Most Common Sources of Complaints

- Clients
- Opposing Parties
- Referrals from Courts/Judges and other attorneys



# MOST COMMON RULE VIOLATIONS

Competence  
(Rule 1.1)

Diligence  
(Rule 1.3)

Safekeeping  
Property  
(Rule 1.15)

Communication  
(Rule 1.4)

Candor  
(Rule 3.3)

Fairness to  
Opposing  
Party (3.4)

# TIPS TO AVOID 1.1 AND 1.3 GRIEVANCES

- Know the law
- Avoid taking cases in areas in which you lack knowledge and experience
- Do you have time for this case? Consider your workload before saying yes to a case.
- Have office procedures in place to keep track of schedules, deadlines, etc.
- Avoid procrastination-don't wait until the last minute
- Get rid of bad clients (ie. clients that cause you undue stress and anxiety).

# CLIENT COMMUNICATION (RULE 1.4) TIPS:



Promptly return phone calls and emails



If you cannot get back to client the same day, make arrangements for staff to at least reach out



Set expectations with client on how you will plan to communicate with them



Initiate contact with clients regularly



Be clear in what you can and cannot do for the client



Clearly communicate fees with a clearly written fee agreement and bill regularly

# TIPS FOR SAFEKEEPING PROPERTY (RULE 1.15)

Review accounting procedures for compliance with Rule 1.15 and Supreme Court Rule 50

Review content on ADO website regarding trust accounts

Remember-It's not your money!!!

Do not make payments on your clients' behalf before funds have cleared

Reconcile your trust account regularly (MONTHLY)

Consider using different colored checks for your trust account to avoid mix ups

The annual Trust Account Certification is a representation made to the Supreme Court. Filing a false certificate is a Rule 3.3 violation



# OTHER COMMON RULE VIOLATIONS

Dishonesty violations (Rules 3.3 (Candor), 4.1 (Truthfulness in Statements to Others) and 8.4(c) (Misconduct)):

- Do not lie to the Court or anyone else.
- Do not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Fairness to Opposing Party and Counsel (Rule 3.4):

- Treat self-represented parties with respect
- Avoid frivolous discovery requests
- Do not obstruct discovery

# CONFLICTS OF INTEREST (RULE 1.7)

- Consider how you or your firm will check for conflicts
- Continually evaluate for conflicts throughout representation
- Can the conflict be waived? If yes, get informed consent in writing from each affected client
- Decline representation if you have any doubt
- Don't loan money to a client or otherwise enter into a business transaction with a client (Rule 1.8)

# New Hampshire Supreme Court

## Attorney Discipline System



## 2021 Annual Report

## **I. OVERVIEW**

In 2021, the Attorney Discipline Office (ADO) consisted of five attorneys, one paralegal, three legal assistants, and one part-time bookkeeper. Additionally, 36 attorney volunteers and 20 lay-member volunteers participated in the three committees that process attorney discipline complaints: Complaint Screening Committee (CSC), Hearings Committee (HC) and Professional Conduct Committee (PCC).

Brian R. Moushegian (BRM) continued to serve as General Counsel with Mark P. Cornell (MPC) serving as the Deputy General Counsel and Andrea Q. Labonte (AQL) serving as the Assistant General Counsel. They are referred to collectively as General Counsel or GC in this report. Sara S. Greene (SSG) and Elizabeth M. Murphy (EMM) continued to serve as Disciplinary Counsel and Assistant Disciplinary Counsel, respectively. They are referred to collectively in this report as Disciplinary Counsel or DC.

## **II. ATTORNEY DISCIPLINE OFFICE OPERATIONS**

### **A. Informal Proceedings**

The rules and procedures that govern the attorney discipline system are set forth in Supreme Court Rules 37 and 37A. Grievances must be filed under oath and must certify that a copy has been sent to the attorney against whom the grievance was filed. Upon request, the ADO sends potential grievants the forms that fulfill those requirements. There is no form for the grievance itself. Some grievants obtain the forms from the ADO website, [www.nhattyreg.org](http://www.nhattyreg.org). Referrals are received from attorneys who are complying with their obligation under Rule of Professional Conduct (Rule) 8.3, and from judges, marital masters and court clerks who bring attorney behavior to the ADO's attention. In addition, the ADO receives a copy of each Overdraft Notice (ODN) that banking institutions send to attorneys or firms holding Client Trust Accounts, and a copy of lawsuits that are filed against attorneys. On March 13, 2020 the Governor declared a State of Emergency and closed all State Offices to the public. The New Hampshire Supreme Court subsequently issued a series of emergency orders closing the ADO to the public. In these orders, the court allowed grievances to be filed online through the ADO website. The ADO continues to receive grievances through the website. In total, the ADO received 174 grievances, ODNs and referrals in 2021.

General Counsel conduct an initial review of the grievances to determine if they should be docketed. After reviewing the 174 matters received in 2021, and the grievances remaining from 2020, 21 grievances were docketed as complaints requiring further investigation. One other case was docketed as a complaint later, after the CSC granted requests for reconsideration. General Counsel non-docketed 147 of the remaining grievances received and pending. Non-

docketed grievances do not appear on attorneys' discipline records and are not indexed. After two years, they are destroyed.<sup>1</sup>

After a case is docketed, grievances are called complaints. All docketed cases are indexed and, once they reach certain procedural milestones, are available to the public at the ADO. The respondent (attorney) is required to answer the complaint after docketing. General Counsel gathers sufficient information pertinent to the conduct in question in order to dismiss the matter, forward the matter to DC for further action, or report to the Complaint Screening Committee. By rule, the work product and reports, as well as the deliberations of the CSC, are not public.

The CSC is comprised of five attorneys and four lay members appointed by the Supreme Court. The CSC met 11 times in 2021. Hon. Peter H. Fauver served as CSC Chair in 2021 and Peter J. Kiriakoutsos, CPA, served as Vice-Chair.

The CSC is tasked with considering and acting on requests for reconsideration of General Counsel's decisions not to docket grievances. Out of the 147 grievances non-docketed in 2021, and five grievances non-docketed in late 2020, the CSC reviewed 46 requests for reconsideration. Four requests for reconsideration on non-docketed matters were granted. One reconsidered matter was docketed for further investigation, while the CSC offered diversion in the other three matters. Those matters were dismissed at the completion of the diversion. When the CSC denies a request for reconsideration of GC's non-docket decision, the matter is closed. See *Petition of Sanjeev Lath, et. al.*, 169 NH 616 (2017) (Grievants do not have standing to appeal the CSC's decision to uphold a non-docket decision.)

The CSC also considers the reports of General Counsel's investigation of docketed complaints. In 2021, the CSC referred 12 docketed cases to Disciplinary Counsel for further action, finding that there was a reasonable likelihood that a hearing panel could find clear and convincing evidence of a violation of the Rules of Professional Conduct. The CSC dismissed four docketed cases with a finding of no professional misconduct, with one of the dismissals occurring after completion of a diversion.

## B. Formal Proceedings

When a matter is referred to Disciplinary Counsel (DC), it is carefully reviewed to determine what best serves the goals of the discipline process, namely protecting the public and preserving the integrity of the legal profession. As part of the assessment, DC generally meets

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<sup>1</sup> As a result of the ADO offices being closed to the public and a pending request from a member of the public to review these files, the ADO had temporarily suspended destruction of these files. The ADO resumed the destruction of files in September 2021.

with respondents, their counsel, witnesses (including the complainants), and New Hampshire Lawyers Assistance Program (NH LAP) representatives if issues of mental health or substance abuse are present. DC also gathers documentation from courts, banks, and third parties, as well as from the respondent.

If DC determines after her investigation that there is not a likelihood of clear and convincing evidence of a Rule violation, she files a Motion to Dismiss with the PCC. DC filed one motion to dismiss a case that had been referred by the CSC, where DC determined there was not clear and convincing evidence of a Rule violation.

When DC concludes there is sufficient evidence to prosecute a matter, she prepares a Notice of Charges (NOC) and requests the appointment of a Hearing Panel by the Hearings Committee Chair. When a NOC is issued, the file becomes public. In 2021, DC issued two Notices of Charges involving two attorneys. One attorney had three matters that were consolidated in 2021 which resulted in two Notices of Charges issued against him for a total of three docketed matters.

In lieu of a contested hearing, Respondents and Disciplinary Counsel may stipulate to all or part of the facts, rule violations, and sanction. Disciplinary Counsel negotiated one stipulation to facts and rules involving two matters and requested that a hearing panel be appointed to decide the sanction. In three cases, the respondents signed stipulations as to facts, rule violations, and sanction *prior to* the issuance of a NOC, and the cases were considered directly by the PCC instead of proceeding to a hearing. There was one attorney that requested she be allowed to resign while under investigation, which was forwarded to the PCC. Disciplinary Counsel requested Diversion in two cases.

At the hearings level, DC participated in seven pre-hearing conferences and nine days of hearings on the merits involving three separate matters. DC also participated in one hearing on sanction after a hearing panel found a rule violation after the respondent defaulted and did not participate in the merits hearing.

The Hearings Committee Chair, Attorney Philip H. Utter, appoints Hearing Panels from members of the Committee, which is comprised of three attorney members and two lay members. Although a Hearing Panel quorum consists of two attorneys and one non-attorney, the Chair generally appoints three attorneys and two non-attorneys to each panel. After hearing evidence in a contested hearing or reviewing stipulations that are filed after a NOC is issued, the Hearing Panel submits a written report to the PCC, making findings of fact by clear and convincing evidence; issuing rulings of law, *i.e.*, which Rules were violated; and making recommendations as to sanction. These reports are public.

The final outcome of a case is the responsibility of the PCC, subject to approval by the Supreme Court (Court) as described below. The PCC, which is comprised of eight attorney members and four lay members, met five times in 2021. The PCC Chair is Attorney David M.

Rothstein; the Vice-Chairs are Attorney Heather E. Krans and lay member Elaine Holden. By Court Rule, the New Hampshire Bar Association Vice President serves on the PCC during his or her term as Vice President. Attorney Sandra L. Cabrera completed her term on the PCC on July 31, 2021. Bar Vice President Attorney Jonathan M. Eck started his term on the PCC on August 1, 2021.

The PCC has the power and authority to accept diversion agreements, approve stipulations, issue protective orders, dismiss matters, and issue reprimands, public censures or suspensions not exceeding six months. In 2021 the PCC issued protective orders in four matters and denied one request for a protective order. In addition, the PCC denied one motion to terminate proceedings and annulled one matter. The PCC considers Hearing Panel Reports, as well as the entire record, in disciplinary matters. In some cases, it hears oral arguments as to whether the Hearing Panel's recommendations should be affirmed and determines whether there is clear and convincing evidence of violations of the Rules of Professional Conduct.

The PCC dismissed one case at the request of DC, closed one case without prejudice, approved two diversion agreements, issued six Public Censures (three were reciprocal discipline) and issued one stayed six-month suspension in 2021. When the PCC determines that a sanction greater than a six-month suspension is warranted, it submits its recommendation to the Supreme Court. During 2021, the Committee submitted two recommendations for disbarment on two lawyers, and one recommendation to deny a resignation request.

Some outcomes determined by the PCC or the Court involve monitoring the respondent attorney for a time certain following the resolution of a case. Among their other responsibilities, Disciplinary Counsel and staff track compliance with CLE requirements, office management improvement parameters, mental health therapy, and substance abuse treatment, and alert the PCC to any non-compliance with the terms of the conditions.

### **III. THE STATISTICS**

As of January 1, 2022, there were 21 grievances and 28 docketed complaints pending at the ADO. One grievance in which the grievant filed a request for reconsideration was pending with the CSC at the end of the year.

Of the docketed complaints, two were in the investigation stage with General Counsel, eleven cases were pending with Disciplinary Counsel, five cases were pending with the Hearings Committee, three cases involving two lawyers were pending with the Supreme Court and seven docketed cases were being monitored by the ADO for compliance with conditions in previous orders issued or as part of a diversion.

**Figure A** illustrates the types of underlying legal matters giving rise to docketed complaints in the past three years.

FIGURE A

<b>Underlying Legal Matters</b>	<b>2021</b>	<b>Percentage in 2021</b>	<b>Percentage in 2020</b>	<b>Percentage in 2019</b>
Family Law	3	14.3%	18.2%	37%
Civil Suit/Litigation	1	4.8%	18.2%	27%
Criminal	3	14.3%	9.1%	7%
Trust Account Issues	0	0%	0%	7%
Patent/Trademark Law	0	0%	13.6%	7%
Overdraft Notification	0	0%	0%	3%
Probate/Estate Planning	3	14.3%	13.6%	3%
Real Estate/Loan Modification	2	9.5%	4.5%	3%
Bankruptcy	0	0%	0%	3%
Other	3	14.3%	9.1%	3%
Employment/Workers Compensation	1	4.8%	0%	0%
Personal Injury	2	9.5%	0%	0%
Collection/Consumer Protection	1	4.8%	0%	0%
Unauthorized Practice of Law	0	0%	4.5%	0%
Criminal Charge against Attorney	1	4.8%	0%	0%
Landlord/Tenant	1	4.8%	9.1%	0%
<b>Total</b>	<b>21</b>			

**Figure B** shows the distribution of the sources of the matters docketed in 2021. Referrals from clients remained the most common source of complaints in 2021.

FIGURE B

<b>Docketed Complaint Filed By</b>	<b>2021</b>	<b>Percentage In 2021</b>	<b>Percentage in 2020</b>	<b>Percentage in 2019</b>
Client	6	28.6%	33.3%	23%
Opposing Party	6	28.6%	23.8%	20%
Court Referral	3	14.3%	19.0%	20%
Attorney Referral	3	14.3%	14.3%	13%
Self-report	1	4.8%	4.8%	10%
ADO Generated	1	4.8%	0%	7%
Bank Referral/ODN	0	0%	0%	4.8%
Other	1	4.8%	4.8%	3.5%
<b>Total</b>	<b>21</b>			



**Figure C** shows the number of years the respondent was admitted to practice in New Hampshire at the time the complaint was docketed.

FIGURE C

	<b>2021</b>	<b>Percentage in 2021</b>	<b>Percentage in 2020</b>	<b>Percentage in 2019</b>
1 – 5 years in practice	0	0%	11.8%	14%
6 – 10 years in practice	1	5.6%	5.9%	5%
11 – 15 years in practice	3	16.7%	17.6%	14%
16 – 20 years in practice	2	11.1%	23.5%	5%
21 – 25 years in practice	2	11.1%	5.9%	19%
26 – 30 years in practice	1	5.6%	0%	5%
31 – 35 years in practice	7	38.9%	23.5%	19%
36+ years in practice	2	11.1%	11.8%	19%
<b>Total Attorneys</b>	<b>18</b>			

\*One attorney had two cases docketed against him, but is only counted once.

\*\* Another attorney had 3 cases docketed against them, but is only counted once.

The CSC considered 63 matters in 2021 with the outcomes shown in **Figure D**.

FIGURE D

	<b>2021</b>	<b>2020</b>	<b>2019</b>
Requests to Reconsider Matters Not Docketed (denied)	42	40	34
Matters Docketed upon Reconsideration of Non-docket	1	3	2
Requests to Reconsider CSC Dismissals (denied)	1	1	1
Matters Referred to Disciplinary Counsel	12	13	18
Dismissals with no Professional Misconduct	3	5	5
Diversion Proposed	4	3	1
Diversion Completed, Case Closed	3	3	4
<b>Total</b>	<b>66</b>	<b>68</b>	<b>65</b>

**Figure E** is a listing of the Rules of Professional Conduct violations found in 2021. Some matters resulted in multiple Rule violations and two lawyers had discipline imposed in three and six different complaints respectively. These complaints were consolidated. All matters necessarily also include a violation of Rule 8.4(a).

FIGURE E

	2021	2020	2019
<b>Rule 1: Client-Lawyer Relationship</b>			
1.1 Competence	5	8	5
1.2 Scope of Representation	3	1	1
1.3 Diligence	4	8	3
1.4 Communication	4	7	3
1.5 Fees	0	1	2
1.6 Confidentiality	0	0	1
1.7 Conflict	0	0	1
1.8 Other Conflict	0	1	1
1.9 Conflict – Former Client	0	0	0
1.14 Client with Diminished Capacity	0	0	0
1.15 Safekeeping Property	0	6	9
1.16 Terminate Relationship with Client	3	4	0
1.19 Disclosure of Information to the Client	0	0	0
<b>Rule 3: Advocate</b>			
3.1 Meritorious Claims and Contentions	1	0	2
3.2 Expediting Litigation	0	0	0
3.3 Candor to Court	0	6	3
3.4 Fairness to Opposing Party	1	6	2
3.5 Impartiality and Decorum of the Tribunal	0	1	1
<b>Rule 4: Transactions with Persons other than Clients</b>			
4.1 Truthfulness in Statements to Others	0	0	1
4.2 Communication with Person Represented by Counsel	1	0	0
<b>Rule 5: Law Firms and Associations</b>			
5.3 Responsibilities Regarding Non-lawyer Assistants	0	1	1
5.4 Professional Independence of a Lawyer	0	0	0
5.5(a) Unauthorized Practice	0	1	2
<b>Rule 8: Integrity of the Profession</b>			
8.1(a) False Statement of Material Fact	4	0	0
8.1(b) Failure to Correct a Misapprehension	0	1	1
8.1(c) Failure to Attend Disciplinary Hearing	0	9	0
8.4(b) Criminal Act	0	0	1
8.4(c) Dishonesty, Fraud, Deceit, or Misrepresentation	0	1	4
8.4(d) Influence of Government Official	0	0	0
Supreme Court Rule 50	0	3	6
<b>Total Violations</b>	<b>25</b>	<b>65</b>	<b>50</b>

The PCC made the determinations and findings shown in **Figure F**. The PCC considers the Rule(s) violated, and balances mitigating and aggravating factors, when deciding the outcome of a case. If an attorney had findings in multiple docketed matters, he/she is only counted once. Requests for reciprocal discipline are now handled directly by the Supreme Court.

FIGURE F

	2021	2020	2019
Closed Without Prejudice	1	0	2
Dismissal	1	3	2
Remand Case to Hearing Panel for Sanction Hearing	0	0	0
Reject Stipulation and Remand Case to Disciplinary Counsel	0	0	2
Approved Diversion by Agreement	2	0	1
Rejected Diversion by Agreement	0	1	1
Approved Stipulation to Facts, Rules and Reprimand	0	2	6
Approved Stipulation to Facts, Rules and Public Censure	3	0	0
Approved Stipulation to Facts, Rules and Public Censure Stayed	0	0	1
Approved Stipulation to Facts, Rules and 6 Mo. Suspension Stayed	1	0	0
Approved Stipulation to Facts, Rules and 1 Yr. Suspension	0	1	0
Approved Stipulation to Facts, Rules and 1 Yr. Suspension Stayed	0	1	0
Approved Stipulation to Facts, Rules and 2 Yr. Suspension	0	0	1
Approved Stipulation to Facts, Rules and 2 Yr. Suspension Stayed	0	0	1
Approved Stipulation to Facts, Rules and 3 Yr. Suspension	0	0	0
Approved Stipulation to Facts, Rules and Disbarment	1	0	1
Sanction issued after Motion to Impose Stayed Sanction:			
Reprimand	0	0	1
3 Mo. Suspension Stayed	0	0	1
6 Mo. Suspension	0	0	0
Recommend Disbarment	0	0	0
Sanction issued after a Hearing:			
Reprimand	0	1	2
Public Censure	0	0	1
6 Mo. Suspension	0	0	0
Recommend 1 yr. Suspension	0	1	0
Recommend 2 yr. Suspension	0	0	1
Recommend 3 yr. Suspension	0	0	1
Recommend Disbarment	1	3	0
Recommendation to Approve Request to Resign Under Discipline	0	0	1
Recommendation to Deny Request to Resign Under Discipline	1	1	0
Grant Motion for Protective Order	4	3	2
Deny Motion for Protective Order	1	2	1
Deny Motion to Terminate Proceedings	2	1	0
Grant Motion for Alternate Service	0	0	1
Deny Request for Reconsideration	0	2	1
Extension of Stayed Sanction	0	0	0

	2021	2020	2019
Dismissal\Closed Following Diversion or Monitoring	3	2	5
Annulment Denied	0	1	1
Annulment Granted	1	2	0
Request for reinstatement forwarded to Hearings Committee	1	0	0
Recommendation to approve reinstatement with conditions	1	0	1
<b>Total</b>	<b>24</b>	<b>27</b>	<b>38</b>

#### **IV. OTHER**

When a solo practitioner is disbarred, suspended, incapacitated or dies, the ADO will recommend to the Supreme Court the appointment of an attorney to inventory the solo practitioner's files and IOLTA accounts. The ADO has begun to conduct inventories in-house. In 2021, the ADO was appointed to conduct inventories in six matters. In addition, the ADO continued to inventory the client files in matters in which it was appointed in 2020. In appropriate cases, the ADO may seek to have an outside attorney appointed by the Supreme Court to conduct the inventory. If the Supreme Court appoints an outside attorney, the ADO provides guidance to the appointed attorney on how to conduct the inventory.

Staff attorneys served as faculty in a variety of educational programs in 2021. These programs included New Hampshire Bar Association CLEs: Best Practices for Closing a Law Practice; 15th Annual Ethics CLE; and How NHLAP Works. In addition, ADO staff attorneys served as guest lecturers at the UNH Law School Professional Responsibility classes in the spring and fall semesters. Finally, the ADO also presented a CLE on Common Issues with IOLTA Accounts to the Inns of Court and an ethics CLE for state workers.

The ADO has completed the first of a series of videos of continuing legal education programs, entitled "IOLTA/Trust Account Compliance: The Big Picture." A link to this free one-hour CLE program is on the ADO's website. Future videos will address trust accounting and compliance with Rule of Professional Conduct 1.15 and Supreme Court Rule 50.

ADO attorneys are also active in the New Hampshire Bar Association. General Counsel Brian Moushegian serves on the Committee on Cooperation with the Courts. Currently, Disciplinary Counsel Sara Greene sits on the Rules Advisory Committee as the ADO designee. Deputy General Counsel Mark Cornell is on the Committee on Lawyer Referral Services.

#### **V. ATTORNEY DISCIPLINE MATTERS AT THE SUPREME COURT**

Pursuant to Supreme Court Rule 37(9), General Counsel must notify the Court when lawyers have been indicted or convicted of serious crimes and may file petitions for interim suspension or disbarment as appropriate in those cases. In 2021, the ADO received one notification that an attorney had been convicted of a serious crime. Four interim suspensions were requested in 2021.

General Counsel also filed four requests for reciprocal discipline stemming from discipline in other jurisdictions. The Supreme Court remanded three of the matters to the PCC to issue public censures and issued a two-year suspension in the fourth. The Court also closed two matters following compliance with orders.

After reviewing matters filed by the PCC, the Supreme Court disbarred three lawyers and suspended four lawyers on an interim basis. The Court granted two requests for reinstatement.

## **VI. CONCLUSION**

As of December 31, 2021, there were 21 grievances and 28 docketed matters pending at the ADO. Of the docketed matters, two were in the investigation stage with General Counsel. One request for reconsideration of a matter not docketed by GC were pending with the CSC at the end of the year.

There were eleven docketed matters involving 10 lawyers pending with Disciplinary Counsel, Five docketed matters were pending with the Hearings Committee, no docketed matters were pending at the PCC, three docketed matters involving two lawyers were pending with the Supreme Court and seven docketed matters were being monitored by the ADO for compliance with conditions in previous orders issued or as part of a diversion.

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- ▶ COMMUNICATIONS WITH NHLAP ARE PROTECTED AND NOT DISCLOSED UNLESS WITH EXPLICIT WRITTEN CONSENT UNDER RULE 58 (NH SUPREME COURT WHICH ESTABLISHES NHLAP)
- ▶ STAFF AND VOLUNTEERS ARE RELIEVED OF 8.3 DUTY (RULES OF PROFESSIONAL CONDUCT)
- ▶ UNDER RULE 37 (DISCIPLINE) COMMUNICATIONS WITH NHLAP ARE PROTECTED ATTORNEY-CLIENT





# Common Warning Signs of Lawyer Impairment

## Performance Issues

- ✓ Odd, unpredictable or erratic behavior
- ✓ Last-minute requests for extensions
- ✓ Missed deadlines or appointments
- ✓ Diminished quality of work product
- ✓ Not returning calls timely or at all
- ✓ Improbable excuses
- ✓ Inadequate follow-through
- ✓ Poor concentration & inattention to details
- ✓ Isolating from or hostile to co-workers
- ✓ Unable to be located
- ✓ Diminished memory or recall of details & conversations

## Health Issues

- ✓ Frequent illnesses
- ✓ Drastic change in appearance
- ✓ Appears exhausted
- ✓ Easily overwhelmed
- ✓ Irritable, impatient, angry
- ✓ Unpredictable, rapid mood swings
- ✓ Over/under reacts to situations
- ✓ Insomnia
- ✓ Sudden weight gain or loss

## Financial Issues

- ✓ Disorganized, inconsistent record-keeping
- ✓ Personal use of trust account funds
- ✓ Attorney trust account overdrafts
- ✓ Failure to timely disburse from trust
- ✓ Credit problems, writing bad checks
- ✓ Judgments, tax liens, bankruptcy

## Personal Issues

- ✓ Estrangement from spouse or children
- ✓ Legal separation or divorce
- ✓ Frequent accidents and/or injuries
- ✓ Arrests or warnings from police
- ✓ No-show at scheduled social events

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# NHLAP Services



## Consultations

When you contact NHLAP for your own personal or professional needs or to share concerns for another, you will receive education about the issues being presented, develop goals for addressing the issues, learn about resources that can assist, and determine strategies moving forward.



## Case Management Services

NHLAP will assist in navigating and connecting to vetted specialists for assessment, psychotherapy, inpatient or outpatient treatment, career counseling, mentorship, and other personal or professional needs. NHLAP can help you get established with professional care regardless of insurance situation.



## Peer Support Services

NHLAP volunteers are members of the N.H. legal community who offer fellowship and support, sharing their lived experiences recovering and/or adapting to challenging situations involving mental health, substance use, and addiction concerns or issues.



## Lawyers Concerned for Lawyers

This is a monthly peer support meeting exclusively for lawyers, judges, and law students in or seeking recovery from unhealthy substances and coping behaviors- and is always confidential. All stages of sobriety and behavior abstinence are welcome to connect with peers and gain support.



## Health & Recovery Monitoring

This is a voluntary program for legal professionals adversely impacted by a mental health condition, substance misuse, and other related addictive disorders. The goal is to restore competency and fitness to practice through participation in a formal evaluation and recommended treatment coordinated and monitored by NHLAP.



## Wellness Programming

Personalized information & resources to merge healthier living with your law practice. NHLAP offers free educational programming on all areas related to well-being in law. NHLAP is here to help legal employers and leaders improve workplace culture and employee well-being by offering workplace consultations and connection to field experts.

For more information visit  
[www.lapnh.org](http://www.lapnh.org)

To contact NHLAP:

- Main number: 603- 491-0282
- By email: [jill@lapnh.org](mailto:jill@lapnh.org)
- To send an electronic message through our secure website visit [www.lapnh.org/contact.htm](http://www.lapnh.org/contact.htm)





*If you know a lawyer in trouble, call for a free, confidential consultation.*

*Signs for Concern:*

- Missing court dates or deadlines*
- Failing to file documents or return phone calls*
- Frequently leaving early or arriving late*
- Changes in mood, behavior or appearance*
- Appearing unwell, unkempt or distracted*

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## Contact

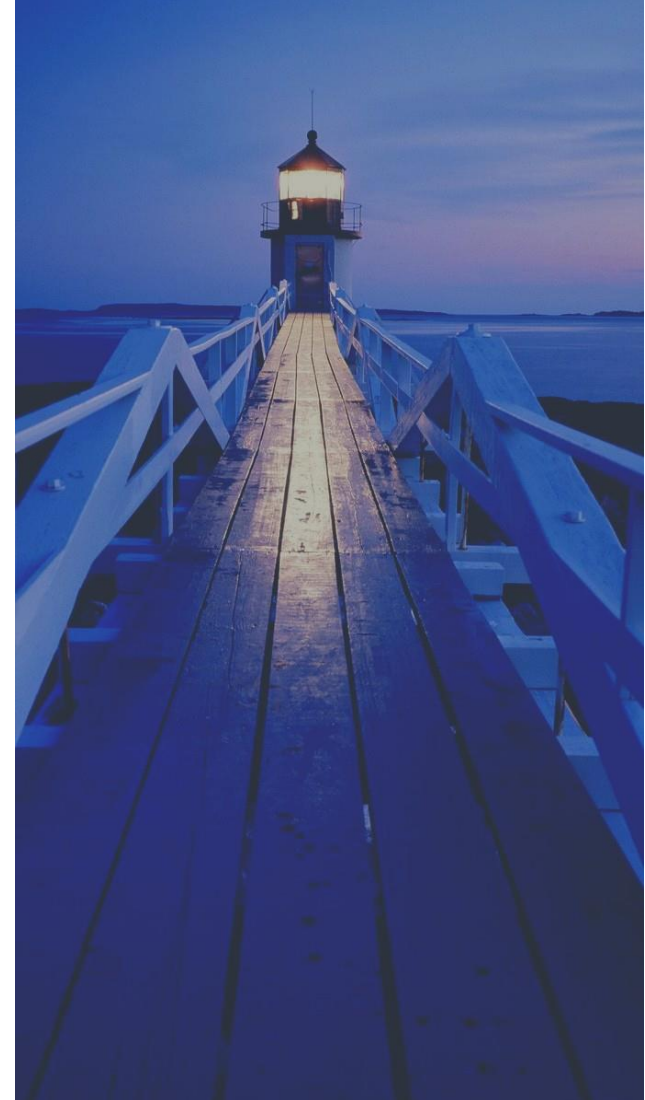
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### **Confidentiality**

NH Supreme Court Rule 58 guarantees confidentiality for all who use NHLAP services and all who work and volunteer to meet NHLAP's mission. NHLAP staff is relieved of any reporting requirement for attorney misconduct.

Confidentiality is the cornerstone of NHLAP's success.

### **Testimonial**

"NHLAP was extremely helpful to me at a point when I didn't know where else to go for help."

- Anonymous NH Lawyer



### **How We Can Help**

We provide support, education and referrals for NH judges, lawyers and law students suffering with issues that impair the ability to competently practice law. Issues range from addiction, depression, anxiety, eating disorders, grief, cognitive decline, burnout, vicarious trauma and work-life imbalance. Healthy lawyers are competent lawyers.





UPDATED  
5/2022



# Member Services Overview

**NHBAR.ORG**

**MEMBER LINE:  
(603) 715-3279**

[NHBAinfo@nhbar.org](mailto:NHBAinfo@nhbar.org)

# Make the Most of Your New Hampshire Bar Association Membership!

## **BAR CENTER CONFERENCE ROOMS**

Free room usage for members on a space-available basis. Contact the front desk coordinator to reserve. Call 603-224-6942

## **NEW HAMPSHIRE BAR NEWS**

Published monthly. Features articles on current legal issues, news about NHBA members and firms, updates on member benefits and upcoming events and information from the NH Judicial Branch. [nhbar.org/publications/bar-news](http://nhbar.org/publications/bar-news)

## **E-BULLETIN**

Published weekly and sent directly to your inbox. Keeps you up-to-date on the latest Bar happenings. Includes time-sensitive information and news from the courts, NHBA, and the legal community.

## **ETHICS OPINIONS AND HELPLINE**

Access online ethics opinions and *Ethics Corner* articles. Helpline offers informal assistance from individual members of the committee. [nhbar.org/resources/ethics/obtain-answers](http://nhbar.org/resources/ethics/obtain-answers) or call 603-715-3259

## **FASTCASE**

Free online legal research database provides access to primary federal and state case law and statutes. Free access through your My NH Bar Portal.

## **NH FREE LEGAL ANSWERS**

Volunteer at your convenience. Income qualified users post simple questions and attorney volunteers select questions which they wish to answer. [nhbar.org/volunteer-for-free-legal-answers](http://nhbar.org/volunteer-for-free-legal-answers)

## **LAW RELATED EDUCATION**

Provides civics education opportunities to NH communities serving thousands of students statewide. Many opportunities for volunteer attorneys to get involved. [nhbar.org/law-related-education](http://nhbar.org/law-related-education)

## **LAWYER REFERRAL SERVICE – FULL-FEE PROGRAM**

Build your client base by receiving prescreened clients in your areas of practice. [nhbar.org/join-lawyer-referral-service](http://nhbar.org/join-lawyer-referral-service)

## **LAWYER REFERRAL SERVICE – MODEST MEANS PROGRAM**

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## **LEADERSHIP ACADEMY**

Gain valuable skills as part of this nationally recognized nine-month program to develop future bar leaders. [nhbar.org/nhba-leadership-academy](http://nhbar.org/nhba-leadership-academy)

## **MEMBER GUIDE**

Comprehensive online guide with information about the NHBA's growing number of benefits, resources, and services. Updated regularly, this guide provides information to help you practice successfully in NH. [nhbar.org/member-guide](http://nhbar.org/member-guide)

## **MENTOR ADVICE PROGRAM (MAP)**

Matches new attorneys (advisees) with experienced practitioners (mentors) to provide guidance regarding ethical, practical, and professional issues. [nhbar.org/mentor-advice-program](http://nhbar.org/mentor-advice-program)

## **MEMBER DISCOUNTS**

Take advantage of valuable discounts on a variety of products - including Clio, MyCase, LawPay, and more - designed to support your practice and help you manage your firm. [nhbar.org/resources/member-services-benefits](http://nhbar.org/resources/member-services-benefits)

## **NHBA CLE**

Offers a wide array of relevant, timely, and interesting CLE programs in a variety of formats to assist your professional development and meet NHMCLE requirements. [nhbar.org/nhbacle](http://nhbar.org/nhbacle)

## **SECTIONS**

Provide an opportunity for improving knowledge and skills in a particular practice area. The NHBA currently offers 19 different Sections. [nhbar.org/sections/](http://nhbar.org/sections/)

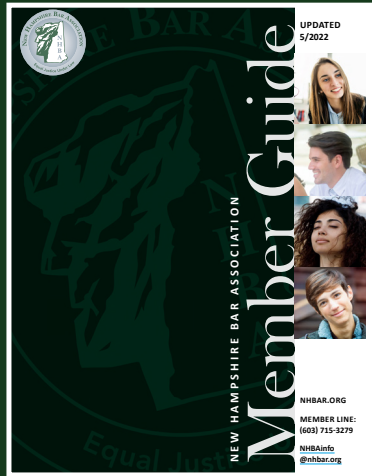
## **TECHCONNECT**

Leverage technology to get the most value. Schedule a free consultation, watch a video tutorial, e-mail an expert with a question, or read a whitepaper. Access through your My NH Bar Portal.

## *We Want to Hear From You!*

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## Panelist Biographies

**Russell F. Hilliard** is a partner with Upton & Hatfield, LLP in Portsmouth, NH where he focuses his practice in professional discipline, and commercial and insurance litigation. He earned his B.S. from Rensselaer Polytechnic Institute in 1973, his J.D. from Cornell University Law School in 1976 and his LL.M. in taxation in 1985 from Boston University. Russ is a fellow of the American College of Trial Lawyers and a member of the NHBA's CLE Committee (past chair) and Insurance Law Section. He is a past president of the NHBA; and past chair of the New Hampshire Bar Foundation. He is also the state delegate to the American Bar Association, and a Uniform Law Commissioner. Russ has participated on numerous CLE panels on trial practice, insurance issues, legislative developments and professional ethics.

**Mark P. Cornell** is the deputy general counsel of the NH Attorney Discipline Office in Concord, NH and is involved in all aspects of the NH attorney discipline system. He received his J.D. from Franklin Pierce Law Center. Prior to joining the Attorney Discipline Office, Mark was in private practice in solo and small firm settings, focusing his practice on Chapter 7 & 13 bankruptcies. He is also a former Chapter 7 bankruptcy trustee. Mark is a member of the NHBA's Committee on Delivery of Legal Services.

**Andrea Q. Labonte** joined the NH Attorney Discipline Office as assistant general counsel in 2018. Prior to that she was in private practice for approximately twenty years, most of that time with a focus on family law matters. She received her J.D. from Franklin Pierce Law Center.

**Rudy Bazelmans** wanted to get a law degree after finishing his Masters in Software Engineering management, but his wife said it should be in divorce law, because his marriage would be ending. Since a law practice didn't work out, Rudy works for Expense Reduction Analysts and gets to negotiate every day with suppliers, on behalf of medium size companies, across the US. Rudy is here because he has been a lay member of the ADO Hearing Council for the past 10 years.

**Jill O'Neill** is Executive Director of the New Hampshire Lawyer's Assistance Program (NH LAP). Jill is a mental health professional with over 19 years of experience serving individuals and families seeking recovery services from mental health conditions, substance use disorders, and other co-occurring disorders. Her background includes training in Trauma-Informed Care and Practice, Motivational Interviewing, Illness Management and Recovery, The Zero Suicide Model, Integrated Dual Disorders Treatment, and various other evidenced-based practices.