

August 18, 2020

Dear Commission Members:

Thank you for allowing me the opportunity to provide testimony to the Commission this morning.

My name is Brian Moushegian. I serve as General Counsel for the New Hampshire Supreme Court Attorney Discipline Office. I have been employed by the Attorney Discipline Office since 2014, and I have served as the office's General Counsel since 2018.

Through my testimony, I hope to provide the Commission with a helpful overview of New Hampshire's Attorney Discipline System.

In summary, the Attorney Discipline System exists to consider and provide a full and fair evaluation of grievances against attorneys. When lawyers enter the practice of law in New Hampshire, they must abide by the Rules of Professional Conduct adopted by the Supreme Court of New Hampshire. Those who violate the Rules of Professional Conduct are subject to discipline.

New Hampshire Supreme Court Rules 37 and 37A, which I have submitted copies of to the Commission, establish and set forth the specific Rules and Procedures of the Attorney Discipline System.

Under Rules 37 and 37A, the Attorney Discipline System is comprised of four parts: the Professional Conduct Committee (the "PCC"), the Hearings Committee, the Complaint Screening Committee (the "CSC") and the Attorney Discipline Office (the "ADO").

The Attorney Discipline System relies heavily on volunteers. Specifically, the twelve members of the PCC, the approximately 30 members of the Hearings Committee, and the 9 members of the CSC are all volunteer lawyers and non-lawyers. Alternatively, the Attorney Discipline Office, which is funded primarily by the Supreme Court's annual assessment of New Hampshire licensed attorneys, consists of five lawyers and five support staff.

The ADO is divided into three General Counsel and two Disciplinary Counsel. General Counsel is responsible for the initial review, evaluation, and investigation of grievances and complaints filed with the Office, and Disciplinary Counsel is responsible for the prosecution of matters before the Hearings Committee, the PCC, and the Supreme Court.

The approximately 200 grievances filed with the ADO each year come from a variety of sources, the most common source being members of the public. Often, grievances are filed by

a client against his or her lawyer, or by an opposing party in a contested civil or criminal matter. Other sources of complaints are judges, other lawyers, Court clerks, and the ADO itself – through ADO generated inquiries. Grievances, which can be filed via mail or online, must be submitted under oath, copied to the attorney against whom the grievance was filed, and filed, with limited exceptions, within two years of the attorney’s alleged misconduct. Most importantly, the grievance must implicate one or more of the Rules of Professional Conduct. The Rules of Professional Conduct are the written rules which set forth the disciplinary standard for New Hampshire lawyers. If a grievance does not meet one or more of the foregoing, the matter will be returned to the grievant and/or non-docketed – which means the matter is, in effect, dismissed.

If, based on an initial review of the matter, General Counsel determines that the potential of clear and convincing evidence of a violation of the Rules of Professional Conduct exists, General Counsel will docket the grievance as a complaint. Once docketed, General Counsel will conduct a more thorough investigation into the matter. The investigation will often include interviews with the complainant and the respondent attorney, and a review of documents outside those submitted by the parties. Importantly, the ADO has the power to subpoena records.

Following its investigation into the matter, General Counsel can dismiss or divert the complaint, or, more commonly, prepare and submit a written investigation report to the Complaint Screening Committee. The Committee, which consists of 5 lawyers and 4 non-lawyers, generally meets once a month to review cases. Under the Rules, the Committee’s deliberations are not open to the public and are not included in the public file. After reviewing General Counsel’s report and recommendation, the Complaint Screening Committee will discuss and vote on what action to take. Specifically, the Committee will determine whether there is a reasonable likelihood of clear and convincing evidence that the respondent attorney’s conduct violated the Rules of Professional Conduct. Based on its findings, the Complaint Screening Committee can divert the matter, dismiss the matter, or refer the matter to Disciplinary Counsel for further proceedings. After the Complaint Screening Committee issues its written decision, the complainant and respondent attorney are permitted to request reconsideration of the Complaint Screening Committee’s decision, which the Committee can either subsequently grant or deny.

If the Complaint Screening Committee votes to refer a matter to Disciplinary Counsel, Disciplinary Counsel will review the file and conduct her own independent investigation. If, following her investigation, Disciplinary Counsel determines that there is insufficient evidence to meet the clear and convincing standard of proof, she will file a motion to dismiss with the Professional Conduct Committee seeking its approval for the dismissal.

In some cases, Disciplinary Counsel and the respondent attorney will enter a stipulation as to the underlying facts and sanction, which is then submitted to the Professional Conduct Committee for its approval. However, if the parties are unable to reach an agreement, or the Professional Conduct Committee denies the stipulation, Disciplinary Counsel will prepare a written Notice of Charges that formalizes the allegations against the Respondent. Once a Notice of Charges is issued and served on the respondent attorney, the previously confidential matter becomes public. The Respondent then has 30 days to file a written answer to the Notice of Charges.

Upon receipt of an answer to the Notice of Charges, the Hearings Committee will appoint a five-person panel from the pool of Hearings Committee volunteers. The hearing panel is typically comprised of three lawyers and two non-lawyers, with a lawyer serving as chair of the panel. The Hearing Panel chair will then schedule a pre-hearing conference, at which the Disciplinary Counsel, Respondent Attorney and Hearing Panel chair will schedule deadlines for discovery, expert disclosures, submission of witness and exhibit lists, and filing of motions in limine, as well as a hearing date.

The Hearing Panel chair conducts the hearing. A record is assembled of all documents submitted and a stenographer is present to transcribe the proceedings. It is the responsibility of Disciplinary Counsel to present the evidence and call witnesses that will support the Notice of Charges. The respondent may present evidence and call witnesses on his or her behalf. Both parties are entitled to cross-examination. The hearing panel is the “fact-finder” in the disciplinary process. The hearing panel makes all findings by clear and convincing evidence and must submit a written report to the PCC no more than 60 days after the close of the hearing. The Hearing Panel will also submit a recommended sanction. Possible sanctions include public reprimand, public censure, suspension and disbarment.

The PCC acts as a reviewing body. It is comprised of 8 attorneys and 4 non-attorneys. Among other duties, the PCC will consider hearing panel reports, applying an appellate standard of review. In some cases, the PCC will request oral argument. The PCC has the authority to determine whether there is clear and convincing evidence of a violation of the Rules of Professional Conduct and to issue sanctions in the form of a reprimand, public censure or a suspension not to exceed six months. All sanctions may be issued with or without conditions. The PCC may issue a diversion or dismiss a matter where appropriate. The respondent or Disciplinary Counsel may file a discretionary appeal with the Supreme Court if either party is aggrieved by the PCC’s final determination. The PCC will make a recommendation and file its recommendation with the Supreme Court if it determines that the appropriate sanction is a suspension greater than six months or a disbarment. Specifically, the Supreme Court has the final authority to issue sanctions involving a suspension of greater than six months.

This concludes the summary of my testimony on the Attorney Discipline System. I am happy to answer any questions Commission members may have.

Sincerely,

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