

MEMORANDUM

To: Advisory Committee on Rules
From: Subcommittee on Rules Re Reinstatement and Readmission¹
Re: # 2015-011. Supreme Court Rule 37. Reinstatement Following
Suspension and Readmission Following Disbarment
Date: September 11, 2017

Attached please find: (1) a proposed new Supreme Court Rule 37(14) designed to address the Court's concerns regarding the existing rule reflected in a June 5, 2015 memo from Eileen Fox to the Advisory Committee on Rules; (2) a copy of the existing Supreme Court Rule 37(14); and (3) a copy of the June 5, 2015 memo from Eileen Fox.

The proposed rule sets out in three distinct sections the procedures to be followed in reinstatement and readmission cases, depending upon whether an attorney has been: (a) suspended for six months or less; (b) suspended for more than six months; or (c) has been disbarred. Please note that under the current rule, and unchanged by the proposed rule, only lawyers who have been disbarred must re-take the Bar Exam.

The procedure for reinstatement following a suspension of six months or less (a) is quite simple. The proposed rules regarding the lengthy suspension cases (b) and the readmission after disbarment cases (c) are more complicated. In both of these cases, the proposed rule requires an attorney to file a petition with the Supreme Court. In the reinstatement following lengthy suspension cases, the petitioner will also be required to complete and file with the petition a "Reinstatement Form".² The proposed rule does not require a petitioner to submit an additional form in readmission after disbarment cases, because in readmission cases, the petitioner will be required to retake the bar examination, and his or her application to take the bar examination will be considered along with his or her petition. In both reinstatement following lengthy suspension and readmission cases, a hearing will likely be held. In reinstatement following lengthy suspension cases, the hearing will be held before a five-person hearing panel, the hearing panel will make a recommendation to the PCC and the PCC will file a recommendation with the Court. In readmission cases, the hearing will be held before a Special Committee on Readmission (comprised of members of the PCC and the Character and Fitness Committee) and the Special Committee will file a recommendation with the Court.

¹ The members of the subcommittee are: Abigail Albee, Superior Court Clerk, Carroll and Belknap Counties, Sara Greene, Disciplinary Counsel, ADO, Sherry Hieber, General Counsel, Office of Bar Admissions, Eileen Fox and Carolyn Koegler.

² This is a form that will be provided by the attorney discipline office.

Abigail Albee, Sara Greene and I will be present at the meeting on September 15 to answer any questions the Committee may have regarding the proposed rule.

APPENDIX A

The subcommittee on rules regarding reinstatement and readmission recommends that Supreme Court Rule 37(14) be deleted and replaced with the following:

(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.³ 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

³ There currently is no fee for a petition for reinstatement after a disciplinary suspension. The subcommittee makes no recommendation as to whether a fee should be collected, and, if so, what the amount of the fee should be. It notes that there is a \$250 filing fee for a petition for reinstatement after an administrative suspension, *e.g.*, suspension for failure to meet MCLE requirements. Unlike administrative suspension cases, however, an attorney suspended for disciplinary reasons typically is required to reimburse the PCC for the cost of the disciplinary proceeding prior to seeking reinstatement, and the amount required to be reimbursed may be substantial.

(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, and one with circulation in the area of the petitioner's former primary office, as well as the *New Hampshire Bar News* that the petitioner has moved for reinstatement. The notice shall also be posted on the court's 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. 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 applicant 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 respondent;
- (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, and one with circulation in the area of the petitioner's former primary office, as well as the *New Hampshire Bar News*, that the petitioner has moved for readmission. The notice shall also be posted on the court's 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. All comments shall be made available to the applicant. 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 applicant 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 applicant 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 applicant 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.