

STATE OF NEW HAMPSHIRE  
SUPREME COURT

Committee to Restructure, Update and Simplify New  
Hampshire Rules of Civil Procedure

David P. Slawsky, Chair

New Hampshire Rules of Civil Procedure

January 18, 2007

These rules are adopted by the New Hampshire Supreme Court pursuant to the authority established in Part II, Article 73-A of the New Hampshire Constitution. They take effect on \_\_\_\_\_, and apply to civil actions filed or pending on that date.

# STATE OF NEW HAMPSHIRE RULES OF CIVIL PROCEDURE

1/18/07

## Table of Contents

- I. General Principles
- II. Commencement of Action
- III. Pleadings and Motions
- IV. Parties and their Representatives
- V. Discovery
- VI. Alternatives to Trial
- VII. Trials
- VIII. Judgment
- IX. Provisional and Final Remedies
- X. Special Proceedings
- XI. Fee Schedules
- XII. Photographing, Recording and Broadcasting

## Outline

### I. General Principles

- Rule 1. Scope, Purpose, Enforcement, Waiver and Substantial Rights
2. Computation of Time
3. Filing and Service

### II. Commencement of Action

4. Preliminary Process
5. Structuring Conference

### III. Pleadings and Motions

6. Pleadings Defined
7. Form of Pleadings and Motions
8. Complaint
9. Answer
10. Counterclaims, Cross-Claims, Third-Party Claims
11. Motions - General
12. Motions - Specific
  - a. Amend
  - b. Consolidate
  - c. Continue
  - d. Dismiss
  - e. Reconsider
  - f. Recuse
  - g. Summary Judgment
13. Objections

### IV. Parties and their Representatives

14. Parties
15. Intervention
16. Class Actions
17. Appearance and Withdrawal
18. Counsel
19. Out-of-State Counsel (*Pro Hac Vice*)
20. Non-Attorney Representatives

V. Discovery

- Rule 21. General Provisions
- 22. Written Interrogatories
- 23. Production of Documents
- 24. Depositions
- 25. Expert Witnesses
- 26. Requests for Admissions
- 27. Discovery Motions

VI. Alternatives to Trial

- 28. Mediation
- 29. Summary Jury Trials

VII. Trials

- 30. Trial Management Conference
- 31. Standing Trial Orders - Procedure
- 32. Standing Trial Orders - Proof
- 33. Jurors

VIII. Judgment

- 34. Settlements
- 35. Approval of Settlements: Minors
- 36. Dismissal of Action
- 37. Default
- 38. Procedure After Trial
- 39. Taxation of Costs
- 40. Appeals and Transfers to Supreme Court

IX. Provisional and Final Remedies

- 41. Attachments
- 42. Injunctions
- 43. Security
- 44. Deposit in Court
- 45. Periodic Payments
- 46. Enforcement

X. Special Proceedings

Rule 47. Special School and Town Meetings

XI. Fee Schedules

- A. Superior Court
- B. Probate Court
- C. District Court

XII. Photographing, Recording and Broadcasting

- 
- (A) Standard Summons form
  - (B) Cross-reference table

## I. General Principles

### **RULE 1. Scope, Purpose, Enforcement, Waiver and Substantial Rights**

(a) These rules govern the procedure in New Hampshire superior, probate, and district courts in all suits of a civil nature whether considered cases at law or in equity, with the exception of the following: small claims actions, landlord and tenant disputes, and family law disputes subject to rules that govern procedures in the Family Division.

(b) The rules shall be construed and administered to secure the just, speedy, and cost-effective determination of every action.

(c) Upon the violation of any of these rules, the court may take such action as justice requires, which action may include, without limitation, the imposition of monetary sanctions against either counsel or a party, fines to be paid to the court, and reasonable attorney's fees and costs to be paid to the opposing party.

(d) As good cause appears and as justice may require, the court may waive the application of any rule.

(e) A plain error that affects substantial rights may be considered and corrected by the court of its own initiative or on the motion of any party.

#### **Source**

- (a) New
- (b) New. Derived from Rule 1, Fed.R.Civ.P.
- (c) Superior Court Preface
- (d) Superior Court Preface
- (e) Superior Court Rule 102-A (modified)

#### **Comments**

(a) These rules have been drafted to apply to civil proceedings in all three trial courts (superior, district and probate). A court may deviate from or modify a rule as justice requires.

(e) The language in Rule 1(e) is taken from Superior Court Rule 102-A which reads as follows: "A plain error that affects substantial rights may be considered even though it was not brought to the court's attention."

**RULE 2. Computation of Time**

In computing any period of time prescribed or allowed by these rules, by order of court, or by applicable law, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, or a legal holiday as specified in RSA ch. 288, as amended.

**Source**

Superior Court Rule 12

**RULE 3. Filing and Service**

(a) Copies of all pleadings filed and communications addressed to the court shall be furnished to all other counsel or to the opposing party if appearing pro se on the same day as the pleadings and communications are filed with the court.

(b) When an attorney has filed a limited appearance under Rule 14(d) on behalf of an opposing party, copies of pleadings filed and communications addressed to the court shall be furnished both to the opposing party who is receiving the limited representation and to the limited representation attorney. After the limited representation attorney files that attorney's "withdrawal of limited appearance" form, as provided in Rule 15(e), no further service need be made upon that attorney. All such pleadings or communications shall contain a statement of compliance herewith.

(c) A no contact order in a domestic violence, stalking, or similar matter shall not be deemed to prevent either party from filing appearances, motions, and other appropriate pleadings, through the court. At the request of the party filing the pleading, the court shall forward a copy of the pleading to the party or counsel on the other side of the case. Furthermore, the no contact provisions shall not be deemed to prevent contact between counsel, when both parties are represented.

(d) Papers shall not be withdrawn from the court files except by leave of court and upon the filing of a receipt therefor.

Source

- (a) Superior Court Rule 21
- (b) Superior Court Rule 21
- (c) Superior Court Rule 21
- (d) Superior Court Rule 56

## II. Commencement of Action

### RULE 4. Preliminary Process

(a) There shall be one form of action to be known as “civil action.”

(b) A civil action, including an action authorized by law to be initiated by writ or petition, is commenced by filing a Complaint with the court. For purposes of complying with the statute of limitations, an action shall be deemed commenced on the date the Complaint is filed.

(c) Upon receipt of the Complaint, civil cover sheet, and filing fee, the court will issue a Summons. The Summons will identify two dates: (i) the date the Complaint is filed, and (ii) the date plaintiff selects to file proof of service of the Complaint on the defendant (the Return Date). Plaintiff will cause the Summons together with a copy of the Complaint to be served on defendant at least 14 days before the return date, service to be made as specified at RSA 510.

(d) In all cases of notice by publication where the time may be fixed by the Court, the order shall be for publication in some paper or papers named by the court in general or special orders, once a week for 3 successive weeks.

(e) Appearances and Answers (or Special Appearances and Motions to Dismiss) are due within 30 days after the Return Date.

#### Source

(a) New. Rule 4(a) eliminates the distinction between actions at law and actions in equity. It is styled after Rule 2, Fed.R.Civ.P. The elimination of the two forms of action is not intended to eliminate or change any remedy currently available through the courts.

(b) New first sentence. Second sentence: Superior Court Rule 2 (modified to be consistent with use of complaint rather than writ).

(c) Superior Court Rules 2 and 3 (amended).

(d) Superior Court Rule 128 (modified).

(e) New; consistent with existing practice.

#### Comments

(c) The second sentence is taken from Superior Court Rule 128 which has been modified to remove the final clause (“the last publication to be not less than fourteen (14) days before the return day”) for two reasons. First, these rules eliminate the concept of a return date. Second, since a court order is required for service by publication, the court in any case can identify any appropriate deadline.

**RULE 5. Structuring Conference**

(a) The court may schedule a Structuring Conference for any case, to establish discovery and trial schedules and discuss any other issues involved in processing of the case.

(b) Ten days prior to the Structuring Conference the parties shall submit a Scheduling Statement identifying proposals for discovery deadlines and a trial schedule. The Scheduling Statement shall make note of any disagreements by counsel about scheduling so that the court can resolve the matter expeditiously. At the same time, all parties shall file summary statements to advise the court of the nature of the claims, defenses, and legal issues likely to arise. Summary statements are not admissible at trial.

(c) Following the Structuring Conference, the court will issue an Order identifying discovery and trial schedules.

**Source**

New. This rule codifies existing procedure. It is a simplification of a rule proposed to the Supreme Court Advisory Committee on Rules, and now being circulated for notice-and-comment.

### III. Pleadings and Motions

#### **RULE 6. Pleadings Defined**

(a) There shall be allowed a Complaint and an Answer; an Answer to a Counterclaim denominated as such; an Answer to a cross-claim, if the Answer contains a cross-claim; a Third-Party Complaint, if a person who was not an original party is summoned to appear in an action; and a Third-Party Answer, if a Third-Party Complaint is served. No other pleading shall be allowed, except that the Court may allow a Reply to an Answer or a Third-Party Answer.

(b) Demurrers, Pleas, and Exceptions for insufficiency of a pleading shall not be used.

#### **Source**

(a) Rule 7(a), Fed.R.Civ.P.

(b) Rule 7(c), Fed.R.Civ.P.

#### **Comment**

Rule 6(a) is part of the restructuring of the civil rules intended to eliminate the distinction between law and equity.

#### **RULE 7. Form of Pleadings and Motions**

(a) All pleadings and motions shall set forth the factual allegations in numbered paragraphs.

(b) All pleadings, motions, and the Appearance and Withdrawal of counsel shall be signed by the attorney of record, authorized non-attorney representative, or by a pro se party. Names, street addresses and telephone numbers shall be typed or stamped beneath all signatures or papers to be filed or served. No attorney, non-attorney representative, or pro se party will be heard until his/her Appearance is so entered.

(c) The signature of an attorney, non-attorney representative, or pro se party to a pleading or motion constitutes a certificate by him/her that s/he has read the pleading; that to the best of his knowledge, information and belief there is a good ground to support it; and that it is not interposed for delay. If a pleading is not signed, or is signed with an intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading had not been filed.

(d) No attorney, non-attorney representative or party to litigation shall directly address himself by pleading or motion to any judge but shall file such pleading or motion with the clerk or register.

(e) The court may in all cases order any party to plead and to file a statement in sufficient detail to give the adverse party and the court reasonable knowledge of the nature and grounds of the action or defense.

**Source**

- (a) Superior Court Rule 121
- (b) Superior Court Rule 15(a)
- (c) Superior Court Rule 15(b)
- (d) Superior Court Rule 6
- (e) Superior Court Rule 29

**RULE 8. Complaint**

(a) All Complaints shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment sought.

(b) Relief in the alternative or of several different types may be demanded.

(c) A plaintiff entitled to a trial by jury and desiring a trial by jury shall so indicate upon the Complaint at the time of filing or if there is a counterclaim at the time plaintiff files an Answer to such counterclaim. Failure to request a jury trial in accordance with this rule shall constitute a waiver by the plaintiff thereof.

(d) Plaintiff shall submit to the Court at the time the Complaint is filed the appropriate filing fee, as detailed in Section XI of these rules.

**Source**

- (a) Rule 8(a), Fed.R.Civ. P. (modified)
- (b) Rule 8(a), Fed.R.Civ. P. (modified)
- (c) Superior Court Rule 8
- (d) Superior Court Rule 3

**RULE 9. Answer**

(a) Answers shall be filed within 30 days after the Return Date, unless defendant files a Motion to Dismiss within that time period. If a Motion to Dismiss is submitted and denied, an Answer will be required within 20 days after the date on the Notice of the Decision denying the motion.

(b) Answers to a pleading shall (i) state in short and plain terms the defenses to each claim asserted, and (ii) admit or deny or otherwise respond to each factual allegation.

(c) To preserve the right to a jury trial, a defendant entitled to a trial by jury must indicate his/her request for a jury trial upon the Answer at the time of filing. Failure to request a jury trial in accordance with this rule shall constitute a waiver by the defendant thereof.

(d) The defendant, in answering the allegations in the Complaint shall not do so evasively but shall answer fully and specifically every material allegation in the Complaint and set out his defense to each claim asserted by the Complaint. If the defendant is without knowledge to any particular facts, s/he shall so state and this will be treated as a denial. The Answer of the defendant may state as many defenses as the defendant deems essential to his/her defense. The defendant may allege any new or special matter in his/her Answer with a demand for relief. An Answer, to the effect that an allegation is neither admitted nor denied, will be deemed an admission. All facts well alleged in the Complaint, and not denied or explained in the Answer, will be held to be admitted.

(e) Failure to plead as affirmative defenses and file a Motion to Dismiss based on the statute of limitations, lack of personal jurisdiction, and/or improper venue within the time allowed in subsection a of this rule will constitute waiver of such defenses.

(f) The Answer to an Amended Complaint must be filed within 20 days after an amended Complaint is filed.

**Source**

- (a) Superior Court Rules 14 and 131 (modified).
- (b) Rule 8(b), Fed.R.Civ.P.
- (c) Superior Court Rule 8
- (d) Superior Court Rule 133
- (e) Superior Court Rule 28
- (f) Superior Court Rule 131 (modified)

### Comment

Answers are to comply with statutory requirements that pertain to brief statements of defense. *See* RSA 515:3, 524:2, 565:7, and 547-C:10.

### **RULE 10. Counterclaims, Cross-claims and Third-Party Claims**

(a) A pleading shall state as a counterclaim any claim which at the time of serving the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

(b) A pleading may state as a cross-claim any claim by one party against a co-party which arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim therein.

(c) Unless otherwise provided by law, whenever a third party may be liable to a defendant in any pending action for any of the plaintiff's claim against said defendant or if said defendant may have a claim against a third party, said defendant may bring an action against said third party and, unless otherwise ordered on motion of any party, such action will be consolidated for trial with the pending action or, if justice requires, said third party may be made a party to the pending action, for the purpose of being bound by the determination of any common issues. However, except for good cause shown to prevent injustice and upon such terms as the court may order, no such action will be consolidated with or said third party joined in said pending action, unless suit is brought against said third party within 60 days following filing of the defendant's Answer in said pending action.

(d) A third party against whom an action is brought in accordance with this rule and a plaintiff against whom a counterclaim has been filed may, under the same circumstances prescribed by this rule, use the same procedure with respect to another person and the same time limitation shall apply, except that as to a plaintiff the sixty days will begin to run on the date the counterclaim is filed.

(e) This rule shall not be construed to limit or abridge in any way the existing common law practice of joining parties in pending actions whenever justice and convenience require, or the giving of notice to third parties to come in and defend any pending action or be bound by the outcome thereof.

(f) This rule does not apply to a defendant who contends that a third party is solely liable to the plaintiff or by a defendant in a tort action as to a possible joint tortfeasor against whom said defendant has no right to contribution or reimbursement.

#### Source

(a) Rule 13(a), Fed.R.Civ.P. The language from this federal rule is consistent with existing New Hampshire practice.

(b) Rule 13(g), Fed.R.Civ.P. The language from this federal rule is consistent with existing New Hampshire practice.

(c) Superior Court Rule 27 (Modified: consistent with current Superior Court practice). This rule does not apply to contribution claims which are governed by RSA 507:7-e, f and g.

(d) Superior Court Rule 27

(e) Superior Court Rule 27

(f) Superior Court Rule 27

(g) Superior Court Rule 27

#### **RULE 11. Motions - General**

(a) A request for court order must be made by motion which must (i) be in writing unless made during a hearing or trial, (ii) state with particularity the grounds for seeking the order, and (iii) state the relief sought.

(b) The Court will not hear any motion grounded upon facts, unless such facts are verified by affidavit, or are apparent from the record or from the papers on file in the case, or are agreed to and stated in writing signed by the parties, their attorneys, or non-attorney representatives; and the same rule will be applied as to all facts relied on in opposing any motion.

(c) Any party filing a motion shall certify to the court that s/he has made a good faith attempt to obtain concurrence in the relief sought, except in the case of dispositive motions, motions for contempt or sanctions, or comparable motions where it can be reasonably assumed that the party or counsel will be unable to obtain concurrence.

(d) The court may assess reasonable costs, including reasonable counsel fees, against any party whose frivolous or unreasonable conduct makes necessary the filing of or hearing on any motion.

Source

- (a) New, derived from Rule 7(b)(1), Fed.R.Civ.P. The language from this federal rule is consistent with existing New Hampshire practice.
- (b) Superior Court Rule 57
- (c) Superior Court Rule 57-A
- (d) Superior Court Rule 59

**Comments**

Motions relating to discovery are addressed in section V of these rules.

**RULE 12. Motions – Specific**

(a) *Motions to Amend.*

(i) No plaintiff shall have leave to amend a pleading, unless in matters of form, after a default, until the defendant has been provided with notice and an opportunity to be heard, to show cause why the amendment should not be allowed.

(ii) Amendments in matters of form will be allowed or ordered, as of course, on motion; but, if the defect or want of form be shown by the adverse party, the order to amend will be made on such terms as justice may require.

(iii) Amendments in matters of substance may be made on such terms as justice may require.

(iv) Amendments may be made to the Complaint or Answer upon the order of the court, at any time and on such terms as may be imposed.

**Source**

- (i) Superior Court Rule 24
- (ii) Superior Court Rule 25
- (iii) Superior Court Rule 26
- (iv) Superior Court Rule 135

(b) *Motions to Consolidate.* Whenever a Motion is filed in any county requesting the transfer of an action there pending to another county for trial with an action there pending, arising out of the same transaction or event or involving common issues of law, and/or fact, the court may, after notice to all parties in all such pending actions and hearing, make such order for consolidation in any one of such counties in which such actions are pending, as justice and convenience requires.

**Source**

Superior Court Rule 113

(c) *Motions to Continue.*

(i) Continuances shall be granted upon such terms as the court may order, in the interest of justice.

(ii) All motions for continuance or postponement shall be signed and dated by the attorney, non-attorney representative, or pro se party filing such motion. Any other party wishing to join in any such motion shall also do so in writing. Each such motion shall contain a certificate by the attorney, non-attorney representative, or pro se party filing such motion that the party so filing the motion has been notified of the reasons for the continuance or postponement, has assented thereto either orally or in writing, and has been forwarded a copy of the motion.

(iii) Where a trial has been scheduled in one case prior to the scheduling of another matter in another court, or elsewhere, where an attorney, non-attorney representative or pro se party has a conflict in date and time, the case first scheduled shall not be subject to a continuance because of the subsequently scheduled matter which is in conflict as to time and date except as follows:

(a) A subsequently scheduled case involving trial by jury in a District, Superior, or Federal District Court, or argument before the Supreme Court.

(b) Unusual circumstances causing the respective courts to agree that an order of precedence other than the above shall take place.

**Source**

- (i) Superior Court Rule 48
- (ii) Superior Court Rule 49
- (iii) Superior Court Rule 49-A

(d) *Motions to Dismiss.* Upon request of a party, hearings on motions to dismiss shall be scheduled as soon as practicable, but no later than 30 days prior to the date set for trial on the merits, unless the court shall otherwise order in the exercise of his discretion. All parties shall be prepared, at any such hearing, to present all necessary arguments.

**Source**

Superior Court Rule 58 (modified)

(e) *Motions to Reconsider.* A Motion for Reconsideration or other post-decision relief shall be filed within 10 days of the date on the written Notice of the order or decision, which shall be mailed by the clerk or register on the date of the Notice. The Motion shall state, with particular clarity, points of law or fact that the court has overlooked or misapprehended and shall contain such argument in support of the Motion as the movant desires to present; but the motion shall not exceed 10 pages. A hearing on the motion shall not be permitted except by order of the court.

(i) No Answer or Objection to a Motion for Reconsideration or other post-decision relief shall be required unless ordered by the court.

(ii) If a Motion for Reconsideration or other post-decision relief is granted, the court may revise its order or take other appropriate action without rehearing or may schedule a further hearing.

(iii) The filing of a motion for reconsideration or other post-decision relief shall not stay any order of the court unless, upon specific written request, the court has ordered such a stay.

**Source**

Superior Court Rule 59-A

(f) *Motions to Recuse.* All grounds for recusal that are known or should reasonably be known prior to trial or hearing shall be incorporated in a written motion for recusal and filed promptly with the court. Grounds for recusal that first become apparent at the time of or during the hearing shall be immediately brought to the attention of the court. Failure to raise a ground for recusal shall constitute a waiver as specified herein of the right to request recusal on such ground. If a record of the proceedings is not available, the court shall make a record of the request, the court's findings, and its order.

**Source**

Superior Court Rule 50-A

(g) *Motions for Summary Judgment.*

(i) Motions for summary judgment shall be filed, defended and disposed of in accordance with the provisions of RSA 491:8-a as amended. Such motions and responses thereto shall provide specific page, paragraph, and line references to any pleadings, exhibits, answers to interrogatories, depositions, admissions, and affidavits filed with the court in support or opposition to the Motion for Summary Judgment. Only such materials as are essential and specifically cited and referenced in the Motion for Summary Judgment, responses, and supporting memoranda shall be filed with the court. In addition, except by permission of the court received in advance, no such motion, response, or supporting memorandum of law shall exceed 20 double-spaced pages. The purpose of this rule is to avoid unnecessary and duplicative filing of materials with the court. Excerpts of documents and discovery materials shall be used whenever possible.

(ii) The non-moving party shall have 30 days to respond to a motion for summary judgment, unless another deadline is established by agreement of the parties or order of the court.

(iii) Where a plaintiff successfully moves for summary judgment on the issue of liability or a defendant concedes liability, the parties must provide the court with a statement of agreed facts sufficient to explain the case to the trier of fact and place it in a proper context so that the trier of fact might more readily understand what they will be hearing in the remaining portion of the trial. Absent such an agreement on facts, the matters of liability and damages cannot be severed.

**Source**

- (i) Superior Court Rule 58-A
- (ii) RSA 491:8-a
- (iii) Superior Court Rule 58-A

**Comments**

This is not an exclusive list of the motions that can be filed in New Hampshire courts, but instead represents a sampling of the motions most commonly filed and opposed in the course of traditional New Hampshire litigation.

**RULE 13.     Objections**

A non-moving party may object or otherwise respond to a motion within 14 days after service and filing thereof unless (a) the party is responding to a Motion for Summary Judgment, *see* RSA 491:8-a, or (b) another deadline is established by court order.

**Source**

Superior Court Rule 58 (modified to conform to existing New Hampshire practice), and adding 4 days to the period for objecting.

## **IV. Parties and their Representatives**

### **RULE 14. Parties**

In addition to the participation of plaintiffs and defendants, a civil action may also involve third parties whenever third parties may be liable to a defendant in any pending action for all or part of the plaintiff's claim against said defendant or if said defendant may have a claim against third parties, depending upon the determination of an issue or issues in said pending action.

#### **Source**

Superior Court Rule 27

### **RULE 15. Intervention**

Any person shown to be interested may become a party to any civil action upon filing and service of a pleading briefly setting forth his relation to the cause; or, upon motion of any party, such person may be made a party by order of court notifying him to appear therein. If a party, so notified, neglects to file an Appearance on or before the date established by the court, that party shall be defaulted. No such default shall be set aside, except by agreement or by order of the court upon such terms as justice may require.

#### **Source**

Superior Court Rule 139

### **RULE 16. Class Actions**

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all if:

(1) The class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

(2) There are questions of law or fact common to the class which predominate over any questions affecting only individual members;

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;

(4) The representative parties will fairly and adequately protect the interests of the class;

(5) A class action is superior to other available methods for the fair and efficient adjudication of the controversy; and

(6) The attorney or non-attorney representative for the representative parties will adequately represent the interests of the class.

(b) *Order Allowing Class Action.* As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this section may be conditional and may be altered or amended before the decision on the merits on the court's own motion or on motion of the parties. The action may be maintained as a class action only if the court finds that the prerequisites under subdivision (a) of this rule have been satisfied.

(c) *Satisfaction of Jurisdictional Damages Limit.* For purposes of satisfying the jurisdictional damages limit of the court, the claims of the members of the class shall be aggregated.

(d) *Description of Class.* The order permitting a class action shall describe the class. When appropriate the court may limit the class to those members who do not request exclusion from the class within the specified time after notice.

(e) *Notice of Class Action.* Following the court's order maintaining the class action, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude that party from the class if that party so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; (C) any member who does not request exclusion may, if that party desires, enter an Appearance through that party's counsel; and contain such other information that the court deems appropriate. Unless the court orders otherwise, the representatives of the class shall bear the expense of notification and be responsible for the giving of the notice to members of the class.

(f) *Exclusion.* Any member of the plaintiff class who files an election to be excluded in the manner and in the time specified in the notice, is excluded from and not bound by the judgment in the class action. A member of a defendant class may not elect to be excluded.

(g) *Judgment.* The judgment in an action maintained as a class action, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class.

(h) *Methods of Payment of Damages.* If the court renders judgment in favor of a plaintiff class, the court may, in its discretion, order the defendant to pay damages into the court and require each member of the class to file a claim with the court, or order payment of damages in any other manner it deems appropriate.

(i) *Actions Conducted Partially as Class Actions.* When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class. The provisions of this subdivision shall then be construed and applied accordingly.

(j) *Orders in Conduct of Class Actions.* In the conduct of class actions the court may make and alter appropriate orders:

(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) Requiring, for the protection of the members of the class, or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, or to appear and present claims or defenses, or otherwise to come into the action; or

(3) Dealing with similar procedural matters.

(k) *Dismissal, Discontinuance or Settlement.* A class action shall not be dismissed, discontinued or settled without the approval of the court. Notice of the proposed dismissal, discontinuance or settlement shall be given to all members of the class in such manner as the court directs.

**Source**

Superior Court Rule 27-A

RULE 17. Appearance and Withdrawal

(a) An Appearance in an action shall be made by filing an Appearance containing the name, street address and telephone number of the person entering the Appearance, and the complete name, street address, and telephone number of the party on whose behalf the appearance is filed. The clerk or register shall be notified of any changes of address of any of the parties. A separate Appearance is to be filed by counsel or non-attorney representative with respect to each case in which counsel or non-attorney representative appears, whether or not such cases are consolidated for trial or other purposes.

(b) The Appearance and Withdrawal of counsel or non-attorney representative shall be signed by that person. Names, street addresses and telephone numbers shall be typed or stamped beneath all signatures or papers to be filed or served. No attorney, non-attorney representative, or pro se party will be heard until his Appearance is so entered.

(c) *Limited Appearance of Attorneys.* To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney providing limited representation to an otherwise unrepresented litigant may file a Limited Appearance in a non-criminal case on behalf of such unrepresented party. The Limited Appearance shall state precisely the scope of the limited representation, and the attorney's involvement in the matter shall be limited only to what is specifically stated. The requirements of Rule 17(a), (b) and (c) of these New Hampshire Rules of Civil Procedure shall apply to every pleading and motion signed by the limited representation attorney. An attorney who has filed a Limited Appearance, and who later files a pleading or motion outside the scope of the limited representation, shall be deemed to have amended the Limited Appearance to extend to such filing. An attorney who signs a Pleading or Motion, or any amendment thereto which is filed with the court (with the exception of a Special Appearance and motion challenging the court's jurisdiction over the defendant), will be considered to have filed a General Appearance and, for the remainder of that attorney's involvement in the case, shall not be considered as a limited representation attorney under these rules; provided, however, if such attorney properly withdraws from the case and the withdrawal is allowed by the court, the attorney could later file a Limited Appearance in the same matter.

(d) An attorney or non-attorney representative may withdraw from an action by serving a Notice of Withdrawal on the client and all other parties and by filing the notice, provided that (1) there are no motions pending before the court, (2) a Final Pretrial Conference has not been held, and (3) no trial date has been set. Unless these conditions are met, an attorney or non-attorney representative may withdraw from an action only by leave of court. Whenever an attorney or non-attorney representative withdraws from an action, and no other Appearance is entered, the court shall notify the party by mail of such withdrawal, and unless the party appears *pro se* or by another attorney or non-attorney representative on or before a date fixed by the court, the action will be terminated either by a dismissal or default as appropriate.

(e) Other than limited representation by attorneys as allowed by Rule 14(d) and Professional Conduct Rule 1.2(f), no attorney or non-attorney representative shall be permitted to withdraw his/her Appearance in a case after the case has been assigned for trial or hearing, except upon motion to permit such withdrawal granted by the court for good cause shown, and on such terms as the court may order. Any motion to withdraw filed by counsel or non-attorney representative shall set forth the reason therefore but shall be effective only upon approval by the court. A factor which may be considered by the court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the attorney's services.

(f) *Automatic Termination of Limited Representation.* Any Limited Representation Appearance filed by an attorney, as authorized under Professional Conduct Rules 1.2(f) and 14(d), shall automatically terminate upon completion of the agreed representation, without the necessity of leave of court, provided that the attorney shall provide the court a "withdrawal of limited appearance" from giving notice to the Court and all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a Limited Appearance who seeks to withdraw prior to the completion of the limited representation stated in the Limited Appearance, however, must comply with Rule 17(d).

(g) *Pleading prepared for Unrepresented Party.* When an attorney provides limited representation to an otherwise unrepresented party, by drafting a document to be filed by such party with the court in a proceeding in which (1) the attorney is not entering any appearance, or (2) the attorney has entered a Limited Appearance which does not include representation regarding such document, the attorney is not required to disclose the attorney's name on such

pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement *“This pleading was prepared with the assistance of a New Hampshire attorney.”* The unrepresented party must comply with this required disclosure. Notwithstanding that the identity of the drafting attorney need not be required to be disclosed under this rule, by drafting a pleading to be used in court by an otherwise unrepresented party, the limited representation attorney shall be deemed to have made those same certifications as set forth in Rule 18(a) despite the fact the pleading need not be signed by the attorney.

**Source**

- (a) Superior Court Rule 2-A and 14 (modified)
- (b) Superior Court Rule 15
- (c) Superior Court Rule 14(d)
- (d) Superior Court Rules 15 and 20 (modified)
- (e) Superior Court Rule 15(d)
- (f) Superior Court Rule 15(e)
- (g) Superior Court Rule 15(f)

**RULE 18. Counsel**

(a) The signature of an attorney, non-attorney representative, or pro se party to a pleading constitutes a certification that the individual has read the pleading; that to the best of that individual’s knowledge, information and belief there is a good ground to support it; and that it is not interposed for delay.

(b) If a pleading is not signed, or is signed with an intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading had not been filed.

(c) When either party shall change attorneys or non-attorney representatives during the pendency of the action, the name of the new attorney or non-attorney representative shall be entered on the docket.

(d) No attorney or non-attorney representative will be permitted to take part in a jury trial after s/he has testified for his/her client therein unless his acting as an advocate would be permitted by Rule 3.7 of the Rules of Professional Conduct.

(e) No attorney may be surety or guarantor of any bond or undertaking in any proceeding.

Source

- (a) Superior Court Rule 15
- (b) Superior Court Rule 15
- (c) Superior Court Rule 20
- (d) Superior Court Rule 17
- (e) Superior Court Rule 22

**RULE 19. Out of State Counsel (Admission *Pro Hac Vice*)**

(a) An attorney who is not a member of the Bar of this State, shall not be allowed to engage in the trial or hearing in any case, except on application to appear *pro hac vice*, which will not ordinarily be granted unless a member of the Bar of this State is associated with him or her and present at the trial or hearing.

(b) An attorney who is not a member of the Bar of this State seeking to appear *pro hac vice* shall file a verified application with the court, which shall contain the following information:

(1) the applicant's residence and business address;

(2) the name, address and phone number of each client sought to be represented;

(3) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;

(4) whether the applicant: (i) has been denied admission *pro hac vice* in this State; (ii) had admission *pro hac vice* revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;

(5) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last 5 years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(6) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last 5 years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application); and

(7) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear *pro hac vice* in this State within the preceding 2 years; the date of each application; and the outcome of the application.

(8) In addition, unless this requirement is waived by the court, the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at any trial or hearing.

(c) The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that such admission:

(1) may be detrimental to the prompt, fair and efficient administration of justice;

(2) may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

(d) An attorney so permitted to practice shall at all times be associated with a member of the New Hampshire bar upon whom all process, notices and other papers may be served; who shall sign all papers filed with the court; and whose attendance shall be required at all proceedings, unless excused by the court.

(e) The court may at any time for good cause revoke such permission.

**Source**

Superior Court Rule 19 (modified)

**RULE 20. Non-attorney representatives**

(a) No person who is not a lawyer will be permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, unless of good character and until there is on file with the court:

(1) a power of attorney signed by the party for whom s/he seeks to appear, witnessed and acknowledged before a Justice of the Peace or Notary Public, constituting said person his or her attorney to appear in the particular action;

(2) an affidavit under oath in which said person discloses (i) all of said person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (ii) all instances in which said person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, and (iii) all prior proceedings in which said person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court; and

(3) a prior written approval of the court. Requests for such written approval shall be made to the court in writing *with a* power of attorney designating such person as the attorney-in-fact in the action. The *request and* power of attorney shall be *signed by the party and* witnessed and acknowledged before a justice of the peace or notary public.

(b) Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

(c) A party who appears *pro se* shall so state in the Notice of Appearance, and all pleadings and motions. The words "*pro se*" shall follow the party's signature on all papers subsequently filed in that action.

**Source**

- (a) Superior Court Rule 14 (modified)
- (b) Superior Court Rule 14
- (c) New

**Comment**

These rules should be interpreted to be consistent with RSA 311, Attorneys and Counselors.

## V. Discovery

### RULE 21. General Provisions

(a) *Discovery Methods.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and physical or mental examinations.

(b) *Scope of Discovery.* Unless otherwise limited by order of the court in accordance with these rules, parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Medical Examination.* In actions to recover damages for personal injuries, the defendant shall have the right to a medical examination of the plaintiff.

(d) *Trial Preparation.*

(1) A party may obtain discovery of documents, electronically stored information and tangible things otherwise discoverable and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, non-attorney representative, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(2) A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without

the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. For purposes of this paragraph, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(e) *Sequence and Timing of Discovery.* Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(f) *Supplementation of Responses.* A party, who has responded to a request for discovery with a response that was complete when made, is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (a) he knows that the response was incorrect when made, or (b) he knows that the response, though correct when made, is no longer true.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

#### Source

- (a) Superior Court Rule 35(a)
- (b) Superior Court Rule 35(b)(1)
- (c) Superior Court Rule 63(D)
- (d) Superior Court Rule 35(b)(2)
- (e) Superior Court Rule 35(d)
- (f) Superior Court Rule 35(e)

**RULE 22. Written Interrogatories**

(a) Any party may serve, by mail or delivery by hand, upon any other party written interrogatories relating to any matters which may be inquired into under Rule 21.

(b) Any party propounding interrogatories shall provide the opponent with notice, substantially as set forth in the following form, of the obligation to answer said interrogatories within thirty days. The notice shall be at the top of the first page and printed in capital, typewritten letters or in ten-point, bold-face print. The form of the notice in substance shall be as follows:

These interrogatories are propounded in accordance with Rule 22 of the New Hampshire Rules of Civil Procedure. You must answer each question separately and fully in writing and under oath. You must return the original and one copy of your answers within thirty (30) days of the date you received them to the party or counsel who served them upon you. If you object to any question, you must note your objection and state the reason therefore. If you fail to return your answers within thirty (30) days, the party who served them upon you may inform the court, and the court shall make such orders as justice requires, including the entry of a conditional default against you.

(c) Interrogatories may be served at any time after service of the action.

(d) The party serving the interrogatories shall furnish the answering party with an original and two copies of the interrogatories. The interrogatories shall be so arranged that after each separate question shall appear a blank space reasonably calculated to enable the answering party to have his answer typed in. The parties may agree to transmit interrogatories electronically or by computer disk, enabling the answering party to provide answers directly after each separate question using the party's available word processing technology. In the event of such an agreement, the requirement of providing space between each question sufficient to manually insert answers is obviated.

(e) Interrogatories shall be answered in writing under oath by the party upon whom served, if an individual, or, if a public or private

corporation, a partnership or association, by an officer or agent who shall furnish all information available to the party.

(f) Each question shall be answered separately, fully and responsibly in such manner that the final document shall have each interrogatory immediately succeeded by the separate answer.

(g) If, in any interrogatory, copies of papers, documents or electronically stored information are requested, such interrogatory shall be deemed to be a request for production pursuant to subdivision (h) of this rule. If any copy provided in response to such an interrogatory is a report of an expert witness or a treating physician, it shall be the exact copy of the entire report or reports rendered by him, and the answering party shall, unless otherwise stated, be deemed to have certified that the existence of other reports of that expert, either written or oral, are unknown to him and, if such become later known or available, he shall serve them promptly on the propounding party but in any case not later than ten days prior to the final trial management conference.

(h) The party, who is served with interrogatories, shall serve his answers thereto, by mail or delivery in hand, upon the party propounding them within thirty days after service of such interrogatories, or within thirty days after the Return Day, whichever date is later. The parties may extend such time by written agreement.

(i) The answers shall be served, together with the original and one copy of the interrogatories upon the propounding party. If copies of papers are annexed to answers, they need be annexed to only one set.

(j) If a party, upon whom interrogatories are served, objects to any questions propounded therein, he may answer the question by objecting and stating the grounds. He shall make timely answer, however, to all questions to which he does not object. The propounder of a question to which another party objects may move to compel an answer to the question, and, if the motion is granted, the question shall be answered within such time as the court directs.

(k) A party may file more than one set of interrogatories to an adverse party, but the total number of interrogatories shall not exceed fifty, unless a different number is established by structuring order issued pursuant to Rule 5 of these rules, or the court otherwise orders for good cause shown after the proposed additional interrogatories have been filed. In determining what constitutes an interrogatory for the purpose of applying this limitation in number, it is

intended that each question be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another question, and however the questions may be grouped, combined or arranged.

(l) The adverse party shall have the same privileges in answering written interrogatories as the deponent in the taking of a deposition.

(m) Interrogatories and answers may be used at the trial to the same extent as depositions. If less than all of the interrogatories and answers thereto are introduced or read into evidence by a party, an adverse party may introduce or read into evidence any other of the interrogatories and answers or parts thereof necessary for a fair understanding of the parts read or otherwise introduced into evidence.

(n) Neither the interrogatories nor the answers need be filed with the court unless the court otherwise directs.

#### **Source**

Superior Court Rule 36 (modified to allow a party upon whom interrogatories are served thirty days to object to any question propounded therein). Rule 22(j), N.H.R.Civ.P. is the language from a section of current Superior Court Rule 36, modified to be consistent with existing practice.

#### **Comments**

The conditional default rule has been moved to the end of this section of the rules, and it applies to both interrogatories and requests for production of documents

### **RULE 23. Production of Documents**

(a) *Scope.* Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form, or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 21(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 21(b).

(b) *Procedure.*

(1) The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts.

(3) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

**Source and Comment**

The language contained in this rule is derived from Rule 34(a), Fed.R.Civ.P. It is consistent with New Hampshire practice. *See* Superior Court Rule 35(a).

**RULE 24. Depositions**

(a) No notice to the adverse party of the taking of depositions shall be deemed reasonable unless served at least 3 days, exclusive of the day of service and the day of caption, before the day on which they are to be taken. Provided, however, that twenty days' notice shall be deemed reasonable in all cases, unless otherwise ordered by the Court. No deposition shall be taken within 20 days after service of the Complaint, except by agreement or by leave of court for good cause shown.

(b) Every notice of a deposition to be taken within the State shall contain the name of the stenographer proposed to record the testimony.

(c) When a statute requires notice of the taking of depositions to be given to the adverse party, it may be given to such party or the party's representative of record. In cases where the action is in the name of a nominal party and the Complaint or docket discloses the

real party in interest, notice shall be given either to the party in interest or that party's attorney of record. Notices given pursuant to this rule may be given by mail or by service in hand.

(d) The interrogatories shall be put by the attorneys or non-attorney representatives and the interrogatories and answers shall be taken in shorthand or other form of verbatim reporting approved by the court and transcribed by a competent stenographer agreed upon by the parties or their attorneys present at the deposition. In the absence of such agreements, the stenographer shall be designated by the Court. Failure to object in writing to a stenographer in advance of the taking of a deposition shall be deemed agreement to the stenographer recording the testimony.

(e) No deposition, as transcribed, shall be changed or altered, but any alleged errors may be set forth in a separate document attached to the original and copies.

(f) The stenographer shall cause to be noted any objection to any interrogatory or answer without deciding its competency. If complaint is made of interference with any witness, the magistrate shall cause such complaint to be noted and shall certify the correctness or incorrectness thereof in the caption.

(g) Upon motion, the court may order the filing of depositions, and, upon failure to comply with such order, the court may take such action as justice may require.

(h) The signature of a person outside the State, acting as an officer legally empowered to take depositions or affidavits, with his seal affixed, where one is required, to the certificate of an oath administered by him in the taking of affidavits or depositions, will be prima facie evidence of his authority so to act.

(i) The deponent, on deposition or on written interrogatory, shall ordinarily be required to answer all questions not subject to privilege or excused by the statute relating to depositions, and it is not grounds for refusal to answer a particular question that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence and does not violate any privilege.

(j) If any deponent refuses to answer any question propounded on deposition, or any party fails or refuses to answer any written interrogatory authorized by these rules, or fails to comply within 30 days after written request to, the party propounding the question

may, upon notice to all persons affected thereby, apply by motion to the court for an order compelling an answer. If the motion is granted, and if the court finds that the refusal was without substantial justification or was frivolous or unreasonable, the court may, and ordinarily will, require the deponent and the party, attorney, or non-attorney representative advising the refusal, or either of them, to pay the examining or requesting party the reasonable expenses incurred in obtaining the order, including reasonable counsel fees.

(k) If the motion is denied and if the court finds that the motion was made without substantial justification or was frivolous or unreasonable, the court may, and ordinarily will, require the examining party or the attorney or non-attorney representative advising the motion, or both of them, to pay to the witness the reasonable expenses incurred in opposing the motion, including reasonable counsel fees.

(l) *Videotape Depositions.*

(1) The court, within its discretion, may allow the use of videotape depositions that have been taken by agreement; and provided further that, if the parties cannot reach such an agreement, the court may, in its discretion, order the taking and/or use of such depositions. At the commencement of the videotape deposition, counsel representing the deponent should state whose deposition it is, what case it is being taken for, where it is being taken, who the lawyers are that will be asking the questions, and the date and the time of the deposition. Care should be taken to have the witnesses speak slowly and distinctly and that papers be readily available for reference without undue delay and unnecessary noise. Counsel and witnesses shall comport themselves at all times as if they were actually in the courtroom.

(2) If any problem arises as to the admissibility or inadmissibility of evidence, this should be handled in the same manner as written depositions.

(3) A party objecting to a question asked of, or an answer given by, a witness whose testimony is being taken by videotape shall provide the court at the pretrial settlement conference with a transcript of the videotape proceedings that is sufficient to enable the court to act upon the objection before the trial of the case, or the objection shall be deemed waived.

**Source**

- (a) Superior Court Rule 38 (modified for use with complaint rather than writ)
- (b) Superior Court Rule 39
- (c) Superior Court Rule 40 (modified for use with complaint rather than writ)
- (d) Superior Court Rule 41
- (e) Superior Court Rule 39
- (f) Superior Court Rule 41
- (g) Superior Court Rule 41
- (h) Superior Court Rule 42. See RSA 517:5 (Appointment of Special Commissioner)
- (i) Superior Court Rule 44
- (j) Superior Court Rule 44 (modified to be consistent with Rule 22)
- (k) Superior Court Rule 44
- (l) Superior Court Rule 45
- (l)(1) Superior Court Rule 45
- (l)(2) Superior Court Rule 45
- (l)(3) Superior Court Rule 45-A

**RULE 25. Expert Witnesses**

(a) Within 30 days of a request by the opposing party, or in accordance with any order of the court following a Structuring Conference held pursuant to Rule 5, a party shall make a disclosure of expert witnesses (as defined in Rule 702 of the Rules of Evidence), whom he expects to testify at trial.

(b) Said disclosure shall:

(1) identify each person, including any party, whom the party expects to call as an expert witness at trial;

(2) provide a brief summary of the expert's education and experience relevant to his area of expertise;

(3) state the subject matter on which the expert is expected to testify; and

(4) state a summary of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The party shall attach to the disclosure a copy of any expert report relating to such expert.

**Source**

- (a) Superior Court Rule 35(f)
- (b) Superior Court Rule 35(f)

**RULE 26. Requests for Admissions**

(a) Any party, desiring to obtain admission of the signature on or the genuineness of any relevant document or of any relevant facts which he believes not to be in dispute, may, after the Return Day of the action without leave of court, file an original request therefor with the court, accompanied by any original documents involved, and deliver a copy of such request and documents by mail or in hand to the adverse party or his representative. Each of the matters, of which an admission is requested, shall be deemed admitted unless within thirty days after such delivery the party requested files with the Court and delivers a copy thereof by mail or in hand to the party requesting such admission, or his attorney or non-attorney representative, either a sworn denial thereof or a written objection on the ground of privilege or that it is otherwise improper.

(b) If objection is made to part of a request, the remainder shall be answered within the time limit, and when good faith requires that a party qualify his answer or deny only part of a matter, he shall specify so much of it as is true and qualify or deny the remainder.

(c) Any party, who without good reason or in bad faith, denies under this rule any signature or fact which has been requested and which is thereafter proved, or who without good reason or in bad faith requests such admission under this rule and thereafter fails to prove it, may, on motion of the other party, be ordered to pay the reasonable expense, including counsel fees, incurred by such other party in proving the signature or fact or in denying the request, as the case may be.

**Source**

Superior Court Rule 54

**RULE 27. Discovery Motions**

(a) *Protective Orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (a) that the discovery not be had; (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (d) that certain

matters not be inquired into, or that the scope of the discovery be limited to certain matters; (e) that discovery be conducted with no one present except persons designated by the court; (f) that a deposition after being sealed be opened only by order of the Court; (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

(b) If a motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(c) *Conditional Default.* If the party upon whom interrogatories have been served, shall fail to answer said interrogatories within 30 days, or any enlarged period, unless written objection to the answering of said interrogatories is filed within that period, said failure will result in a conditional default being entered by the Court upon motion being filed indicating such failure to answer. The party failing to answer shall receive notice of the conditional default. The conditional default shall be vacated if the defaulted party answers the interrogatories within 10 days of receiving notice thereof and moves to strike the conditional default. If the defaulted party fails to move to strike the conditional default within 10 days of receiving notice thereof, the adverse party may move to have a default judgment entered and damages assessed in connection therewith. If, upon review of an affidavit of damages, the court determines that it does not provide a sufficient basis for determining damages, the court may, in its discretion, order a hearing thereon.

(d) *Motion to Compel.* Before any Motion to Compel discovery may be filed, counsel for the parties shall attempt in good faith to settle the dispute by agreement. If a Motion to Compel regarding requested discovery is filed, the moving party shall be deemed to have certified to the court that he has made a good faith effort to obtain concurrence in the relief sought.

(e) Where a discovery dispute has been resolved in favor of the party requesting discovery by court order, the requested discovery shall be provided within 10 days thereafter or within such time as the court may direct.

(f) Motions for protective order or to compel responses to discovery requests shall include a statement summarizing the nature of the action and shall have annexed thereto the text of the requests and responses, if any objected to.

(g) If the court finds that a motion, which is made pursuant to this rule, was made frivolously or for the purpose of delay or was necessitated by action of the adverse party that was frivolous or taken for the purpose of delay, the court may order the offending party to pay the amount of reasonable expenses, including attorney's fees, incurred by the other party in making or resisting the motion.

**Source**

- (a) Superior Court Rule 35(c)
- (b) Superior Court Rule 35(c)
- (c) Superior Court Rule 36
- (d) Superior Court Rule 57-A
- (e) New. Consistent with existing New Hampshire practice.
- (f) New. Consistent with existing New Hampshire practice.
- (g) Superior Court Rule 35(c)

## VI. Alternatives to Trial

### **RULE 28. Mediation**

(a) The Court may order the parties in any civil action to participate in mediation.

(b) If the parties agree, they may elect a form of alternative dispute resolution other than mediation (e.g. neutral evaluation, non-binding arbitration or binding arbitration).

(c) The parties may agree to engage in private mediation instead of or in addition to the court-ordered mediation.

(d) The parties may also request that the presiding judge assign a complex case for intensive mediation to be conducted by another judge.

(e) Unless the parties agree otherwise, proceedings under this rule are nonbinding and shall not impair the litigants' trial rights.

#### **Source**

New (derived from Superior Court Rule 170)

#### **Comment**

The courts are currently involved in an effort to create a complete set of rules addressing the various forms of alternative dispute resolution (ADR). The umbrella rule set forth here is designed to identify the general parameters of the ADR process, which will likely be subject to the more detailed procedures identified in the separate set of ADR rules.

### **RULE 29. Summary Jury Trial**

(a) *Cases for Summary Jury Trial Proceedings.* The parties may request, and the court may order that a summary jury trial be held in any case, provided the following conditions are satisfied:

(1) The case is not one in which the credibility of a witness is likely to be determinative of the outcome of the case.

(2) The decision in the case will not set a precedent but simply requires the application of existing law.

(3) The case shall be in trial readiness when called for summary jury trial and all discovery shall have been completed.

(b) *Objections To Order for Summary Jury Trial.* Specific objections to an order placing a case on the summary jury trial list shall be raised by motion filed within 10 days of the mailing of notice of such order and shall be heard by the presiding judge.

(c) *Summary Jury Trial: When and Where Held; Notice.*

(1) Summary jury trials shall be held at the time and place designated by the presiding judge. The Court shall notify counsel in writing, at least fifteen (15) days before the trial, of the time and place of trial.

(2) Unless excused by order of court, clients or client representatives shall be in attendance at the summary jury trial.

(d) *Jury Panel.* The case shall be heard before a jury of six members or such lesser number as the parties may stipulate, drawn in accordance with usual procedures. Once a juror has served on a summary jury, he or she shall not serve on any regular jury during the same term.

(e) *Jury Instructions.* Unless excused by order of court, counsel shall submit proposed jury instructions to the court and opposing counsel no later than 5 days before the date set for hearing.

(f) *Presentation of Evidence.* All evidence shall be presented through the attorneys, non-attorney representatives or parties (if *pro se*), who may incorporate arguments on such evidence in their presentations. Each representative shall be given one hour to describe to the jury that party's view of the circumstances of the case. Counsel may reserve a portion of the hour for a statement in rebuttal. Only evidence that would be admissible at trial upon the merits may be presented. Counsel may only present factual representations supportable by reference to discovery materials, to a signed statement of a witness, to a stipulation, or to a document or by a professional representation that counsel personally spoke with the witness and is repeating what the witness stated. Statements, reports and depositions may be read from, but not at undue length. Physical exhibits, including documents, may be exhibited during a presentation and submitted for the jury's consideration.

(g) *Exhibits.* Prior to the summary jury trial, counsel shall mark and exchange copies of all proposed exhibits they plan to offer at said trial and inform the court whether they object to any proposed exhibit, setting forth reasons in support thereof. Failure to exchange a proposed exhibit shall constitute valid grounds for objection to admission. Failure to file an objection to any exchanged proposed exhibit shall constitute a waiver of any objection thereto.

(h) *Objections.* Objections will be received if in the course of a presentation counsel goes beyond the limits of propriety in presenting statements as to evidence or argument thereon.

(i) *The court's charge.* After presentations, the jury will be given an abbreviated charge by the presiding judge on the applicable law.

(j) *Verdict.* The jury may return either a consensus verdict or a special verdict consisting of an anonymous statement of each juror's findings on liability and/or damages (each known as the jury's advisory opinion). The jury will be encouraged to return a consensus verdict.

(k) *Transcript.* No record of the proceedings shall be permitted except in extraordinary circumstances, as determined by the court.

(l) *Effect of Verdict.* Counsel may stipulate that a consensus verdict by the jury will be deemed a final determination on the merits and that judgment be entered thereon by the court, or may stipulate to any other use of the verdict that will aid in the resolution of the case.

(m) *Restoration to Active List; Inadmissibility of Summary Jury Trial Proceedings.* The parties shall notify the court within fifteen (15) days after entry of the summary jury trial verdict whether settlement in the case has been reached. If a settlement agreement or stipulations for docket markings are not filed, the case shall be forthwith restored to the trial docket. In the event that no settlement is reached following the summary jury trial, and the case is restored to the trial docket, no person shall be called as a witness to testify what took place in the summary jury proceeding. In such event, the documents relating to that proceeding and the evidence presented therein shall be sealed and shall not be admissible, except for such evidence as is otherwise admissible at trial under the rules of evidence. The judge who presided at the summary jury proceeding shall not be the trial the court.

**Source**

Superior Court Rule 171

## VII. Trials

### RULE 30. Trial Management Conference

#### *Jury Trials*

(a) In every case scheduled for jury trial, the court shall schedule a Trial Management Conference which shall take place within 14 days before trial is to begin. At the Conference, parties will be present or available by telephone, prepared to discuss conduct of the trial and settlement.

(b) 14 days prior to the Trial Management Conference, all parties shall file with the court and serve on the other parties Pretrial Statements, which shall include, by numbered paragraphs, a detailed, comprehensive, and good faith statement, setting forth the following:

1. A summary of the case that can be read by the court to the jury at the beginning of trial;
2. Disputed issues of fact;
3. Applicable law;
4. Disputed issues of law;
5. Specific claims of liability by the party making the claim;
6. Defendant's specific defenses;
7. Itemized special damages;
8. Specification of injuries with a statement as to which, if any, are claimed to be permanent;
9. The status of settlement negotiations;
10. A list of all exhibits to be offered in the direct case of each party. The parties, or their counsel, shall bring exhibits, or exact copies of them, to court on the day of the Trial Management Conference for examination by opposing parties or their representatives;
11. A list of all depositions to be read into evidence;
12. A waiver of claims or defenses, if any;

13. A list of the names and addresses of all witnesses who may be called;

14. Whether there will be a request for a view and, if so, who shall pay the cost in the first instance;

15. The names and addresses of the trial attorneys or non-attorney representatives.

(c) Except for good cause shown, only witnesses listed in the Pre-trial Statement will be allowed to testify and only exhibits, so listed, will be received in evidence.

(d) Preliminary requests for instructions about unusual or complex questions of law shall be submitted in writing at the Trial Management Conference. Supplementary requests may be proposed at any time prior to the time the court completes its instructions to the jury.

#### *Bench Trials*

(e) The court may direct the parties to attend a Trial Management Conference in non-jury cases. Written pretrial statements are not required in non-jury cases unless ordered by the court. Requests for findings of fact and rulings of law shall be submitted in writing in accordance with a schedule to be determined by the court.

#### **Source**

Superior Court Rule 62 (modified from the June 2006 proposal presented to the Advisory Committee on Rules)

### **RULE 31. Standing Trial Orders - Procedures**

(a) *Addressing the court.* Anyone addressing the court or examining a witness shall stand. No-one should approach the bench to address the court except by leave of the court.

(b) *Opening statements.* Opening statements shall not be argumentative and shall not be longer than 30 minutes unless the Court otherwise directs. Closing arguments shall be limited to 1 hour each, unless otherwise ordered by the court in advance. Before any attorneys, non-attorney representatives or *pro se* party shall read to the jury any excerpt of testimony prepared by the court, the opposing

party shall be furnished with a copy thereof prepared by said stenographer.

(c) *Copies of documents for court.* Counsel shall seasonably furnish for the convenience of the court, as s/he may require, copies of the specifications, contracts, letters or other papers offered in evidence.

(d) *Examination of witnesses.*

(1) Only 1 counsel on each side will be permitted to examine a witness.

(2) A witness cannot be re-examined by the party calling him, after his cross-examination, unless by leave of court, except so far as may be necessary to explain his answers on his cross-examination, and except as to new matter elicited by cross-examination, regarding which he has not been examined in chief.

(3) After a witness has been dismissed from the stand, he cannot be recalled without permission of the court.

(4) No person, who has assisted in the preparation of a case, shall act as an interpreter at the trial thereof, if objection is made.

(5) *Attorney as Witness.*

(i) *Compelling Testimony.* Except with leave of court for good cause shown, no attorney shall be compelled to testify at trial or hearing in any action in which the attorney is counsel, unless notified in writing at least 30 days before the trial or hearing. The notice shall contain a brief statement explaining why testimony of the attorney may be necessary.

(ii) *Participation as Advocate.* An attorney who gives testimony at trial or hearing shall not act as advocate at such trial or hearing unless the attorney's testimony relates to an uncontested issue, or relates to the nature and value of legal services rendered in the case, or unless the court determines that disqualification of the attorney would work unreasonable hardship on the attorney's client.

(e) *Exceptions Unnecessary.* Formal exceptions to non-evidentiary rulings or orders of the court are unnecessary, and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at or before the time the ruling or order of the court is made or sought, makes known to the court by pleading or

orally on the record the action which he desires the court to take or his objection to the action requested by a party opponent, provided that in each instance the party has informed the court of the specific factual or legal basis for his position. Objections to evidentiary rulings are governed by N.H. R. Ev. 103.

(f) *Objections.* When stating an objection, counsel will state only the basis of the objection (e.g., “leading,” “non-responsive,” or hearsay”), provided, however, that upon counsel’s request, counsel shall be permitted a reasonable opportunity to approach the bench to elaborate and present additional argument or grounds for the objection.

(g) *Plaintiff rests.* In all trials, the plaintiff shall put in his whole case before resting and shall not thereafter, except by permission of the court for good cause shown, be permitted to put in any evidence except such as may be strictly rebutting; and the defendant shall, before resting, put in his/her whole defense, and shall not thereafter introduce any evidence except such as may be in reply to the rebutting evidence.

(h) *Bench motions.* Motions for dismissal or mistrial as well as offers of proof should be made at the bench and out of the hearing of the jury.

(i) *Protection of children in sex-related cases.* In any delinquency proceeding under RSA chapter 169-B alleging a sex-related offense in which a minor child was a victim, the court shall allow the use of anatomically correct drawings and/or anatomically correct dolls as demonstrative evidence to assist the alleged victim or minor witness in testifying, unless otherwise ordered by the court for good cause shown. In the event that the alleged victim or minor witness is nervous, afraid, timid, or otherwise reluctant to testify, the court may allow the use of leading questions during the initial discovery.

#### Source

- (a) Superior Court Rule 16
- (b) Superior Court Rule 71
- (c) Superior Court Rule 64
- (d)(1) Superior Court Rule 65
- (d)(2) Superior Court Rule 67
- (d)(3) Superior Court Rule 69
- (d)(4) Superior Court Rule 109
- (d)(5)(i) Superior Court Rule 18 (modified)
- (d)(5)(ii) Superior Court Rule 17 and Rule 3.7 of the Rules of Professional Conduct
- (e) Superior Court Rule 77-A
- (f) Superior Court Rule 66(a)
- (g) Superior Court Rule 70
- (h) Superior Court Rule 66(b)
- (i) District Court Rule 1.24

#### **RULE 32. Standing Trial Orders – Proof**

(a) *Bills.* If, after an action has been entered for 3 months, a party submits copies of bills incurred to opposing counsel, and no objection has been made within 30 days, the bills may be introduced without formal proof.

(b) *Criminal record.* If a party plans to use or refer to any prior criminal record, for the purpose of attacking or affecting the credibility of a party or witness, s/he shall first furnish a copy of same to the opposing party, and then obtain a ruling from the court as to whether the opposing party or a witness may be questioned with regard to any conviction for credibility purposes.

(i) Evidence of a conviction under this rule will not be admissible unless there is introduced a certified record of the judgment of conviction indicating that the party or witness was represented by counsel at the time of the conviction unless counsel was waived.

(c) *Documents.* The signatures and endorsements of all written instruments declared on will be considered as admitted unless the defendant shall file a notice within 30 days after the Return Day at which the writ is entered that they are disputed.

(d) *Expert files.* All experts, including doctors and law enforcement personnel, who are to testify at a trial, will be advised by counsel to bring their original records and notes to court with them.

(e) *Life expectancy.* The life expectancy tables in textbooks such as C.J.S. and Am. Jur. (2d) are admissible as evidence to prove life expectancy.

(f) *Medical reports.* Copies of all medical reports relating to the litigation, in the possession of the parties, will be furnished opposing counsel on receipt of the same.

(i) *Medical records.* X-rays and hospital records (which are certified as being complete records) if otherwise admissible and competent may be introduced without calling the custodian or technician. Any party shall have the right to procure from opposing counsel an authorization to examine and obtain copies of hospital records and X-rays involved in the litigation.

(g) *Motor vehicles.*

(i) *Speed.* The issue of speed of a motor vehicle on a public highway, if material, will be submitted on the grounds of reasonableness without regard to statutory provisions relative to rates of speed that are *prima facie* reasonable, unless a party objects thereto at the Trial Management Conference, or files written objection thereto at least seven days before the trial.

(ii) *Licensing.* No claim is to be made at any trial that the operator of a motor vehicle, involved in the case, was not properly licensed, unless the claim has been made at the pretrial settlement conference, or unless the claim was filed in writing at least 7 days before the trial.

(h) *Proof of Highway Waived unless Demanded.* In any case in which a road or way is alleged to be a “way” as defined in RSA 259:125 or a public highway, a party shall notify the opposing party at least 10 days prior to trial if said “way” or public highway must be formally proved; otherwise, the need to formally prove said “way” or public highway will be deemed to be waived.

(i) *Special Damages.* Any party claiming damages shall furnish to opposing counsel, within 6 months after entry of the action, a list specifying in detail all special damages claimed; copies of bills incurred thereafter shall be furnished on receipt. Any party claiming loss of income shall furnish opposing counsel, within six months after the entry of the action, as soon as each is available, copies of the party’s Federal Income Tax Returns for the year of the incident giving rise to the loss of income, and for two years before, and one year after, that year, or, in the alternative, written authorization to procure such copies from the Internal Revenue Service.

(j) *Stipulations.* Unless otherwise expressly provided by these rules, all stipulations affecting a civil action, except stipulations which are made in the presence of the court and entered on the record, or embodied in an order of the court, shall be in writing and shall be signed by attorneys of record, non-attorney representatives of record, or by parties if *pro se*. The court may require handwritten stipulations to be replaced by fully executed, typewritten stipulations within 10 days. Except to prevent injustice, no stipulation which does not satisfy these requirements shall be given effect.

#### Source

- (a) Superior Court Rule 63C
- (b) Superior Court rule 68
- (c) Superior Court Rule 3 (modified for use of complaint rather than writ)
- (d) Superior Court Rule 63G
- (e) Superior Court Rule 63A
- (f) Superior Court Rule 63E
- (f)(i) Superior Court Rule 63F
- (g)(i) Superior Court Rule 63H
- (g)(ii) Superior Court Rule 63I
- (h) Superior Court Rule 89
- (i) Superior Court Rule 63B
- (j) Probate Court Rule 150 (modified)

### **RULE 33. Jurors**

(a) *Juror Questionnaires.* The clerk of the superior court for each county shall maintain a list of jurors presently serving, together with copies of their completed Questionnaire forms, which shall be available for inspection by attorneys, non-attorney representatives and *pro se* parties.

(i) The clerk's office shall permit attorneys, non-attorney representatives and *pro se* parties who have jury cases scheduled for trial during the term to have a photocopy of the questionnaires which have been completed by the jurors presently serving. Such questionnaires shall not be exhibited to anyone other than the parties and their representatives.

(ii) Violation of this rule may be treated as contempt of Court.

(b) *Voir Dire.* Voir dire of the jury at the start of trial is governed by RSA 512-A:12-a.

(c) *Juror Notetaking.* It is within the court's discretion to permit jurors to take notes on evidence. If notetaking is allowed, after the opening statements the court will supply each juror with a pen and

notebook to be kept in the juror's possession in the court and jury rooms, and to be collected and held by the bailiff during any recess in which the jurors may leave the courthouse and during arguments and charge. After verdict, the court will immediately destroy or order the destruction of all notes.

(d) *Juror Questioning of Witnesses at Trial.* In any civil case, it is within the discretion of the trial the court to permit jurors to ask written questions. If a trial the court decides to permit jurors to ask written questions at trial, the following procedure shall be utilized:

1. At the start of the trial, the judge will announce to the jury and counsel the decision to allow jurors to ask written questions of witnesses. At this time the judge will instruct the jurors on taking notes and, as to the scope of questioning, the procedure to be followed.

2. Trial will proceed in the normal fashion until questioning of the first witness has been completed by both counsel.

3. When questioning of the first witness is completed, the court will allow jurors to formulate any questions they may have, in writing. Jurors will be asked to put their seat number on the back of the question. The judge is the only person who will see the number.

4. The bailiff will collect the anonymous questions and deliver them to the judge.

5. At the bench, the judge and counsel will read the proposed questions. Counsel will be given the opportunity to make objections on the record to any proposed question after which the judge will decide if they are appropriate, based on the rules of evidence, and whether, under the circumstances of the case, the judge will exercise discretion to permit the questions.

6. Questions may be rephrased by the judge, or the judge may ask the question in a way mutually agreeable to the parties. The question should, however, attempt to obtain the information sought by the juror's original question.

7. After all the chosen questions are answered, each counsel will have an opportunity to re-examine the witness. The party who called the witness will proceed first. The judge should allow only questions which directly pertain to questions posed by the jurors. The judge may also impose a time limit. If the judge does plan to impose a time limit, counsel should be notified and given an opportunity to object to the length outside the hearing of the jury.

8. The judge shall instruct the jury substantially as follows at the beginning of trial:

Ladies and gentlemen of the jury, I have decided to allow you to take a more active role in your mission as finders of fact. I will permit you to submit written questions to witnesses under the following arrangements.

After each witness has been examined by counsel, you will be allowed to formulate any questions you may have of the witness. Please remember that you are under no obligation to ask questions, and questions are to be directed only to the witness. The purpose of these questions is to clarify the evidence, not to explore your own legal theories or curiosities.

If you do have any questions, please write them down on a pad of paper. Do not put your name on the question, and do not discuss your questions with fellow jurors. The bailiff will collect the questions, and I will then consider whether they are permitted under our rules of evidence and are relevant to the subject matter of the witness' testimony. If I determine that the question or questions may be properly asked of the witness pursuant to the law, I will ask the question of the witness myself.

It is extremely important that you understand that the rejection of a question because it is not within the rules of evidence, or because it is not relevant to the witness' testimony, is no reflection upon you. Also, if a particular question cannot be asked, you must not speculate about what the answer might have been.

9. If the court decides to ask questions during trial, the following instruction will be given before the jury retires to deliberate:

Ladies and gentlemen of the jury, I remind you of my earlier remarks regarding juror questions. Some questions cannot be asked in a court of law because of certain legal principles. For this reason there is the possibility that a question you have submitted has been deemed inappropriate by me and will not be asked. I alone have made this determination, and you

should not be offended, or in any way prejudiced by my determination.

(e) *Communication with Jurors.* Before and during trial no attorney, non-attorney representative, party or witness shall knowingly communicate directly or indirectly, with any member of the venire from which the jury will be selected, or with any juror.

(i) For 30 days after discharge of the jury venire on which a juror has served, no attorney, non-attorney representative or party shall directly or indirectly interview, examine or question any juror or member of a juror's family with respect to the trial, verdict or deliberations. At no time shall an attorney, non-attorney representative or party, directly or indirectly ask questions of or make comments to a juror that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service. Upon application of any person the court may issue protective orders or impose sanctions as justice may require.

(f) *Juror Questions During Deliberations.* After a case has been submitted to a jury, and the jury has retired for deliberations, counsel shall not leave the courthouse without permission of the court. If counsel or non-attorney representatives are absent from the courthouse, with or without permission, when a jury requests additional instructions, such absence shall constitute a waiver of the right to be present during instructions given in response to the request.

(g) *Loss of a juror.* If any juror or jurors become disabled, or otherwise unavailable, during the course of a trial, the trial will continue with the jurors who remain, unless prior to the selection of the jury, a party notifies the court that he objects to such procedure.

#### Source

- (a) Superior Court Rule 61-A
- (b) Superior Court Rule 61-A
- (c) Superior Court Rule 64-A
- (d) Superior Court Rule 64-B
- (e) Superior Court Rule 77-B(b)
- (f) Superior Court Rule 114
- (g) Superior Court Rule 9

## VIII. Judgment

### RULE 34. Settlements

(a) Whenever an attorney, non-attorney representative or *pro se* party states orally or in writing to the court that a particular case has been settled and that agreements will be filed, the court shall forthwith notify by mail the parties of record or their representatives of such statement, and, if the agreements and/or docket markings are not filed within thirty days after the mailing of such notice, the court shall take such action as justice may require.

(b) In order that the Court may seasonably make up and complete the court's record, the parties shall seasonably file all papers and documents necessary to make up and enter the judgment and to complete the record of the case and no execution shall issue, or final order or decree be entered, until such papers are filed.

(c) No final order will be entered until the parties have submitted a final civil action disposition sheet.

#### Source

- (a) Superior Court Rule 51
- (b) Superior Court Rule 55
- (c) New

### RULE 35. Approval of Settlement: Minors

(a) All petitions for approval of settlement of actions on behalf of minors shall be signed by the parent, next friend or guardian of the minor.

(b) Court approval is not required for the settlement of any suit or claim brought on behalf of a minor in which the net amount is equal to or less than \$10,000.00. Any settlement of such suit or claim in which the net amount exceeds \$10,000.00 shall require court approval.

(c) In any suit or claim on behalf of a minor if the amount to be paid to the minor before the age of majority exceeds \$10,000.00, the court shall require proof in the form of a certified statement from the Court of Probate that the guardian ad litem, parent, next friend, or other person who receives money on behalf of the minor whether through settlement, judgment, decree or other order, has been appointed guardian of the estate of such minor and is subject to the

duties prescribed under RSA 463:19. In the event of a structured settlement where an amount will be paid to the minor both before and after the minor reaches the age of majority, no guardian of the estate of such minor is required if the amount to be paid to the minor before the age of majority is \$10,000.00 or less. If the amount to be paid to the minor before the age of majority in such structured settlement exceeds \$10,000.00, then a guardian of the estate of such minor is required. In determining whether the net amount of a settlement exceeds \$10,000.00, all sums covering attorney's fees, court costs and other expenses related to the claim including medical expenses are to be excluded.

(d) The petition shall contain the following information where applicable:

1. A brief description of the accident and of all injuries sustained and the age of the minor.

2. An itemized statement of all medical expenses and special damages incurred by the minor.

3. The total amount of the settlement and whether any bills or expenses are to be paid out of the total settlement or are being paid in addition as part of the parent's claim. If the parent is being paid anything directly, the petition should contain a statement of the total amount being paid to the parent and a specification of the items covered.

4. Whether the settlement was negotiated by counsel actually representing the minor.

5. A statement from the attorney for non-attorney representative for the minor as to whether there was medical payment insurance available to the minor and whether or not a claim has been made for said benefits or whether payment has been received.

6. A statement from the attorney for the minor as to whether any liens for medical providers have been asserted or are assertable and how the settlement would resolve those liens.

7. The net amount to be received on behalf of the minor.

8. A request that the settlement be approved.

(e) The petition must be accompanied with the following material:

1. A photocopy of the minor's birth certificate.

2. An itemized statement from counsel detailing the nature of the work performed and the time spent on the case. An attorney's fee in excess of 25% of the settlement amount will not be ordinarily allowed unless upon good cause shown. In the event that counsel seeks an attorney's fee in excess of 25%, counsel shall file a motion requesting such an approval which motion shall contain the reasons for the request. A copy of that motion shall be provided to the next friend at least 10 days prior to the hearing or conference relative to approval of the settlement.

(f) The court will not authorize the next friend to settle the action or authorize the execution of releases and will not make any order respecting indemnity agreements, and the petition should make no such request.

(g) The court, upon its own motion, may appoint a guardian ad litem to represent the interests of the minor child and/or to review the proposed settlement. The fees of the guardian ad litem shall be paid by defendant.

(h) The attorney or non-attorney representative, minor, parent, guardian, or next friend, will ordinarily be required to appear in all cases in support of the petition unless attendance has been excused by the court upon prior motion of counsel or upon the court's review of the file. In all cases where the minor has not actually been represented in the negotiation of the settlement, the minor, parent, and the next friend or guardian shall be required to appear with the attorney or non-attorney representative for the minor.

(i) A full medical report, including a recent and detailed prognosis from the attending physician, will ordinarily be required. "Recent" shall mean a report dated not more than 6 months prior to the date of the filing of the petition for approval of a settlement.

(j)(1) Court approval of a net settlement of \$10,000.00 or less is not required by statute, however if a party desires court approval, the court's order will ordinarily be in substantially the following form:

Settlement approved. All bills listed in the petition are to be paid. Counsel fees in the amount of \$\_\_\_\_\_ allowed (if settlement was actually negotiated by counsel representing the minor). The balance, amounting to \$\_\_\_\_\_, shall be deposited in a

savings account in the \_\_\_\_\_ Bank at \_\_\_\_\_ in the name of \_\_\_\_\_, as Trustee for \_\_\_\_\_, no withdrawals to be made prior to the 18th birthday of said minor, except on written approval of the court. Said savings institution is authorized to pay over the full amount remaining in said account to the said \_\_\_\_\_ upon satisfactory proof that he/she has reached the age of 18 years. Approval is conditional upon compliance with this order with respect to payment of bills and deposit.

(j)(2) If the net amount of a settlement exceeds \$10,000.00, court approval is required, and the Court's order will ordinarily be in substantially the following form:

Settlement approved. All medical bills and other approved expenses listed in the petition are to be paid. Counsel fees in the amount of \$\_\_\_\_\_ allowed (if settlement was actually negotiated by counsel representing the minor). The balance amounting to \$\_\_\_\_\_, shall be paid over to \_\_\_\_\_, as guardian over the estate of the minor.

Said funds shall, upon payment, be under the jurisdiction of the appropriate Court of Probate and shall be administered in accordance with the requirements of the Court of Probate. Any requests for withdrawal shall be addressed to the Court of Probate for its consideration.

Approval is conditional upon compliance with this order with respect to payment of bills and deposit of funds in accordance with this order.

Counsel for the minor shall be responsible for the settlement funds until said funds shall have actually been deposited in the appropriate guardianship account pursuant to the terms of this order and pursuant to the terms of the guardianship.

(k) In the event that the parties desire to enter into a structured settlement, which is defined as a settlement wherein payments are made on a periodic basis, the following rules shall also apply:

1. Counsel for the defendants shall provide the court with an affidavit from an independent certified public accountant, or an equivalent professional, specifying the present value of the settlement and the method of calculation of that value.

2. If the settlement is to be funded by an annuity, the annuity shall be provided by an annuity carrier meeting at least the following criteria:

(a) The annuity carrier must be licensed to write annuities in New Hampshire and, if affiliated with the liability carrier or the person or entity paying the settlement, must be separately capitalized, licensed and regulated and must have a separate financial rating;

(b) The annuity carrier must have a minimum of \$100,000,000.00 of capital and surplus, exclusive of any mandatory security valuation reserve;

(c) The petition shall contain the following information about the annuity and the annuity carrier:

(i) a description of the structure of the annuity arrangement;

(ii) a description of the history and size of the annuity carrier and its experience in issuing annuities;

(iii) a certificate from the New Hampshire Insurance Department stating that the annuity carrier is in good standing in New Hampshire;

(iv) whether the annuity carrier is domiciled or licensed in a state accredited by the National Association of Insurance Commissioners under that organization's Financial Regulation Standards program; and

(v) the annuity carrier's most recent ratings from at least two of the commercial rating services listed in subparagraph (d);

(d) The annuity carrier must have one of the following ratings from at least two of the following rating organizations:

(i) A.M. Best Company: A++, A+, A, or A-;

(ii) Moody's Insurance Financial Strength Rating: AAA or AA;

(iii) Standard & Poor's Corporation Insurer Claims-Paying Ability Rating: AAA, AA+, AA, or AA-;

(iv) Duff & Phelps Credit Rating Company Insurance Company Claims Paying Ability Rating: AAA, AA+, AA, or AA-;

(e) The annuity carrier must meet any other requirement the court considers reasonably necessary to assure that funding to satisfy periodic payment settlements will be provided and maintained;

(f) The annuity carrier issuing an annuity contract pursuant to a qualified funding plan under these rules may not enter into an assumption reinsurance agreement for the annuity contract without the prior approval of the court and the owner of the annuity contract and the claimant having the beneficial interest in the annuity contract. The court shall not approve assumption reinsurance unless the reinsurer is also qualified under these rules;

(g) The annuity carrier and the broker procuring the policy shall each furnish the court with an affidavit certifying that the carrier meets the criteria set forth in subsection (d) above as of the date of the settlement and that the qualification is not likely to change in the immediate future. The broker's affidavit shall also contain the following certification: "This determination was made with due diligence by the undersigned based on rating information which was available or should have been available to an insurance broker in the structured settlement trade";

(h) In the event that the parties to the action desire to place the annuity with an annuity carrier licensed in New Hampshire which does not meet the above criteria, the court may consider approving the same, but only if the annuity obligation is bonded by an independent insurance or bonding company, licensed in New Hampshire, in the full amount of the annuity obligation; and

(i) The court reserves the right to require other reasonable security in any structured settlement if the circumstances should so require.

3. The court may, for good cause shown, approve a structured settlement that does not comply with the provisions of paragraph (K). If the Court approves a settlement that does not comply with the provisions of paragraph (K), the court shall make specific findings on the record explaining the reason(s) for approving the settlement.

**Source**

Superior Court Rule 111

**RULE 36. Dismissal of Actions**

All non-jury cases which shall have been pending upon the docket for 3 years, without any action being shown on the docket other than being placed on the trial list, shall be marked “non-suit” or “dismissed” as the case may be, and notice thereof sent to the representatives who have appeared in the action.

**Source**

Superior Court Rule 168

**RULE 37. Default**

(a) Final default may be entered by the court, *sua sponte*, where appropriate, or by motion of a party, a copy of which shall be sent to all parties defaulted or otherwise.

(b) In all cases in which final default is entered, whether due to failure to file an Appearance, Answer, or otherwise, the case shall be marked “final default entered, continued for entry of judgment or decree upon compliance with Rule 37.” A copy of the court’s order and any subsequent orders shall be mailed to all parties, defaulted or otherwise.

(c) The non-defaulting party may then request entry of final judgment or decree, by filing a motion, together with an affidavit of damages or, in equity cases a proposed decree, and where the default is based on a failure to file an appearance, shall include an affidavit as to military service. The moving party shall certify to the court that a copy of all pleadings has been mailed to the defaulting party and shall include a notice that entry of final judgment or decree is being sought. Any party may request a hearing as to final judgment or decree. All notices under this rule shall be sufficient if mailed to the last known address of the defaulting party.

(d) A hearing as to final judgment or decree shall be scheduled upon the request of any party. Otherwise, the court may enter final judgment or decree based on the pleadings submitted or exercise its discretion to hold a hearing depending on the circumstances of the default, the sufficiency of the pleadings and the nature of the damages sought or relief requested.

(e) If the court schedules a hearing, all parties, defaulted or otherwise, shall receive notice and an opportunity to be heard.

**Source**

(a)–(e) Superior Court Rule 75

**RULE 38. Procedure After Trial**

A motion to set aside a jury verdict shall be filed within 14 days after its rendition, and a motion to set aside any other verdict or decree shall be filed within 14 days from the date on the court's written notice with respect to same, which shall be mailed by the court on the date of the notice. In each case, the motion shall fully state all reasons and arguments relied on.

**Source**

Superior Court Rule 73 (modified to increase the applicable period from 10 to 14 days)

**RULE 39. Taxation of Costs**

(a) *Costs.* Costs shall be allowed as of course to the prevailing party as provided by these rules, unless the court otherwise directs.

(b) *Taxation of Costs.* Upon written request, the court shall tax costs in any case, which shall include the fees of the court and fees for service of process which are documented in the court file.

(i) Any party claiming other allowable costs shall file a motion to allow costs together with an itemized, verified bill of all costs requested, to be ruled upon by the court. Any party aggrieved by the court's order concerning costs may appeal therefrom within 30 days from the date of notice of such order, regardless of whether an appeal concerning the underlying judgment is sought.

(c) *Allowable Costs.* The following costs shall be allowed to the prevailing party: Fees of the court, fees for service of process, witness fees, expense of view, cost of transcripts, and such other costs as may be provided by law. The court, in its discretion, may allow the stenographic cost of an original transcript of a deposition, plus one copy, including the cost of videotaping, and may allow other costs including, but not limited to, actual costs of expert witnesses, if the costs were reasonably necessary to the litigation.

**Source**

(a)–(c) Superior Court Rule 87

**RULE 40. Appeals and Transfers to Supreme Court**

(a) Whenever any question of law is to be transferred by interlocutory appeal from a ruling or by interlocutory transfer without ruling, counsel shall seasonably prepare and file with the trial court the interlocutory appeal statement or interlocutory transfer statement pursuant to Supreme Court Rule 8 and Supreme Court Rule 9, and after the court has signed the statement, counsel shall mail the number of copies provided for by the rules of the Supreme Court to the clerk or register thereof.

(b) In all actions in which a verdict or decree is entered, or in which a motion for a nonsuit or directed verdict is granted, or in which a bill in equity is dismissed, or in which any motion is acted upon after verdict or decree, all appeals relating to the action shall be deemed waived and final judgment shall be entered as follows, unless the court has otherwise ordered, or unless a Notice of Appeal has then been filed with the Supreme Court pursuant to its Rule 7:

1. Where no motion, or an untimely filed motion, has been filed after verdict or decree, on the 31st day from the date on the court's written notice that the court has made the aforementioned entry, grant or dismissal; or

2. Where a timely filed motion has been filed after verdict or decree, on the thirty-first day from the date on the court's written notice that the court has taken action on the motion.

(c) The court shall not grant any requests for extensions of time to file an appeal document in the Supreme Court or requests for late entry of an appeal document in the Supreme Court; such requests shall be filed with the Supreme Court. *See* Supreme Court Rule 21(6).

(d) In civil actions in which a mistrial is declared, appeals from the denial of motions for nonsuit or directed verdict shall not be transferred to the Supreme Court before verdict following further trial unless the court shall approve an interlocutory appeal pursuant to Supreme Court Rule 8.

(e) When the Supreme Court orders that a transcript be prepared, if a question of law is transferred by appeal, the appealing party shall advance the estimated cost of the transfer, and the expense of such transfer shall be taxed in his bill of costs if he shall prevail; but if transferred by virtue of an agreement signed by the parties or otherwise without ruling, such expense shall be advanced as the court, within its discretion, may rule that justice requires.

(f) The stenographer shall transcribe the original and two copies of all the oral proceedings except opening statements, medical testimony, arguments, and charge, unless otherwise ordered by the Supreme Court.

(g) After determination of what is to be transcribed as provided by these rules and the Supreme Court rules, the Court of the Supreme Court shall notify the party liable therefor of the estimated cost to him/her at the prevailing per page rate for the original and each copy thereof, and shall notify him/her to pay the estimated cost to the court within 15 days from the date of the notice; otherwise his/her appeal shall be deemed waived; or if it is an agreed case or if otherwise transferred without ruling, the action shall be dismissed unless the other party will advance such expense within 15 days after notice, in which event he may tax it as costs if he prevails. Upon receipt of the required advance payment, the court shall notify the stenographer to proceed with the transcription.

(h) In cases tried by the court without jury or by a master or referee, the oral proceedings of the trial shall not be transcribed by the stenographer in advance of verdict or decree unless the court rules that justice so requires, and then portions thereof may be omitted as may be expressly ordered. In the event that such prior transcription is ordered, the stenographer shall prepare not less than the typewritten original and two copies thereof and the court shall determine the apportionment of the cost thereof.

### Source

- (a) Superior Court Rule 79
- (b) Superior Court Rule 74
- (c) Superior Court Rule 74
- (d) Superior Court Rule 74
- (e) Superior Court Rule 80
- (f) Superior Court Rule 80
- (g) Superior Court Rule 80
- (h) Superior Court Rule 80

## IX. Provisional and Final Remedies

### RULE 41. Attachments

(a) *Attachments with Notice.* The following procedure is to be used where the plaintiff requests that the court authorize an attachment of the defendant's property, using the method requiring notice to the defendant, and an opportunity for the defendant to be heard before the court renders its decision.

1. The Motion to Attach shall be executed under oath, and accompanied with the Notice to defendant as well as a copy of the Order form.

2. The Motion to Attach shall be fastened to the face of the Complaint.

3. Copies of the Complaint are then to be given to the sheriff or his deputy for service on the defendant; immediately after such service, that Complaint, together with the sheriff's Return of Service, is to be entered with the court.

4. If the Motion to Attach is granted, the plaintiff's attorney, non-attorney representative or *pro se* plaintiff is authorized to fill out a Writ of Attachment in accordance with the Order granting the motion. If permission is granted to make a real estate attachment, the attachment Writ together with the court's Order thereon may be served on the Registry of Deeds by the sheriff, or his deputy, the plaintiff, his attorney or any other person to effect the real estate attachment. To effect all other attachments, the Attachment Writ together with the court's Order thereon must be served by the sheriff, or his deputy. The Return of Service is to be filed immediately on completion of the attachment. No additional service upon the defendant is required to perfect an attachment, provided that a Notice of Intent has been served upon the defendant as provided in RSA 511-A:2.

(b) *Attachments without Notice (Ex Parte).* The following procedure is to be used where the plaintiff requests permission to attach using the method that does not require notice to the defendant prior to the attachment:

1. The Motion for Attachment shall be executed under oath, and accompanied with the Notice to defendant and Order form;

2. The motion, and copies, are to be filed in court, and an entry fee paid;

3. If the motion is denied, the plaintiff may move for attachment under the provisions of RSA 511-A:3.

4. If the motion is granted, the plaintiff or his representative is authorized to prepare a Writ of Attachment in accordance with the Order granting the request.

5. A certified copy of the Motion, the Notice to the defendant, and the Court's order thereon shall be fastened to the face of the Writ of Attachment.

6. The Writs of Attachment and Summons, together with copies, shall be delivered to the sheriff with directions to serve the writ of attachment first, within the time directed by the court's order, and immediately thereafter the writ of summons. In those cases where permission is granted to make a real estate attachment, the Attachment Writ together with the court's Order thereon may be served on the Registry of Deeds by the sheriff, or his deputy, the plaintiff, his attorney or any other person to effect the real estate attachment before the Writs of Attachment and Summons, together with copies, are delivered to the sheriff. The Returns of Service are to be filed immediately after service has been completed.

#### Source

- (a) Superior Court Appendix

### **RULE 42. Injunctions**

(a) *Temporary Restraining Order; Notice; Hearing; Duration.* A Temporary Restraining Order may be granted without written or oral notice to the adverse party only if (1) it clearly appears to the court in which the action is pending from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition; and (2) the applicant or the applicant's representative certifies to the court in writing the efforts which have been made to give the notice and/or the specific facts supporting the claim why the notice should not be required. Any hearing held without the presence of the adverse party or his or her attorney shall be recorded, unless directed otherwise by the court. Every temporary restraining order, which is granted without notice, shall be endorsed with the

date and hour of issuance, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall expire by its terms within such time after issuance, not to exceed 10 days, as the court fixes, unless, within the time so fixed, the order, for good cause shown, is extended for a like period, or unless the party, against whom the order is directed, consents that it may be extended for a longer period. In case a temporary restraining order is granted without notice, the application for a preliminary injunction shall be set down for hearing at the earliest possible time, and in any event within 10 days, and, when the matter comes on for hearing, the party, who obtained the temporary restraining order, shall proceed with the application for a preliminary injunction, and if he or she does not do so, the Court shall dissolve the Temporary Restraining Order. On 2 days' notice to the party who obtained the Temporary Restraining Order without notice, or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification, and, in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(b) *Preliminary Injunction.*

(1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party and they shall only be issued by the court.

(2) *Consolidation of Hearing with Trial on Merits.* Before, or after, the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. This subdivision (b)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(c) *Security.* Unless the Court, for good cause shown, shall otherwise order, no Restraining Order or Preliminary Injunction shall issue except upon the giving of an injunction bond by the applicant, in such sums as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such bond shall ordinarily be required of marital cases or of the United States or of the State of New Hampshire.

(d) *Form and Scope of Injunction or Restraining Order.* Unless the court, for good cause shown, otherwise orders, an injunction or restraining order shall be specific in terms; shall describe in reasonable detail, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, em-

ployees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) *Labor Disputes and Liens.* These rules are subject to any statutory provisions relating to restraining orders and injunctions in actions involving or growing out of labor disputes and liens.

(f) Before injunctions are granted, it must appear that process at law or in equity has been filed; but, when the object of the injunction would be defeated by the delay necessary to file such process, an injunction may issue to expire on a day specified therein, unless such process be filed by such a day.

(g) Whenever an injunction is issued without notice to, or appearance by, the adverse party (except in marital cases), the party at whose request it is issued, ordinarily shall, and in any case may, be required to give bond with sufficient sureties, conditioned to pay and satisfy all such damages as may be occasioned to the adverse party by reason of the injunction, in case it shall appear that the injunction was improper.

(h) Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court (or register if in probate court) as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court (or register if in probate court), who shall forthwith mail copies to the sureties if their addresses are known.

#### Source

- (a) Superior Court Rule 161(a)
- (b) Superior Court Rule 161(b)
- (c) Superior Court Rule 161(c)
- (d) Superior Court Rule 161(d)
- (e) Superior Court Rule 162 and 163

**RULE 43. Security**

(a) When the plaintiff is a non-resident, he shall furnish security for costs in such amount and within such time as the court may order.

(b) Sheriffs and deputy sheriffs are authorized to take bail in civil contempt proceedings and shall forward forthwith such bail so taken to the court of the court issuing the capias.

**Source**

- (a) Superior Court Rule 140
- (b) Superior Court Rule 143 and 205

**RULE 44. Deposit in Court**

(a) In proper cases, the defendant may pay into court any sum of money which he admits to be due, accompanied by the general issue as to the balance; and, if the plaintiff shall refuse to accept the same with his costs, in full satisfaction of his claim, such sum shall be struck out of the Complaint; and unless the plaintiff shall prove that a larger sum be due him, he shall have no costs, but the defendant shall be allowed costs from the time of such payment.

(b) When a sum of money is to be paid into court with an interpleader action, or when a set-off, counterclaim or recoupment shall be filed and a sum of money paid into court as the balance due the plaintiff, the costs of the plaintiff up to that time shall also be paid into court; and the defendant, if he prevail, shall be allowed only his subsequent costs.

**Source**

- (a) Superior Court Rule 60
- (b) Superior Court Rule 61

**RULE 45. Periodic Payments**

(a) A judgment creditor seeking an order for weekly payments under RSA 524:6-a must file a Complaint with the court setting out specific grounds for relief. Issuance of a Writ of Execution need not be a preliminary step to the weekly payment process.

(b) Upon the filing of such a Complaint, an Order noticing the action and identifying a date for a hearing will issue requiring the judgment debtor to appear at a time and date named therein and submit to an examination relative to his property and ability to pay said judgment.

(c) The judgment creditor shall cause the Notice of Hearing to be served either in-hand or by certified mail, restricted delivery, return receipt requested. If the judgment creditor elects to serve the Notice of Hearing by certified mail, restricted delivery, return receipt requested, and if the return receipt is returned without indication that the Notice of Hearing has been properly served, then in-hand service shall be required.

(d) On hearing, the judgment debtor will submit a financial affidavit and will be examined under oath as to his property and ability to pay. Either party may introduce oral and written evidence as the court deems relevant. Technical rules of evidence will not apply.

(e) If the debtor fails to appear at the hearing, the court may proceed and orders may be made in the debtor's absence.

(f) If the court finds that the debtor has no property other than property that is exempt from attachment or execution and that the debtor is unable to make weekly payments on the judgment, the Complaint will be dismissed. Attendance by the plaintiff or plaintiff's counsel is not required unless ordered by the court.

(g) If the court is satisfied that the debtor has property not exempt from attachment or execution, the court may order the debtor to produce it, or so much thereof as may be sufficient, to satisfy the judgment and cost of the proceedings, so that it may be taken on execution. If the debtor is able to make weekly payments on the judgment, the court may, after allowing the debtor an appropriate amount for his support and that of his family, if he has a family, order the debtor to make weekly payments on the judgment from time to time. The court may also make an Order combining any of the orders above mentioned.

(h) The court may prescribe the times, places, amount of payments and other details in making any of its orders. The court may at any time review, revise, modify, suspend or revoke any order made. Failure to obey any lawful order of the court, without just excuse, shall constitute a contempt of court. Contempt proceedings will be initiated by the creditor by a verified petition, and will be handled in

a manner similar to support proceedings, except that they will be instituted by summons rather than a capias.

(i) A sentence for contempt shall not end the proceedings nor any order made by the court, and future violations of the order, upon which the sentence was founded, may likewise be dealt with as for contempt.

(j) If the Complaint is dismissed, the creditor shall not file within one year after the date of such dismissal another petition against the same debtor upon the same judgment unless the court otherwise for good cause orders.

(k) RSA 524:6-a is construed, until further order, as applying only to Judgments entered after the effective date of the statute (July 20, 1975.)

#### Source

This language is consistent with RSA 524:6-a. Subsection c is the language currently in District Court Rule 1.21(2).

### **RULE 46. Enforcement**

(a) *In General.* Process to enforce a judgment for the payment of money shall be a Writ of Execution, unless the court directs otherwise. The proceedings on and in aid of execution shall be in accordance with applicable statutes. In aid of the judgment or execution, the judgment creditor or the judgment creditor's successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules. Process to enforce a judgment for the delivery of land shall be a Writ of Possession.

(b) *Contempt and Arrest.* Parties may be arrested upon order of Court and required to give bonds for appearance and to abide the order of Court in any case where it shall be deemed necessary. Sheriffs and deputy sheriffs are authorized to take bail in civil contempt proceedings and shall forward forthwith such bail so taken to the court issuing the capias.

(c) *Criminal Contempt.*

(1) *Summary Disposition.* A direct criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. Oral notice of the conduct observed must be given by the judge and the contemnor given an opportunity to speak in his defense. The Order of Contempt shall recite the adjudication and sentence and shall be signed by the judge and entered of record. The disposition, when imposed, shall also be entered on a separately numbered State v. (The Contemnor ) file.

(2) *Disposition Upon Notice and Hearing.* An indirect criminal contempt shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of an attorney for the State or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to admission to bail as provided by statute. In a proceeding under this subdivision, if the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt, the court shall enter an order fixing the punishment.

**Source**

- (a) New
- (b) Superior Court Rules 142 and 143
- (c) Superior Court Rule 95

## **X. Special Proceedings**

### **RULE 47. Special School and Town Meetings**

All complaints requesting permission to hold special school district or town meetings must set forth the facts alleged to create an emergency requiring an immediate expenditure of money and also the specific articles to be inserted in the warrant in the event such permission is granted.

A sample complaint is set forth below:

#### **Decree For Special Town Meeting.**

The above entitled complaint came before the Court for hearing and the Court, having considered the evidence, finds that an emergency has arisen in the Town of \_\_\_\_\_ which may require an immediate expenditure of money.

It is hereby ordered, adjudged and decreed that the Selectmen of the Town of \_\_\_\_\_ are hereby authorized to hold a Special Town Meeting (insert time and place of meeting), for the purpose of acting upon the article(s) set forth in the accompanying petition, and the Special Town Meeting shall have the same authority as that of an annual Town Meeting.

The above approval is conditioned upon compliance with all statutory requirements relating to posting and notice which control such a Special Meeting.

This decree is made solely for the purpose of permitting the Special Town Meeting to be held, and it is not to be construed nor interpreted in any other manner nor for any other purpose whatsoever.

#### **Source**

Superior Court Rule 123 and Appendix to Superior Court Rules

## XI. Fee Schedules

### A. Superior Court Fees

I. The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.

II. 32.8% of the entry fee paid in each libel and petition in marital cases (\$41.00) shall be deposited into the special fund established by RSA 458:17-b. Said fund is for the compensation of mediators, appointed pursuant to RSA 458:15-a, and guardians ad litem, appointed pursuant to RSA 458:17-a, when the parents are indigent.

#### III. (a) Original Entries:

Original Entry of any action except a petition for writ of habeas corpus; Original Entry of all Marital Matters, Including Order of Notice and Guardian ad Litem Fee; Transfer; the filing of a foreign judgment pursuant to RSA 524.....	\$ 125.00
(i) Original Entry of a petition for writ of habeas corpus.....	\$ 0
(b) Small Claim Transfer Fee .....	\$ 90.00
(c) Motion to Bring Forward (post judgment) .....	\$ 50.00
(d) Petition to Annul Criminal Record .....	\$ 50.00
(e) Wage Claim Decision .....	\$ 25.00
(f) Marriage Waiver .....	\$ 25.00
(g) Motion for Periodic Payments .....	\$ 15.00
(h) (i) Divorce Certificate (VSR) only.....	\$ 5.00
(ii) Divorce Certificate, Certified Copy of Decree and if applicable, Stipulation QDRO, USO, and other Decree-related Documents.....	\$ 15.00
(i) Certificates and Certified Copies .....	\$ 5.00
(j) All Copied Material.....	\$.50/page

IV. On the commencement of any custody or support proceeding for which a fee is required, including libels for divorce with minor children, an additional fee of \$2.00 shall be paid by the petitioner.

V. Pursuant to RSA 490:24, II, the sum of \$20.00 shall be added to the fees set forth in paragraphs (III)(A)(i), (III)(C), and (III)(F) above.

VI. Records Research Fees:

(a) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.

(b) A fee of \$10.00 per request will be assessed for electronic (computer) searches of less than ten names.

(c) A fee of \$25.00 per request will be assessed for electronic (computer) searches of ten or more names.

(d) Extensive electronic (computer) searches requiring more than one hour will be assessed \$25.00 per additional hour or portion thereof.

(e) A fee of \$25.00 per hour or portion thereof will be assessed for manual searches. The fee is based on this hourly rate and not the number of names per request.

(f) Charges for requests requiring a combination of manual and electronic searches on the same party will be assessed according to the fee schedule for both categories.

EXAMPLE: One request for electronic search with seven names = \$10.00. Additional requirement that one or more of those seven names be manually researched as well = \$25.00 per hour or portion thereof. Assuming the manual research is completed in less than one hour, then the total fee = \$35.00.

**Source**

Superior Court Rule 169

**B. District Court Fees**

- I. (a) Original Entries
  - Civil complaint..... \$75.00
  - Replevin ..... \$75.00
  - Landlord/Tenant entry ..... \$50.00
  - Registration of foreign judgment..... \$100.00
  - Small claims entry..... \$35.00
  
- (b) General and Miscellaneous
  - Motion for Periodic Payments ..... \$15.00
  - Petition to annul criminal record ..... \$50.00
  - Original writ ..... \$1.00 ea.
  
- (c) Certificates and Copies
  - Certificate of Judgment..... \$10.00
  - Exemption of Judgment ..... \$50.00
  - Certified copies ..... \$5.00
  - All copied material (except transcripts) ..... \$.50/page
  - Computer screen printout..... \$.50/page

II. Surcharge. Pursuant to RSA 490:24, II, the sum of \$20.00 shall be added to the fees set forth in paragraph (I)(A) above.

III. Records Research Fees.

(a) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.

(b) A fee of \$10.00 per request will be assessed for electronic (computer) searches of less than ten names.

(c) A fee of \$25.00 per requests will be assessed for electronic (computer) searches of ten or more names.

(d) Extensive electronic (computer) searches requiring more than one hour will be assessed \$25.00 per additional hour or portion thereof.

(e) A fee of \$25.00 per hour or portion thereof will be assessed for manual searches. The fee is based on this hourly rate and not the number of names per request.

(f) Charges for requests requiring a combination of manual and electronic searches on the same party will be assessed according to the fee schedule for both categories.

EXAMPLE: One request for electronic search with seven names = \$10.00. Additional requirement that one or more of those seven names be manually researched as well = \$25.00 per hour or portion thereof. Assuming the manual research is completed in less than one hour, then the total fee = \$35.00. – Amended June 1, 1982; August 21, 1985; September 1, 1989; February 1, 1990; November 26, 1991, July 1, 1997; September 10, 2004, eff. November 1, 2004; January 21, 2005, eff. March 1, 2005.

**Source**

District Court Rule 3.3

**Probate Court Fees**

- I. (a) Original Entry of any action..... \$130.00
- (b) Petition File and Record Authenticated. Copy of Will, Foreign Wills; Petition Estate Administration for estates with a gross value greater than \$25,000; Petition Administration of Person Not Heard From; Petition Guardian, Foreign Guardian or Conservator (RSA 464-A)..... \$105.00
- (c) Petition Termination of Parental Rights; Petition Involuntary Admission; Petition Guardian Minor Estate and Person and Estate (RSA 463); Petition Guardian of Incompetent Veteran (RSA 465)..... \$80.00
- (d) Petition Adoption, includes one certificate (no entry fee when accompanied by a Petition for termination); Motion to Reopen (estate administration); Motion to Bring Forward ..... \$55.00

- (e) Petition Estate Administration for estates having a gross value of \$25,000 or less; Petition Change of Name (includes one certificate); Petition Guardian Minor Person (RSA 463) \$30.00
- (f) Marriage Waiver ..... \$25.00
- (g) Motion Prove Will in Common and/or Solemn Form (administration required); Motion to Re-examine Will..... \$105.00
- (h) Petition Appoint Trustee ..... \$80.00
- (i) Motion Successor Trustee, Administrator, Executor, or Guardian of Estate and Person and Estate (RSA 463) (RSA 464-A); All Executor/Administrator Accounting for estates with a gross value greater than \$25,000; Trustees Accounting; Guardian/ Conservator Accounting ..... \$55.00
- (j) Petition Change of Venue (includes authenticated copy fee); Motion Successor Guardian of Person (RSA 463) (RSA 464-A); Motion Sue on Bond; Motion Remove Fiduciary; Motion Fiduciary to Settle Account ..... \$30.00
- (k) Pursuant to RSA 490:24, II, the sum of \$20.00 shall be added to the fees set forth in subsections (a), (b), (c), (d), (e), and (f) above.

II. ENTRY FEES INCLUDE:

Preparation and issuance of Orders of Notice, Notice, Copies of Decrees, mailing costs, certificate to discharge surety.

III. ENTRY FEES DO NOT INCLUDE:

*Notice by publication.* This fee shall be paid by the Party or the Attorney for the Party from whom the notice is required. The cost of publication shall be determined by the Register of each county. The request may require that payment be made directly to the publisher of the notice.

*In-hand service.* If service by a law enforcement officer is required, the Party or the Attorney for the Party from whom the notice is required shall pay the cost of service to the appropriate county sheriff's department.

*Additional copies.* If additional copies of any document, or additional certificates are requested beyond those included in normal processing as indicated above, the Party or the Attorney for the Party requesting the additional copies shall pay the costs in advance as indicated under "Certificates & Copies."

IV OTHER:

Defaults (RSA 548:5-a)..... \$25.00/each occurrence  
Citations/show cause (RSA 548:5-a and 550:2) .. \$50.00/each occurrence  
Duplicate Audio Tape ..... \$25.00/each tape

V. CERTIFICATES & COPIES:

Certificates..... \$5.00  
Certification .....\$5.00 plus copy fee  
Photocopy of Will ..... \$1.00/page  
All other copied material..... \$ .50/page  
Authenticated Copy of Probate..... \$25.00/each

"Certificates & Copies" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

**Source**

Probate Rule 169

## XII. PHOTOGRAPHING, RECORDING AND BROADCASTING

(a) The presiding the court should permit the media to photograph, record and broadcast all courtroom proceedings that are open to the public. The presiding the court 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 presiding the court, no person shall within the courtroom take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of any proceeding.

(b) Official court reporters and authorized recorders, are not prohibited by section (a) of 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 court proceeding – or any other interested person – shall notify the court at the inception of a matter, or as soon as practicable, if that person intends to ask the court to limit electronic media coverage of any proceeding that is open to the public. Failure to notify the court in a timely fashion may be sufficient grounds for the denial of such a request. In the event of such a request, the presiding the court 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 presiding the court *sua sponte* proposes a limitation on coverage by the electronic media. A copy of the court's order shall, in addition to being incorporated in the case docket, be sent to the Associated Press, which will disseminate the court's 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 New Hampshire courtroom for coverage of any court proceedings shall be made as far in advance as practicable. If no objection to the requested electronic coverage is received by the court, coverage shall be permitted in compliance with this rule. If an objection is made, the media will be so advised and the court 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. This rule and procedures also apply to

all court proceedings conducted outside the courtroom or the court facility.

(e) *Pool Coverage.* The presiding the court retains discretion to limit the number of still cameras and the amount of video equipment in the courtroom at one time and may require the media to arrange for pool coverage. The court 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 court in advance of a proceeding to determine if pool coverage will be required. If the presiding judge has determined that pool coverage will be required, it is the sole responsibility of the media, with assistance as needed from the court, to determine which news outlet will serve as the “pool.” Disputes about pool coverage will not ordinarily be resolved by the court. 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 court 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 presiding judge. The court retains the discretion to make one “media” copy of each exhibit available in the office of the court clerk or Register.

(h) *Equipment.* Exact locations for all video and still cameras, and audio equipment within the courtroom will be determined by the presiding judge. Movement in the courtroom is prohibited, unless specifically approved by the presiding judge.

(1) Placement of microphones in the courtroom will be determined by the presiding judge. An effort should be made to facilitate broadcast quality sound. All microphones placed in the courtroom 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 presiding judge.

(i) *Restrictions.* Unless otherwise ordered by the presiding judge, 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 court is in session.

(3) No camera movement during court session.

(4) No cameras permitted behind the defense 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 presiding judge at the bench. Any such recording is prohibited.

(6) During their term of jury service, jurors will not be photographed in connection with said service.

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

(8) All reporters and photographers will abide by the directions of the court officers at all times.

(9) Broadcast or print interviews will not be permitted inside the courtroom before or after a proceeding.

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

(11) Appropriate dress is required.

**Source**

Superior Court Rule 78

\_\_\_\_\_, ss.

\_\_\_\_\_  
COURT

v.

**SUMMONS IN CIVIL ACTION**

CASE NUMBER:

TO: (Name and address of Defendant)

**YOU ARE HEREBY SUMMONED** and required to file with the Court and serve on Plaintiff's Attorney (name and address)

an Answer to the Complaint which is served on you with this Summons, or a Motion to Dismiss, within 30 days after the Return Date noted below. If you fail to file a timely Answer or Motion to Dismiss, a default will be taken against you for the relief demanded in the Complaint.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date Filed

\_\_\_\_\_  
(By) Deputy Clerk

\_\_\_\_\_  
Return Date

**RETURN OF SERVICE**

Service of the Summons and complaint was made by me  
Date: \_\_\_\_\_

NAME OF SERVER

TITLE

---

*Check one box below to indicate appropriate method of service*

Served personally upon the defendant. Place where served:

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

Returned unexecuted:

Other (specify):

**STATEMENT OF SERVICE FEES**

TRAVEL:

SERVICES:

TOTAL:

**DECLARATION OF SERVER**

I declare under penalty of perjury that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
Date

Signature of Server \_\_\_\_\_

Address of Server \_\_\_\_\_