

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

ORDER

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

I. Supreme Court Rules. Attorney Discipline – Summary Suspension.

(This amendment adds a new subsection 9-B to Supreme Court Rule 37 to provide a summary suspension procedure for respondent attorneys who do not cooperate with the disciplinary authority.)

1. Amend Supreme Court Rule 37 to adopt subsection (9-B), as set forth in Appendix A.

II. Supreme Court Rules. Attorney Discipline – Permissive Vertical Prosecution.

(These amendments to Supreme Court Rules 37 and 37A: (1) remove the language prohibiting disciplinary counsel from participating in meetings of the complaint screening committee; (2) add language to allow disciplinary counsel to assist general counsel in performing his or her duties; and (3) add “catch-all” provisions to the preliminary provisions of Rules 37 and 37A to allow vertical prosecution in the discretion of general counsel in appropriate cases. A majority of members of the Advisory Committee on Rules voted against recommending these changes, but, after careful consideration, the Court has concluded that the changes will eliminate redundancies and increase efficiency without impinging on the due process rights of the respondent attorney.)

1. Amend Supreme Court Rule 37(1), as set forth in Appendix B.
2. Amend Supreme Court Rule 37(5)(c), as set forth in Appendix C.
3. Amend Supreme Court Rule 37(6)(b), as set forth in Appendix D.

4. Amend Supreme Court Rule 37A(I), as set forth in Appendix E.
5. Amend Supreme Court Rule 37A(II)(a)(6), as set forth in Appendix F.

III. Superior Court Civil Rules.

(These amendments: (1) amend Superior Court (Civ.) Rule 9 to provide a non-exclusive list of affirmative defenses; (2) adopt Superior Court (Civ.) Rule 13A to address when, and under what circumstances, responses beyond the objection to a motion are permitted; (3) amend Superior Court (Civ.) Rule 28A to make clear that an order for an independent medical examination outside of the expert disclosure deadlines should be a rare occurrence and only granted for good cause shown; (4) amend Superior Court (Civ.) Rule 29 to create a process and provide the timing for filing motions for protective orders to protect the confidentiality of certain discovery; (5) amend Superior Court (Civ.) Rule 205 to require records of juror orientation to be retained for only six years; and (6) adopt a rule referencing administrative orders.)

1. Amend Superior Court (Civ.) Rule 9, as set forth in Appendix G.
2. Adopt Superior Court (Civ.) Rule 13A, as set forth in Appendix H.
3. Amend Superior Court (Civ.) Rule 28A, as set forth in Appendix I.
4. Amend Superior Court (Civ.) Rule 29, as set forth in Appendix J.
5. Amend Superior Court (Civ.) Rule 205, as set forth in Appendix K.
6. Adopt Superior Court (Civ.) Rule 208, as set forth in Appendix L.

IV. New Hampshire Rules Of Criminal Procedure. Discovery.

(These amendments require the court to inform the defendant, at the defendant's first appearance before the court, of his or her ability to obtain discovery from the State.)

1. Amend New Hampshire Rule of Criminal Procedure (Non-Felonies First Counties) 12(a), as set forth in Appendix M.
2. Amend New Hampshire Rule of Criminal Procedure (Felonies First Counties) 12(a), as set forth in Appendix N.

V. Circuit Court – District Division. Landlord-Tenant Rules.

(These amendments amend the landlord-tenant rules to clarify the procedure to be followed when a tenant defaults either by not filing an appearance or by failing to appear for trial.)

1. Amend Circuit Court - District Division Rule 5.4, as set forth in Appendix O.
2. Amend Circuit Court – District Division Rule 5.7 as set forth in Appendix P.
3. Amend Circuit Court - District Division Rule 5.9 as set forth in Appendix Q.

VI. Circuit Court – Electronic Filing Pilot Rules.

(These amendments, made in anticipation of the implementation of e-filing in estate cases, limit the filer to using only graphic signature representations in specifically delineated cases in order to assure the court of the consent of the person on behalf of whom the document is filed.)

1. Amend Circuit Court Electronic Filing Pilot Rule 8, as set forth in Appendix R.
2. Amend Circuit Court Electronic Filing Pilot Rule 11, as set forth in Appendix S.

Effective Date

The amendments set forth in appendices R and S shall take effect May 1, 2017. All other amendments shall take effect on July 1, 2017.

Issued: April 20, 2017

ATTEST:



Eileen Fox, Clerk
Supreme Court of New Hampshire

APPENDIX A

Amend Supreme Court Rule 37 by adopting subsection (9-B), as follows:

(9-B) Summary Suspension Procedure.

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

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

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

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

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

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

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

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

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

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

(g) If an attorney cures the failure to comply with the subpoena or other request for information, the attorney may file a petition for reinstatement with this court. The petition shall be accompanied by an affidavit of compliance stating the extent to which he or she has complied with the subpoena or request for information. A copy of the petition and affidavit shall be sent to the attorney discipline office, which may file a response to the petition and affidavit within 10 days. The court may take such action on the petition as it deems appropriate.

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

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

Amend Supreme Court Rule 37(1) as follows (new material is in **and brackets**):

(1) ***Attorney Discipline in General:***

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

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

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

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

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

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

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

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

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

Amend Supreme Court Rule 37(5)(c) as follows (deleted material is in ~~striketrough~~ format):

(5) *Complaint Screening Committee:*

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

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

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

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

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

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

(5) To dismiss complaints for any other reason. If the committee determines that there is no reasonable likelihood that a complaint can be proven by clear and convincing evidence, the complaint should be dismissed.

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

(7) To refer complaints to disciplinary counsel for the scheduling of a hearing only where there is a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence.

(8) To consider and act upon requests for reconsideration of its own decisions, subject to the further right of disciplinary counsel or respondents to request that the professional conduct committee review a decision to refer a complaint to disciplinary counsel for the scheduling of a hearing.

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

APPENDIX D

Amend Supreme Court Rule 37(6)(b) as follows (new material is in **and brackets**):

(6) ***Attorney Discipline Office:***

(a) The professional conduct committee shall appoint:

(1) a disciplinary counsel and such deputy and assistants as may be deemed necessary whether full-time or part-time;

(2) a general counsel and such deputy and assistants as may be deemed necessary whether full-time or part-time; and

(3) other professional staff, including auditors, and clerical staff as may be necessary whether full-time or part-time.

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

(1) To review complaints referred by the complaint screening committee for hearings.

(2) To contact witnesses, conduct discovery and prepare the complaints for hearings before a panel of the hearings committee.

(3) To try cases before panels of the hearings committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX E

Amend Supreme Court Rule 37A(I) as follows (new material is in **and brackets**):

(I) **General Provisions**

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

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

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

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

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

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

Court: The New Hampshire Supreme Court.

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

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

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

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

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

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

General Counsel: The attorney responsible for (a) receiving, evaluating, docketing and investigating grievances filed with the attorney discipline office; (b) dismissing or diverting complaints on the grounds set forth in Rule 37(6)(c) or presenting complaints to the complaint screening committee with recommendations for diversion, dismissal for any reason or referral to disciplinary counsel for a hearing; (c) assisting disciplinary counsel in the performance of the duties of disciplinary counsel as needed; (d) performing general legal services as required for the committees of the attorney discipline

system; and (e) overseeing and performing administrative functions for the attorney discipline system. General counsel shall include a full-time attorney so designated, such deputy and assistants as may from time to time be deemed necessary, and such part-time attorney or attorneys as may from time to time be deemed necessary], **and such other attorneys of the attorney discipline office as may from time to time be designated to assist general counsel].**

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

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

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

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

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

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

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

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

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

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

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

(e) *Types of Discipline and Other Possible Action*

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

- (A) Disbarment - by the court.
- (B) Suspension for more than six months - by the court.
- (C) Suspension for six months or less - by the professional conduct committee or the court.

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

(E) Reprimand - by the professional conduct committee.

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

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

(f) Subsequent Consideration of Disciplinary Action

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

(g) Diversion

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

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

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

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

(A) The misconduct appears to the attorney discipline office general counsel, the complaint screening committee or the professional conduct committee to be the result of poor office management, chemical dependency,

behavioral or health-related conditions, negligence or lack of training or education; and

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

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

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

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

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

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

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

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

(h) *Public Announcements*

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

(i) *Period of Limitation*

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

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

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

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

(B) if based on charges which do not include conduct described in (A) but which include as a material element fraud or fraudulent misrepresentation,

dishonesty, deceit, or breach of a fiduciary duty, but only if commenced within one (1) year after actual discovery of the misconduct by the aggrieved party.

(4) The period of limitation does not run:

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

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

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

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

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

Amend Supreme Court Rule 37A(II)(a)(6) as follows (deleted material is in ~~striketrough~~ format):

(II) *Investigations and Informal Proceedings*

(a) Preliminary Provisions

(1) Responsibility of Attorney Discipline Office

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

(2) Initiation of Investigation Process

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

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

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

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

(3) *Procedure after Receipt of Grievance*

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

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

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

Extensions of time are not favored.

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

(i) *Violation Alleged.* It contains: (a) a brief description of the legal matter that gave rise to the grievance; (b) a detailed factual description of the respondent's conduct; (c) the relevant documents that illustrate the conduct of the respondent, or, if the grievant is unable to provide such documents, an explanation as to why the grievant is unable to do so; and (d) whatever proof is to be provided, including the name and addresses of witnesses to establish a violation of a disciplinary rule.

(ii) *Standing.* With the exception of an attorney discipline office-initiated inquiry or a referral by a judge or attorney, it must be filed by a person who is directly affected by the conduct complained of or who was

present when the conduct complained of occurred, and contain a statement establishing these facts.

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

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

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

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

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

(B) *Failure to Meet Complaint Requirements.* If the attorney discipline office determines that a grievance fails to meet the requirements for docketing as a complaint, it shall so advise the grievant in writing. The attorney who is the subject of the grievance shall be provided with a copy of the grievance and the response by general counsel, and shall be given an opportunity to submit a reply to the grievance within thirty (30) days from the date of the notification or such further time as may be permitted by general counsel. The attorney's reply shall be filed in the record, which shall be available for public inspection in accordance with Rule 37(20).

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

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

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

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

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

cause why he or she should not be determined to be in violation of Rules 8.1(b) and 8.4(a) of the rules of professional conduct for failing to respond to general counsel's request for an answer to the complaint.

(6) *Investigation.*

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

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

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

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

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

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

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

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

APPENDIX G

Amend Superior Court (Civ.) Rule 9 as follows (new material is in **and brackets**):

Rule 9. Answers; Defenses; Forms of Denials

(a) An Answer or other responsive pleading shall be filed with the court within 30 days after the person filing said pleading has been served with the pleading to which the Answer or response is made. It shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. A pleader who intends in good faith to deny only a part or a qualification of an allegation shall specify so much of it as is true and material and deny only the remainder. The pleader may not generally deny all the allegations but shall make the denials as specific denials of designated allegations or paragraphs. 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.

In addition, within the same 30 days, the person filing an Answer or other responsive pleading shall also file an appearance in accordance with Rule 17. No attorney, non-attorney representative or self-represented party will be heard until his or her Appearance is so entered.

(b) Instead of an Answer, a person responding to a pleading to which a response is required may, within 30 days after the person has been served with the pleading to which the Answer or response is required file a Motion to Dismiss. If a Motion to Dismiss is submitted and denied, an Answer must be filed within 30 days after the date on the Notice of the Decision finally denying the motion; provided, however, that if a Motion to Dismiss which challenges the court's personal jurisdiction, the sufficiency of process and/or the sufficiency of service of process is filed, an Answer must be filed within the time specified in section (e) of this rule.

(c) To preserve the right to a jury trial, a defendant entitled to a trial by jury must indicate his or her request for a jury trial upon the first page of 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) Failure to plead as affirmative defenses or file a Motion to Dismiss based on affirmative defenses, including the statute of limitations, within the time allowed in section (b) of this rule will constitute waiver of such defenses.

[Affirmative defenses include the following:

- (1) accord and satisfaction;**
- (2) arbitration and award;**
- (3) assumption of risk;**
- (4) contributory negligence;**
- (5) duress;**
- (6) estoppel;**
- (7) failure of consideration;**
- (8) fraud;**
- (9) illegality;**
- (10) injury by fellow servant;**
- (11) laches;**
- (12) license;**
- (13) payment;**
- (14) release;**
- (15) res judicata;**
- (16) statute of frauds;**
- (17) statute of limitations; and**
- (18) waiver.**

(e) A party does not waive the right to file a Motion to Dismiss challenging the court's personal jurisdiction, sufficiency of process and/or sufficiency of service of process by filing an Answer or other pleadings or motions addressing other issues. However, a party who wishes to challenge the court's personal jurisdiction, sufficiency of process, and/or sufficiency of service of process must do so in a Motion to Dismiss filed within 30 days after he or she is served. If a party fails to do so within this time period, he or she will be deemed to have waived the challenge. If the trial court denies the Motion to Dismiss:

(1) The party will be deemed to have waived the challenge if the party does not seek review of the denial by the supreme court within 30 days of the clerk's final written notice of the trial court's decision. If the party does not seek review of the denial by the supreme court, the party must file an Answer within 30 days of the clerk's final written notice of the trial court's decision.

(2) If the party appeals the denial, and the supreme court declines the appeal, the party must file an Answer within 30 days after the date of the supreme court's final written notice declining the appeal. The supreme court's declining to accept the appeal does not preclude a party who has complied with this section from challenging the trial court's ruling on personal jurisdiction, sufficiency of process and/or sufficiency of service of process in an appeal from a final judgment of the trial court.

(3) If the supreme court accepts the appeal and rejects the party's challenge, the party must file an Answer within 30 days after the date of the supreme court's final decision rejecting the challenge.

Comment

Pleadings which notify the opposing party and the court of the factual and legal basis of the pleader's claims or defenses better define the issues of fact and law to be adjudicated. This definition should give the opposing party and the court sufficient information to determine whether the claim or defense is sufficient in law to merit continued litigation. Pleadings should assist in setting practical limits on the scope of discovery and trial and should give the court sufficient information to control and supervise the progress of the case.

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.

This rule changes current practice in that it requires a defendant to file an Answer within 30 days after the defendant is served with the Complaint. The practice under prior law whereby, in actions at law, the defendant's entry of an appearance operated as a general denial of all allegations of the plaintiff's writ has been eliminated. Section (b) of the rule extends the time for filing an Answer if the defendant moves to dismiss the Complaint. If a motion to dismiss is filed, the Answer is not due until 30 days after the clerk's notice of the court's decision finally denying the motion. Except for challenges to personal jurisdiction, to the sufficiency of process or to the sufficiency of service of process, any defense that can be raised by motion also can alternatively be raised in an Answer.

Section (d) of the rule makes clear that affirmative defenses are deemed waived if they are not raised in an Answer or a motion to dismiss filed within 30 days after the defendant is served with the Complaint.

Section (e) requires that motions to dismiss based on a challenge to the court's personal jurisdiction, the sufficiency of process, or the sufficiency of service of process must be raised by motion to dismiss filed within 30 days after service of the Complaint. This subsection is intended to modify long standing New Hampshire practice concerning the manner in which a litigant who desires to challenge the court's personal jurisdiction or the adequacy of process or service of process must proceed. Under prior law, a litigant desiring to make such challenges was required to enter a special appearance and to file a motion to dismiss within 30 days after being served. If the litigant failed to follow this course, or if the litigant filed an Answer or pleading that raised any other issues, the litigant would be deemed to have submitted to the court's

jurisdiction and thus waived his or her challenge to personal jurisdiction or the adequacy of process or service of process.

Under the new rule, a litigant desiring to challenge personal jurisdiction or the sufficiency of process or the service of process must still do so by filing a motion to dismiss within 30 days after being served. However the litigant is not required to enter a “special appearance,” nor will the litigant be deemed to have waived such challenges and submitted to the court’s jurisdiction by filing an Answer or other pleadings or motions that raise issues aside from personal jurisdiction, sufficiency of process or sufficiency of service of process. In accordance with *Mosier v. Kinley*, 142 N.H. 415, 423-24 (1997), the new rule preserves the requirement that a litigant whose motion to dismiss on these grounds is denied by the trial court must seek an immediate appeal of the trial court’s ruling, or be deemed to have waived these challenges.

APPENDIX H

Adopt Superior Court (Civ.) Rule 13A as follows:

Rule 13A. Reply and Surreply.

Any party may file a reply within ten (10) days of the filing of an objection to a motion. A party who intends to file a reply to an objection shall advise the clerk within three (3) days of the Court's receipt of the objection. Surreplies may only be filed with permission of the Court.

APPENDIX I

Amend Superior Court (Civ.) Rule 28A as follows (new material is in **bold and brackets**]; deleted material is in ~~striketrough~~ format):

Rule 28A. Medical Injuries and Special Damages.

(a) *Medical Examinations*. In actions to recover damages for personal injuries, the defendant shall have the right to a medical examination of the plaintiff prior to, ~~or during,~~ trial. **[The defendant shall seek and obtain the medical examination of the plaintiff within the expert disclosure deadlines set forth by statute, rule, or in the structuring order issued by the court. The court may order a medical examination of the plaintiff to take place outside of the expert disclosure deadlines, including during trial, only for good cause shown.]**

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

(c) *Medical Records*. 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.

(d) *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.

Amend Superior Court (Civ.) Rule 29 as follows (new material is in **bold and brackets**]; deleted material is in ~~striketrough~~ format):

Rule 29. 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) Motions for a protective order relating to trade secrets, confidential research, development or commercial information, or other private or confidential information sought through discovery shall be filed within the time set by these rules to respond to the discovery request or within 30 days of the date of automatic disclosure required by Rule 22, including any extensions agreed to by the parties or ordered by the court, or within ten days of an order of production of records. All protective orders, whether assented to or not, must be approved by the court.]

~~(b)~~ **[(c)]** 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)~~ **[(d)]** *Conditional Default.* If the party upon whom interrogatories or requests for production have been served, shall fail to answer said interrogatories or requests for production within 30 days, or any enlarged period, unless written objection to the answering of said interrogatories or requests is filed within that period, said failure will result in a conditional default being entered by the clerk 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 or requests 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)~~ **[(e)]** *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 the moving party has made a good faith effort to obtain concurrence in the relief sought.

~~(e)~~ **[(f)]** Where a discovery dispute has been resolved by court order 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)~~ **[(g)]** Motions for protective order or to compel responses to discovery requests shall include a statement summarizing the nature of the action and shall include the text of the requests and responses at issue.

~~(g)~~ **[(h)]** 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.

APPENDIX K

Amend Superior Court (Civ.) Rule 205 as follows (new material is in **bold and brackets**]; deleted material is in ~~striketrough~~ format):

Rule 205. Juror Orientation.

When a new panel of prospective jurors is first summoned for service, the panel shall be given preliminary instructions regarding the terms and conditions of jury service, the role of the jury in the justice system, and the legal principles applicable to the cases the jurors may hear. Such instructions may be given by a justice of the superior court, by utilization of a prerecorded audio or video presentation created for this purpose, or by a combination of use of a recording and instruction by a justice. Juror orientation sessions shall be open to the public. Except during periods when an audio or video recording is being played, all proceedings involving the judge giving preliminary instructions and taking and responding to juror questions shall be conducted on the record. The record of juror orientation sessions shall be preserved for a period of ~~ten (10)~~ **[six (6)]** years.

APPENDIX L

Adopt Superior Court (Civ.) Rule 208 as follows:

Rule 208. Administrative Orders.

The Chief Justice of the Superior Court has issued administrative orders. The administrative orders can be located on the New Hampshire Judicial Branch website.

Amend New Hampshire Rule of Criminal Procedure (Non-Felonies First Counties) 12(a) as follows (new material is in **[bold and brackets]**):

Rule 12. Discovery

(a) *Circuit Court-District Division*

(1) **[At the defendant's first appearance before the court, the court shall inform the defendant of his or her ability to obtain discovery from the State.]** Upon request, in misdemeanor and violation-level cases, the prosecuting attorney shall furnish the defendant with the following:

(A) A copy of records of statements or confessions, signed or unsigned, by the defendant, to any law enforcement officer or agent;

(B) A list of any tangible objects, papers, documents or books obtained from or belonging to the defendant; and

(C) A statement as to whether or not the foregoing evidence, or any part thereof, will be offered at the trial.

(2) Not less than fourteen days prior to trial, the State shall provide the defendant with:

(A) a list of names of witnesses, including experts and reports, and a list of any lab reports, with copies thereof, it anticipates introducing at trial;

(B) all exculpatory materials required to be disclosed pursuant to the doctrine of *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, including *State v. Laurie*, 139 N.H. 325 (1995); and

(C) notification of the State's intention to offer at trial pursuant to Rule of Evidence 404(b) evidence of other crimes, wrongs, or acts committed by the defendant, as well as copies of or access to all statements, reports or other materials that the State will rely on to prove the commission of such other crimes, wrongs or acts.

(3) Not less than seven days prior to trial, the defendant shall provide the State with a list of names of witnesses, including experts and reports, and a list of any lab reports, with copies thereof, the defendant anticipates introducing at trial.

(4) *Sanctions for Failure to Comply.* If at any time during the proceedings it is brought to the attention of the court that a party has failed to comply with

this rule, the court may take such action as it deems just under the circumstances, including but not limited to:

- (A) ordering the party to provide the discovery not previously provided;
- (B) granting a continuance of the trial or hearing;
- (C) prohibiting the party from introducing the evidence not disclosed;
- (D) assessing the costs and attorneys fees against the party or counsel who has violated the terms of this rule.

Amend New Hampshire Rule of Criminal Procedure (Felonies First Counties) 12(a) as follows (new material is in **[bold and brackets]**):

Rule 12. Discovery

(a) *Circuit Court-District Division*

(1) **[At the defendant's first appearance before the court, the court shall inform the defendant of his or her ability to obtain discovery from the State.]** Upon request, in misdemeanor and violation-level cases, the prosecuting attorney shall furnish the defendant with the following:

(A) A copy of records of statements or confessions, signed or unsigned, by the defendant, to any law enforcement officer or agent;

(B) A list of any tangible objects, papers, documents or books obtained from or belonging to the defendant; and

(C) A statement as to whether or not the foregoing evidence, or any part thereof, will be offered at the trial.

(2) Not less than fourteen days prior to trial, the State shall provide the defendant with:

(A) a list of names of witnesses, including experts and reports, and a list of any lab reports, with copies thereof, it anticipates introducing at trial;

(B) all exculpatory materials required to be disclosed pursuant to the doctrine of *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, including *State v. Laurie*, 139 N.H. 325 (1995); and

(C) notification of the State's intention to offer at trial pursuant to Rule of Evidence 404(b) evidence of other crimes, wrongs, or acts committed by the defendant, as well as copies of or access to all statements, reports or other materials that the State will rely on to prove the commission of such other crimes, wrongs or acts.

(3) Not less than seven days prior to trial, the defendant shall provide the State with a list of names of witnesses, including experts and reports, and a list of any lab reports, with copies thereof, the defendant anticipates introducing at trial.

(4) *Sanctions for Failure to Comply.* If at any time during the proceedings it is brought to the attention of the court that a party has failed to comply with

this rule, the court may take such action as it deems just under the circumstances, including but not limited to:

- (A) ordering the party to provide the discovery not previously provided;
- (B) granting a continuance of the trial or hearing;
- (C) prohibiting the party from introducing the evidence not disclosed;
- (D) assessing the costs and attorneys fees against the party or counsel who has violated the terms of this rule.

APPENDIX O

Amend Circuit Court - District Division Rule 5.4 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 5.4. Failure to Answer.

[A.] If the defendant does not file an appearance on or before the return day, a notice of default shall be issued that the plaintiff may recover possession of the demanded premises and costs; and, if the writ includes a claim for unpaid rent the notice of default may include the amount of unpaid rent claimed, not to exceed fifteen hundred dollars (\$1,500.00) in addition to the costs. A writ of possession and notice of judgment shall also issue, but not until the expiration of at least **[five business]** ~~three~~ days after the Clerk's notice of default and upon the filing of a military affidavit and, if the writ includes a claim for unpaid rent, an affidavit of damages.

[B. No such default shall be stricken off, except by agreement, or by order of the court upon such terms as justice may require, upon motion. A motion to strike the default shall: (1) set forth all the facts and circumstances explaining why the tenant defaulted and all the reasons why the court should strike the default; (2) specifically set forth the defendant's defense to the landlord-tenant writ filed by the plaintiff and all the facts upon which the defense is based; and (3) state that the defendant understands that making a false statement in the pleading may subject the defendant to criminal penalties.

[C. If the defendant files a motion to strike the default prior to the issuance of a writ of possession and notice of judgment, no writ of possession shall issue prior to the Court's ruling upon the motion. If the motion to strike the default is denied, then a notice of judgment shall be issued, and the writ of possession shall not issue until the expiration of the seven day period for filing a Notice of Intent to Appeal set forth in RSA 540:20. If the defendant files a timely Notice of Intent to Appeal, then the writ of possession shall not issue until the expiration of the appeal period set forth in Supreme Court Rule 7, except as otherwise provided in RSA 540:25, I, or following an order from the Supreme Court dismissing the defendant's possessory appeal or deeming the defendant's possessory appeal waived for failure to comply with RSA 540:25, II. If the possessory action was instituted for nonpayment of rent, the Court shall determine and set forth in its order denying the motion to strike the default the amount which must be paid into Court on a weekly basis in the event the defendant appeals. This amount is equal to the actual

weekly rent or the periodic rent converted into a weekly sum, adjusted for housing assistance, if applicable.]

APPENDIX P

Amend Circuit Court - District Division Rule 5.7 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 5.7. Writ of Possession and Judgment.

A. If the defendant fails to appear for trial, or if upon trial it is considered by the Court that the plaintiff has sustained the complaint, judgment shall be rendered that the plaintiff recover possession of the demanded premises and costs, and a writ of possession shall issue.

1. If the defendant failed to appear for trial, then the writ of possession and notice of judgment shall not issue until the expiration of at least **[five business]** ~~three~~ days after the Clerk's notice of default and, if the writ includes a claim for unpaid rent, upon the filing of an affidavit of damages. **[No such default shall be stricken off, except by agreement, or by order of the court upon such terms as justice may require, upon motion. A motion to strike the default shall: (1) set forth all the facts and circumstances explaining why the tenant defaulted and all the reasons why the court should strike the default; (2) specifically set forth the defendant's defense to the landlord-tenant writ filed by the plaintiff and all the facts upon which the defense is based; and (3) state that the defendant understands that making a false statement in the pleading may subject the defendant to criminal penalties.**

If the defendant files a motion to strike the default prior to the issuance of a writ of possession and notice of judgment, no writ of possession shall issue prior to the Court's ruling upon the motion. If the motion to strike the default is denied, then a notice of judgment shall be issued, and the writ of possession shall not issue until the expiration of the seven day period for filing a Notice of Intent to Appeal set forth in RSA 540:20. If the defendant files a timely Notice of Intent to Appeal, then the writ of possession shall not issue until the expiration of the appeal period set forth in Supreme Court Rule 7, except as otherwise provided in RSA 540:25, I, or following an order from the Supreme Court dismissing the defendant's possessory appeal or deeming the defendant's possessory appeal waived for failure to comply with RSA 540:25, II. If the possessory action was instituted for nonpayment of rent, the Court shall determine and set forth in its order denying the motion to strike the default the amount which must be paid into Court on a weekly basis in the event the defendant appeals. This amount is equal to the actual

weekly rent or the periodic rent converted into a weekly sum, adjusted for housing assistance, if applicable.]

2. If upon trial the plaintiff sustained the complaint, then the writ of possession shall not issue until the expiration of the seven day period for filing a Notice of Intent to Appeal set forth in RSA 540:20. If the defendant files a timely Notice of Intent to Appeal, then the writ of possession shall not issue until the expiration of the appeal period set forth in Supreme Court Rule 7, except as otherwise provided in RSA 540:25, I, or following an order from the Supreme Court dismissing the defendant's possessory appeal or deeming the defendant's possessory appeal waived for failure to comply with RSA 540:25, II.

B. In all cases in which a judgment for plaintiff is rendered where the action is based upon nonpayment of rent, the Court shall determine and set forth in its order the amount which must be paid into Court on a weekly basis in the event defendant appeals. This amount is equal to the actual weekly rent or the periodic rent converted into a weekly sum[, **adjusted for housing assistance, if applicable**].

C. In all cases which include a claim for unpaid rent the Court's judgment shall include a money judgment on the plaintiff's claim and any setoff or counterclaim by defendant.

APPENDIX Q

Amend Circuit Court - District Division Rule 5.9 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 5.9. Notice Form.

[A.] The Landlord and Tenant Writ shall incorporate or have attached to it the following notice:

If you desire to be heard on the matters raised in these papers, you must notify the Court by filing an appearance form with the Clerk of Court on or before the date specified on this writ next to the words "RETURN DAY". (These forms are available at the Clerk's Office.) Once you have filed your appearance, a date for a hearing will be set by the court and you will be notified by mail. You do not have to physically appear in court on the RETURN DAY since there will be no hearing on that day. If the landlord claims unpaid rent and if you file a claim or counterclaim which offsets or reduces the amount owed to the landlord, you must file the claim or counterclaim on or before the RETURN DAY shown on this Landlord and Tenant Writ. Space is provided on the appearance form for making the claim or counterclaim. IF YOU DO NOT FILE AN APPEARANCE FORM, IT WILL BE ASSUMED YOU DO NOT WISH TO CONTEST THE ACTION, A DEFAULT JUDGMENT WILL BE ENTERED AGAINST YOU, WHICH MAY INCLUDE ANY UNPAID RENT CLAIMED BY THE LANDLORD, AND A WRIT OF POSSESSION MAY ISSUE.

[B. Whenever the defendant does not file an appearance on or before the return day, the Clerk's notice of default shall include the language set forth in Rule 5.4. Whenever the defendant fails to appear for trial, the Clerk's notice of default shall include the language set forth in Rule 5.7(A)(1).]

Amend Circuit Court Electronic Filing Pilot Rule 8 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 8. Signatures on Filings

(a) *Original Document Deemed Signed.* The electronic submission of a document by a registered filer shall be considered a signed original if:

(1) The document is electronically signed by the registered filer in either one of the following ways:

(A) the typed symbol /s/ followed by the typed name of the registered filer submitting the document (example: /s/ John Smith); or

(B) a graphic representation of the filer's actual signature; and

(2) The document including the electronic signature also includes the following information:

(A) name (in addition to name typed as part of electronic signature in section (1));

(B) address;

(C) telephone number (if available);

(D) e-mail address;

(E) law firm (for attorneys only); and

(F) NH Bar Association Identification Number (for attorneys only).

(b) *When Multiple Signatures Are Required.*

[(1) Except as provided in paragraph (3) below, w]When multiple signatures are required on a document[s], each person named as a signer of the document shall either:

(A) sign in one of the ways a filer signs documents described in (a)(1) above; or

(B) authorize the filer to sign the document on his or her behalf. The filer shall represent having obtained approval to sign for another signer named in the document as follows:

Typed symbol /s/ followed by the typed name of the other signer, followed by, "Signed by [filer's name] with permission of [other signer's name.]"

Example: /s/ Jennifer Jones

Signed by John Smith with permission of Jennifer Jones.

(2) The electronic signature of each named signer shall be accompanied by the same information required to accompany the filer's electronic signature described above in (a)(2). However, when a document is signed with permission of another named signer, the filer's information shall accompany only the filer's own signature.

[(3) When multiple signatures are required on the specific documents listed below:

Estate Related Documents

- i. Petition for Estate Administration**
- ii. Executor's / Administrator's Accounting**
- iii. Inventory of Fiduciary**
- iv. Motion for Summary Administration**
- v. Waiver of Full Administration Statement To Close Estate**
- vi. Motion to Determine that an Estate is Insolvent**
- vii. Motion for Distribution of Insolvent Estate**
- viii. Statement of Executor/Administrator Regarding Distribution of Insolvent Estate**

(A) The registered filer may sign in one of the ways a filer signs documents described in (a)(1) above;

(B) However, the registered filer shall not sign on behalf of other named signers. Other named signers shall sign only by graphic representation as described in (a)(1)(B). The electronic signature of each named signer shall be accompanied by the same information required to accompany the filer's electronic signature described above in (a)(2).

(C) Notwithstanding the above, in its discretion, the court may require a graphic representation of any filer's actual signature.]

(c) An electronic signature meeting the requirements described above in (a)(1) and (2) shall be considered the functional equivalent to a handwritten signature produced on paper.

(d) Any party to a case may challenge the authenticity of the signature on an electronically filed document by filing an objection within ten (10) days after discovery that the signature is not authentic.

Amend Circuit Court Electronic Filing Pilot Rule 11 as follows (new material is in **[bold and brackets]**):

Rule 11. Filing a Document Which is Entirely Confidential

(a) The following provisions govern a filing party's obligations when filing a "confidential document" as defined in this rule. These provisions apply to both electronic filings and conventional filings by parties.

(b) A confidential document shall not be included in a filing if it is neither required for filing nor material to the proceeding. If the confidential document is required or is material to the proceeding, the party must file the document in the manner prescribed by this rule.

(c) "Confidential documents" means documents that are not to be accessible to the public pursuant to state law, administrative or court rule, court order or case law including, but not limited to, the following:

(1) Certain documents relating specifically to small claims cases, such as, but not limited to:

- (A) Confidential Information Sheets;
- (B) Statements of Assets and Liabilities.

(2) All documents filed with or issued by the court in guardianship cases under RSA 463 or RSA 464 *except*:

- (A) A Certificate of Appointment of Guardian;
- (B) An Order on Appointment of Guardian;
- (C) A Motion/License to sell Real Estate or Personal property in Guardianship or Conservatorship;
- (D) A Motion/License to Mortgage Real Estate;
- (E) A Return/Notice of Sale;
- (F) An Appointment of Resident Agent.

(3) Certain documents relating to case types other than small claims cases or guardianship cases, such as, but not limited to:

- (A) records pertaining to juvenile delinquency, children in need of services proceedings, or abuse/neglect proceedings;
- (B) financial affidavits in family law proceedings;
- (C) guardian ad litem reports in family law proceedings;
- (D) Qualified Domestic Relations Orders in family law proceedings;
- (E) Plaintiff and Defendant Information Sheets in domestic violence and stalking proceedings;
- (F) Vital Statistics forms;
- (G) personal data sheets;
- (H) records pertaining to termination of parental rights proceedings;

- (I) records pertaining to adoption proceedings;
- (J) records pertaining to mental health proceedings;
- (K) information related to competency determinations.

[(L) death certificates]

(d) Confidential documents set forth in this rule shall be filed electronically as follows:

(1) for confidential documents relating specifically to small claims cases, including the Confidential Information Sheet and Statement of Assets and Liabilities, filers shall select the appropriate name of the document in the filing system;

(2) for documents relating specifically to guardianship cases, filers shall select the appropriate name of the document in the filing system;

(3) for confidential documents from other case types or for other confidential documents set forth above, the filer shall select “Other (Confidential)” in the filing system.

(e) Confidential documents set forth in this rule that are being filed conventionally by a party excused from the mandate of electronic filing pursuant to Rule 1(b)(1), (2), (3) or (4) shall be clearly identified as “confidential,” but need not be identified as relating specifically to particular case types.

(f) When filing a document that the party believes to be confidential but that is not included on the list in section (c) of this rule, the filing party shall file a motion to seal with the document in accordance with Rule 13.

(g) When filing a document that is included on the list in section (c) of this rule but that is being filed as an exhibit or an attachment in a proceeding other than the proceeding that makes the document confidential under section (c) of this rule, the filing party shall file a motion to seal the document in accordance with Rule 13.