

#2016-002



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December 29, 2015

The Honorable Robert J. Lynn
New Hampshire Supreme Court
One Charles Doe Drive
Concord, New Hampshire 03301

Dear Justice Lynn,

As a member of the Supreme Court Advisory Committee on Rules, I am writing to inquire about the whether the Rules Committee has considered reviewing and possibly adopting the Business and Commercial Dispute Docket, Standing Orders dated May 4, 2015 by Judge Richard McNamara (a copy is enclosed for your reference). There are 11 standing orders that appear to apply only to the Business and Commercial docket at this time.

I am hopeful that the Committee can review these standings orders to determine whether they might be appropriate for passage throughout the trial court and should be scheduled for a hearing with the Committee. I am particularly interested in establishing Superior Court rules across the civil docket as provided for in Standing Order 8: Deposition of Corporation or other Entity. The Rule 30(b)(6) deposition process, as utilized in the Federal Courts, could be very helpful in expediting discovery in civil cases pending on the state court.

As I understand, there has been an ongoing review of the civil procedure rules, by this Committee. I am unsure of the status of that review and whether the enclosed rules are part of that review.

Thank you for your attention to this matter.

Very truly yours,

Maureen Raiche Manning

MRM/lrd
Enclosure

cc: Carolyn Koegler, Secretary

The State of New Hampshire

MERRIMACK, SS.

SUPERIOR COURT

BUSINESS AND COMMERCIAL DISPUTE DOCKET

STANDING ORDERS

Standing Order 1: Generally

These orders are applicable to all proceedings in the Business and Commercial Dispute Docket of the Superior Court (BCDD). Relief from failure to comply with the provisions of any Standing Order may be granted on such terms as the Court may order where justice so requires.

Standing Order 2: Initial Status Conference

Once a case has been accepted to the Business and Commercial Dispute Docket, the Clerk will schedule a status conference. Counsel should be prepared to discuss the following subjects with the Court at the status conference:

1. Posture of the case.
2. Structuring order: whether an order is in place and whether it needs to be modified.
3. Anticipated dispositive motions.
4. Anticipated discovery issues.
5. Standing orders of the Business and Commercial Dispute Docket.

6. ADR: the timing of ADR and whether there are motions which, if decided would facilitate ADR.

7. Trial: bench or jury and the use of real time at trial.

The parties should be prepared to discuss any other issues the parties believe are significant or would have an impact on resolution of the case.

Standing Order 3: Motions

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 the permission of the Court.

Standing Order 4: Copies of Memoranda

Any party filing a memorandum in support of a pleading which is in excess of ten (10) pages shall file two (2) working copies of the memorandum for use of the Court and the Court's law clerk.

Standing Order 5: Protective Orders

Motions for a protective order should be made as soon as reasonably possible. Any protective order, whether assented to or not, must be approved by the Court.

Standing Order 6: Privilege Logs

If a claim of privilege is made in response to a discovery request, a privilege log must be provided which includes sufficient information to identify the document and assess the

claim of privilege, including the name of the author, the name of the recipient if any, the date of the document, a brief description of the type of document, the general subject matter of the document (without revealing the privileged information) and the type of privilege claimed.

Comment

A claim for protection against disclosure based on a claim of privilege or protection of trial preparation materials must be made expressly and describe the nature of the allegedly protected information sufficient to enable opposing parties to assess the merits of the claim. This is usually accomplished by the parties submitting a log, frequently called a "Vaughn Index". Vaughn v. Rosen, 484 F.2d 820, 827 (D.C. Cir. 1973).

Standing Order 7: Time of Depositions

Unless otherwise stipulated or ordered by the Court, a deposition is ordinarily limited to 1 day of 7 hours. On motion made, the Court will allow additional time if needed to fairly examine the deponent, if the deponent or another person or any other circumstance impedes or delays the deposition.

Comment:

In complicated cases involving many documents it is often the case that a full and fair deposition cannot be conducted within 7 hours. The 7-hour rule is an aspirational goal, and not a fixed limit, and a motion to exceed depositions in excess of 7 hours will ordinarily be granted if a lawyer represents in good faith that the time is needed.

Standing Order 8: Deposition of Corporation or other Entity

In a notice of deposition or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a government agency or other entity, and describe with reasonable particularity the matters for the examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a non-party organization of its duty to make this designation. The person or persons designated must testify about any information known or reasonably available to the organization.

Comment:

This rule is essentially a cognate of Federal Rule of Civil Procedure 30 (b) (6) and is designed to reduce delay and expense. Case law governing FRCP 30 (b) (6) should govern interpretation of this standing order.

Standing Order 9: Electronic Discovery:

Counsel should as soon as reasonably practicable, but no later than 120 days after a case is filed in the BCCD, meet and confer to determine whether or not it is likely that there will be substantial issues regarding electronic discovery, including but not limited to the following:

- A. Access to electronic discovery;
- B. The cost of electronic discovery;
- C. The form in which electronic discovery should be provided; and

D. The need for and extent of litigation holds.

After the parties meet and confer they shall certify to the Court that they have met and conferred regarding electronic discovery and provide for the Court the substance of any agreements they have entered into. If the parties cannot agree, or if the parties wish to discuss their proposed agreement with the Court, they shall request a hearing on electronic discovery.

Standing Order 10: Status Conferences

Any party may, at any time, request a status conference to informally discuss discovery issues without the issue being fully briefed.

Standing Order 11: Real Time Transcripts of Trial

Any party may, at its own expense, use a certified stenographic reporter in order to obtain a Real-time transcript. If a party obtains such a stenographer, access to Real-time must be provided for the Court. However, the official record of the proceeding shall be the record taken by the courtroom monitor.

SO ORDERED

May 4, 2015

DATE

s/Richard B. McNamara

Richard B. McNamara,
Presiding Justice

RBM/mrs