

# 2016-005

To: Advisory Rules Committee  
From: David Peck, Esq.  
Re: Proposals for Amendments to Superior Court Rules 1(f) and 4  
Date: May 24, 2016

I am writing to suggest amendments to the Superior Court Rules that govern the procedure followed when pleadings are rejected by the clerk. Rule 1(f) now provides that the clerk may refuse to accept a filing that does not comply with the rules. An objection may be made to that determination by written motion to the court. The rule does not set any time limit as to when the objection is to be made. Rule 4(b) provides that to initiate a civil action, the plaintiff files a complaint, an appearance, and the filing fee. The rule does not indicate that a motion to waive the filing fee may be filed rather than the fee itself.

The amendments to Rule 1 address two matters: (1) when an objection must be filed to a refusal to accept a filing; and (2) when a complaint is deemed to be filed for the purposes of the statute of limitations or other filing deadline (such as the time limit for filing a petition for writ of certiorari) in a case in which the complaint is initially refused but is then promptly corrected and resubmitted. The second matter arose in a recent case decided by the Supreme Court (2015-0618, Richard P. Cassidy v. NH Department of Health and Human Services). In that case, the plaintiff filed a complaint in superior court on June 10, 2015, contesting the denial of his application for benefits under the Aid to the Permanently and Totally Disabled program. June 10 was within the 30-day period that generally applies to such cases. The complaint was refused by letter dated June 11 because it was not accompanied by the filing fee of \$260 and because of insufficient copies. The plaintiff refiled the complaint on June 18 with a motion to waive the filing fee. Because June 18 was beyond the 30-day period, the trial court dismissed the complaint.

The proposed amendments to Rule 1 first set forth a deadline for challenging the clerk's refusal. More importantly, however, they address the problem of defective filings made near the end of an appeal period or a statute of limitations. If a timely complaint is rejected, the amendments provide that the rejection shall be in writing, shall state the reasons, and shall give the party 15 days from the date of the written rejection (or, if the party unsuccessfully and timely challenges the rejection, within 15 days of the court order) to correct the deficiencies. If the deficiencies are timely corrected, then the filing date will relate back to the date the complaint was first filed.

The proposed amendments to Rule 4 simply clarify that an action can be filed by filing a motion to waive the filing fee as well as by paying the fee. The amendments do not change the requirement that the fee either be paid or waived before the court begins to process the action. Rule 4 is also amended to refer to the change in Rule 1 with respect to when a complaint is deemed filed for purposes of the statute of limitations or other analogous time limits.

I suggest these changes in an effort to avoid causes of action being forfeited due to minor mistakes in following the rules that can be and are easily corrected. Particularly given the numbers of unrepresented persons who appear in the courts, it seems to me that the purposes of filing deadlines are met when the plaintiff provides the court with a complaint, even if that complaint requires minor fixes such as the provision of additional copies or the filing of a motion to waive the filing fee. As long as the party makes the necessary corrections promptly, I would not want the complaint to be dismissed simply because it took time for the clerk to mail a letter refusing the filing and for the party to make the corrections and refile the complaint. This seems especially relevant in cases in which the time to file is short, such as certiorari petitions from agency actions, zoning appeals, etc. It would not be unusual, I wouldn't think, for a pro se appeal in a zoning case to be mailed to the court close to the end of the appeal period, and if the filing were refused by the clerk and mailed back to the appealing party, then the appeal could be untimely when refiled if the refile is not treated as relating back to the original filing date. It is my understanding that the supreme court follows a similar procedure to what is being suggested here – if an appeal is filed with the clerk on June 1, for example, but the fee is not included or additional copies are needed, the appellant is informed of what he must do, but the supreme court appeal is still deemed to have been filed as of June 1.

If the Committee concludes that amendments would be appropriate, I would suggest also considering whether similar amendments might be appropriate for the rules of the various circuit court divisions. I do not know what procedure is followed in those courts when a complaint or other time-sensitive pleading is filed that is "defective." If such pleadings are refused by the clerk, then it is possible that similar issues could be addressed in the rules for those courts.

Here are the suggested amendments to the Superior Court Rules (new material is in bold; deleted material is in italics and underlined):

## Rule 1

(f) The clerk may refuse to accept, **by notification in writing**, any filing that the clerk determines does not comply with these rules. *In the event an objection is made to such determination, a written motion may be made to the court to rule on such determination.* **The written notification shall state: (1) all reasons why the filing is not being accepted; (2) that in the event the filing party objects to such determination, a written motion shall be made to the court to rule on such determination within 15 days of the date of the notification; and (3) if the refused filing includes a Complaint, that if the noted defects are cured and the corrected filing resubmitted to the clerk within 15 days of the notification or within 15 days of any ruling by the court on a timely-filed motion objecting to the determination, the Complaint will be deemed to have been filed on the date that the defective filing was initially received by the clerk.**

## Rule 4

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

(b) To initiate a civil action, including an action authorized by law to be initiated by writ or petition, the plaintiff files with the court: (i) the Complaint; (ii) an Appearance (indicating the plaintiff's representative by name, address, email address, telephone number, and New Hampshire Bar Association identification number); and (iii) **either the filing fee or a motion to waive the filing fee.** See Rule 201. For purposes of complying with the statute of limitations **or analogous time limit**, an action shall be deemed commenced on the date the Complaint is filed. **See Rule 1(f) (addressing when Complaint is deemed to have been filed when clerk refuses to accept Complaint because filing does not comply with these rules).**

(c) Upon receipt of the Complaint and, **if the filing fee is not waived, the** filing fee, the court will process the action and provide plaintiff with the completed Summons for service. The Summons will identify: (i) the date the Complaint is filed; (ii) the court-ordered deadline for service; and (iii) a hearing date, if appropriate. Plaintiff will cause the Summons together with a copy of the Complaint to be served on defendant no later than the court-ordered deadline for service, service to be made as specified in RSA 510, or as otherwise allowed by law. Proof of service shall be filed with the court within 21 days of the court-ordered deadline for service. If a defendant is not served within the court-ordered deadline for service, the court shall dismiss the action with or without prejudice, as justice may require.

(d) In all cases of notice by publication where the time may be fixed by the court, the order shall be for publication in some newspaper or newspapers named by the court in general or special orders, once a week for 3 successive weeks. The last publication shall not be later than the time fixed by the court.

(e) Appearances and Answers are due within 30 days of the date the defendant is served with the Summons and Complaint.