

MEMORANDUM

To: Advisory Committee on Rules  
From: Carolyn Koegler  
Re: # 2016-006. Motions to Seal.  
Date: May 17, 2018

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Attached please find several pages of an order the Supreme Court issued today requesting comment on, among other things, a suggestion to adopt “Supplemental Rules of the Superior Court of New Hampshire for Electronic Filing in Specified Civil Cases.” Please note that suggested Rule 11 (“Filing Confidential Documents or Documents Containing Confidential Information”) is very similar to the proposal that the Committee has put out for public hearing in June. However, it is not identical. Note, for example, that suggested rule 11(d)(“Motions to Seal”) does not include some of the provisions included in the proposal the Committee is considering.

If the Committee votes in June to recommend that the Court adopt the proposal, it may also wish to recommend that the Court amend (if they are adopted) the “Supplemental Rules of the Superior Court of New Hampshire for Electronic Filing in Specified Civil Cases” so that the rules are not redundant or in conflict.

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT OF NEW HAMPSHIRE

ORDER

R-2018-002, In re Suggested Amendments to Superior Court Rules and Circuit Court Rules (Electronic Filing)

Advisory Committee on Rules Chair, Chief Justice Robert Lynn, recently received a suggestion to adopt Supplemental Rules of the Superior Court of New Hampshire for Electronic Filing in Specified Civil Cases and to amend existing Superior Court Rules 3, 12, 39, 42, 47 and 201 to accommodate electronic filing. He also received a suggestion to amend Circuit Court Electronic Filing Rule 7. Justice Lynn referred the suggestions directly to the Court pursuant to New Hampshire Supreme Court Rule 51(f) (“Special Cases”).

On or before **July 2, 2018**, members of the bench, bar, legislature, executive branch or public may file with the clerk of the supreme court comments on the suggested amendments. An original and one copy of all comments shall be filed. Comments may also be emailed to the court at:

[rulescomment@courts.state.nh.us](mailto:rulescomment@courts.state.nh.us)

To see the language of proposed new Supplemental Rules of the Superior Court of New Hampshire For Electronic Filing in Specified Civil Cases please see Appendix A (attached). To see the language of the proposed amendments to existing Superior Court Rules, please see Appendices B through G (attached). To see the language of the proposed amendments to Circuit Court Electronic Filing Rule 7, please see Appendix H.

The current rules of the New Hampshire state courts are available on the Internet at:

<http://www.courts.state.nh.us/rules/index.htm>

Date: May 17, 2018

ATTEST:



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Eileen Fox, Clerk  
Supreme Court of New Hampshire

of a person who performed a notarial act on a document filed electronically in that case by filing an objection within ten (10) days after discovery that the signature is not authentic.

### **Comment**

For requirements of notarial acts and signatures on electronic documents, *see, especially*, RSA 456-B:7 and RSA 294-E:2, VIII, RSA 294-E:9, and RSA 294-E:11.

### **Rule 11. Filing Confidential Documents or Documents Containing Confidential Information.**

(a) The following provisions govern a filing party's obligations when electronically filing a "confidential document" or documents containing "confidential information," as defined in this rule.

#### *(b) Filing a Confidential Document*

(1) A "confidential document" means a document that is confidential in its entirety because it contains confidential information and there is no practicable means of filing a redacted version of that document.

(2) A confidential document shall not be included in a pleading if it is neither required for filing nor material to the proceeding.

(3) Should a confidential document be filed, the filer shall file a motion to seal, as set forth in (d), below.

(4) A party filing a confidential document shall identify the document in the caption of the pleading so as not to jeopardize the confidentiality of the document but in sufficient detail to allow a party seeking access to the confidential document to file a motion to unseal.

#### *(c) Filing Documents Containing Confidential Information.*

(1) "Confidential Information" means:

(A) Information that is not public pursuant to state or federal statute, administrative or court rule, a prior court order placing the information under seal, or case law; or

(B) Information which, if publicly disclosed, would substantially impair:

(i) The privacy interests of an individual; or

(ii) The business, financial or commercial interests of an individual or entity; or

(iii) The right to a fair adjudication of the case; or

(C) Information for which a party can establish a specific and substantial interest in maintaining confidentiality that outweighs the strong presumption in favor of public access to court records.

- (2) The following is a non-exhaustive list of the type of information that should ordinarily be treated as “confidential information” under this rule:
- (A) Information that would compromise the confidentiality of juvenile delinquency, children in need of services, or abuse/neglect, termination of parental rights proceedings, adoption, mental health, grand jury, or other court or administrative proceedings that are not open to the public; or
  - (B) Financial information that provides identifying account numbers on specific assets, liabilities, accounts, credit card numbers or Personal Identification Numbers (PINs) of individuals including parties and non-parties; or
  - (C) Personal identifying information of any person, including but not limited to social security number, date of birth (except a defendant’s date of birth in a criminal case), mother’s maiden name, a driver’s license number, a fingerprint number, the number of other government-issued identification documents or a health insurance identification number.
- (3) Filing Documents Containing Confidential Information
- (A) When a party files a document the party shall omit or redact confidential information from the filing when the information is not required to be included for filing and is not material to the proceeding. If none of the confidential information is required or material to the proceeding, the party should file only the version of the document from which the omissions or redactions have been made. At the time the document is electronically filed, the party must clearly indicate on the document that the document has been redacted or information has been omitted pursuant to Rule 11(c)(3)(A).
  - (B) It is the responsibility of the filing party to ensure that confidential information is omitted or redacted from a document before the document is filed. It is not the responsibility of the court staff to review documents filed by a party to determine whether appropriate omissions or redactions have been made.
  - (C) If confidential information is required for filing and/or is material to the proceeding and therefore must be included in the document, the filer shall upload and electronically file the following:
    - (i) A motion to seal as set forth in (d), below;
    - (ii) the document with the confidential information redacted by blocking out the text or using some other method to clearly delineate the redactions; and
    - (iii) An unredacted version of the document clearly marked as confidential.

(d) *Motions to Seal*

- (1) A motion to seal a confidential document or an unredacted version

of a document containing confidential information shall state the authority for confidentiality, *i.e.*, the statute, case law, administrative order or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. Upon filing of the motion to seal with the unredacted version of the document, the unredacted version of the document shall be kept confidential pending a ruling on the motion. The court shall review the motion to seal and any objection to the motion to seal that may have been filed and determine whether the unredacted version of the document shall be confidential. An order will be issued setting forth the court's ruling on the motion to seal.

(2) A party or person with standing may move to seal or redact confidential documents or confidential information that is contained or disclosed in the filing of any other party and may request an immediate order to seal the document pending the court's ruling on the motion.

### **Comment**

These provisions are intended to ensure that confidential documents and confidential information contained within documents are accessible, upon filing, only to the court and its staff, to the parties and their attorneys or the parties' authorized representatives, and to others authorized to perform service of process. Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. *See, e.g., Associated Press v. State of N.H.*, 153 N.H. 120 (2005); *Petition of Keene Sentinel*, 136 N.H. 121 (1992); *see also* District Division Rule 1.26; Family Division Rule 1.30; Probate Division Rule 169-A; Superior Court Rule (Civil) 203; Superior Court Rule (Criminal) 169-A.

## **III. Service of Documents**

### **Rule 12. Formal Service of Process**

(a) *Proof of Formal Service of Process.* Documents that require personal service or other formal service of process to confer jurisdiction over a party as a matter of law shall not be served electronically. Whenever a party is required by statute, court rule or court order to file proof of formal service of process, the proof of service document shall be scanned and filed electronically in accordance with the provisions of Rule 7(d) concerning "Original Documents and Other Paper Documents That Were Not Prepared for Electronic Filing."

(b) *Attestation/Certification of Documents.* A document shall be considered properly attested or certified for purposes of service of process or other purpose when: