

MEMORANDUM

To: N.H. Supreme Court Advisory Committee on Rules

From: Subcommittee on Amendment to Civil Rules of Procedure
N. William Delker, Chair

Date: May 9, 2016

Re: Recommendations regarding Amendments to N.H. Rules of Civil Procedure

OVERVIEW

At the March 11, 2016 meeting of the Supreme Court Advisory Committee on Rules, I was asked to chair a subcommittee to address proposed amendments to the N.H. Rules of Civil Procedure. This endeavor is not intended to be a complete re-writing of the rules but rather to address some specific errors or omissions when the rules were recently adopted. More specifically, this subcommittee was asked to address the following issues:

1. Advisory Committee Agenda Items 2014-006 to -010: The subcommittee was tasked with continuing the work of an original subcommittee that had been chaired by Emily Rice in 2013.
2. The subcommittee was also asked to review a request to consider adopting some or all of the business docket standing orders as part of the civil rules. A link to those orders can be found at: <http://www.courts.state.nh.us/superior/orders/bcdd/Business-and-Commercial-Dispute-Docket-Standing-Orders.pdf>
3. The subcommittee was also tasked with identifying any other issues that may have arisen since the recent adoption of the civil rules. For example, Rule 10(a) addresses the need to raise mandatory counterclaims but the rules are silent about when, if ever, permissive counterclaims can be brought in the action.

On April 18, 2016, the following individuals convened to discuss these matters:

- Hon. N. William Delker, Chair of Subcommittee
- Hon. David Anderson, Rockingham Superior Court
- Karen Gorham, Superior Court Clerk Administrator
- Carolyn Koegler, Secretary of the Advisory Committee on Rules
- Kimberly Kirkland, Esq.
- Jeanne Herrick, Esq.
- David Slawsky, Esq.

Non-Docketed Item 2: Extending the time to file an answer for more than 30 days

Proposal: Attorney Derek Lick proposed amending the time to file an answer or other responsive pleading to provide more than 30 days. He felt that for insurance defense cases 30 days was not adequate to file an answer or other responsive pleading.

Recommendation: The subcommittee felt that no change to the existing rule was needed. The subcommittee felt that extending the time to answer would only delay resolution of cases. In New Hampshire practice attorneys regularly assent to requests for more time to respond to the complaint. If the plaintiff objects, the defendant can always file a motion for an extension of time, which Courts routinely grant so long as the delay does not prejudice the plaintiff.

Non-Docketed Item 3: Permissive Counterclaims

Proposal: Currently Rule 10 only addresses mandatory counterclaims which must be asserted by a party. Judge Delker proposed amending Rule 10 to address when it is appropriate for a party to file permissive counterclaims.

Recommendation: This proposal requires additional research of New Hampshire law on the parameters for filing permissive counterclaims. Judge Delker volunteered to recruit law clerk assistance to research this issue and craft a proposal for the Advisory Committee. The subcommittee recommends this issue be docketed as a separate agenda item to be addressed at a later time.

Non-Docketed Item 4: Appearances

Proposal: Judge Anderson raised the question of whether the rules regarding when a party must file an appearance should be amended. In other words, he felt that the filing of a complaint, answer, or other responsive pleading should be adequate to constitute an appearance of an attorney. Currently N.H. Superior Court Administrative Order 2013-007 provides that a complaint signed by an attorney which includes all of the information required by Rule 4(a) will serve as an appearance.

Recommendation: The subcommittee was in general agreement that the rule regarding appearance should be revisited. The rule would have to address appearances filed by an attorney, a non-attorney representative, a *pro se* litigant, and limited representative appearances. Judge Anderson volunteered to draft a rule for the subcommittee's consideration. The subcommittee recommends that this item be assigned its own docket number for separate consideration at a later time.