

MEMORANDUM

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

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

Date: December 14, 2016

Re: # 2016-011. Super. Ct. R. 17. Appearances.

The subcommittee believes that the rules regarding when a party must file an appearance should be amended to state that the filing of a complaint, answer or other responsive pleading will 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.¹ The subcommittee recommends the deletion of Administrative Order 2013-007 if the Court adopts these proposed changes to Rule 17.

The subcommittee recommends the following amendment to Superior Court Rule 17 (Appearances). Former subparagraph (a) is broken into subparagraphs (a) and (b) which changes the lettering throughout the rule. The only changes, however, are in subparagraphs (a) and (b) (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 17. Appearance and Withdrawal

(a) An Appearance in an action shall be made by filing a typed or handwritten Appearance form containing the name, street address, mailing address, email address, New Hampshire Bar Association member identification number, and telephone number of the person entering the Appearance, and the complete name, street address, and telephone number of the party on whose behalf the Appearance is filed. **[If counsel includes all of the foregoing information in a complaint, answer or motion to dismiss, that pleading will be considered his or her appearance and a separate appearance need not be filed.]**

[(b)] A party who chooses to represent himself or herself ~~shall so state in the appearance.~~ **[must file an Appearance and shall state in the Appearance that the party is choosing to represent himself or herself. The failure of a self-represented**

¹ Administrative Order 2013-007 reads, "Pursuant to Superior Court Civil Rule 4(b), the plaintiff is required to file an appearance which shall include the plaintiff's representative by name, address, telephone number and New Hampshire Bar Association Identification Number. A signed complaint which contains this information shall constitute an appearance as required by Rule 4(b)."

party to file an Appearance in conformity with this rule shall result in a conditional default or other order as justice requires.] The clerk shall be notified of any changes of address of any of the parties. A separate Appearance is to be filed by counsel, non-attorney representative, or self-represented party with respect to each case in which said counsel, non-attorney representative or self-represented party appears, whether or not such cases are consolidated for trial or other purposes.

~~(b)~~**[(c)]** The Appearance and Withdrawal of counsel, non-attorney representative, or self-represented party shall be signed by that person. Names, street addresses, mailing addresses, New Hampshire Bar Association member identification numbers, and telephone numbers shall be typed or stamped beneath all signatures or papers to be filed or served. No attorney, non-attorney representative, or self-represented party will be heard until his or her Appearance is so entered.

~~(e)~~**[(d)]** *Limited Appearance of Attorneys.* To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney providing limited representation to an otherwise unrepresented litigant may file a Limited Appearance in a non-criminal case on behalf of such unrepresented party. The Limited Appearance shall state precisely the scope of the limited representation, and the attorney's involvement in the matter shall be limited only to what is specifically stated. The requirements of Rule 7(c) and (d) of these Rules shall apply to every pleading and motion signed by the limited representation attorney. An attorney who has filed a Limited Appearance, and who later signs a motion or other filing outside the scope of the limited representation, shall be deemed to have amended the Limited Appearance to extend to such filing. An attorney who signs a pleading (see Rule 6) or any amendment thereto that is filed with the court will be considered to have filed a General Appearance and, for the remainder of that attorney's involvement in the case, shall not be considered as a limited representation attorney under these rules; provided, however, if such attorney properly withdraws from the case and the withdrawal is allowed by the court, the attorney could later file a Limited Appearance in the same matter.

~~(d)~~**[(e)]** An attorney or non-attorney representative may withdraw from an action by serving a Notice of Withdrawal on the client and all other parties and by filing the notice, provided that: (1) there are no motions pending before the court; (2) a Trial Management Conference has not been held; and (3) no trial date has been set. Unless these conditions are met, an attorney or non-attorney representative may withdraw from an action only by leave of court. Whenever an attorney or non-attorney representative withdraws from an action, and no other Appearance is entered, the court shall notify the party by mail of such withdrawal. If the party fails to appear by himself, herself, attorney or non-attorney representative by a date fixed by the court, the court may take such action as justice may require.

~~(e)~~**[(f)]** Other than limited representation by attorneys as allowed by Rule 17(c) and Professional Conduct Rule 1.2(f), no attorney or non-attorney representative shall be permitted to withdraw his or her Appearance in a case after the case has been assigned

for trial or hearing, except upon motion to permit such withdrawal granted by the court for good cause shown, and on such terms as the court may order. Any motion to withdraw filed by counsel or non-attorney representative shall set forth the reason therefore but shall be effective only upon approval by the court. A factor which may be considered by the court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the attorney's services.

~~(f)~~**(g)** *Automatic Termination of Limited Representation.* Any Limited Representation Appearance filed by an attorney, as authorized under Rule 17(c) and Professional Conduct Rule 1.2(f), shall automatically terminate upon completion of the agreed representation, without the necessity of leave of court, provided that the attorney shall provide the court a "withdrawal of limited appearance" form giving notice to the court and all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a Limited Appearance who seeks to withdraw prior to the completion of the limited representation stated in the Limited Appearance, however, must comply with Rule 17(d).

~~(g)~~**(h)** *Filing Prepared for Unrepresented Party.* When an attorney provides limited representation to an otherwise unrepresented party, by drafting a document to be filed by such party with the court in a proceeding in which (1) the attorney is not entering any appearance, or (2) the attorney has entered a Limited Appearance which does not include representation regarding such document, the attorney is not required to disclose the attorney's name on such filing to be used by that party; any filing drafted by such limited representation attorney, however, must conspicuously contain the statement ***"This filing was prepared with the assistance of a New Hampshire attorney."*** The unrepresented party must comply with this required disclosure. Notwithstanding that the identity of the drafting attorney need not be required to be disclosed under this rule, by drafting a filing to be used in court by an otherwise unrepresented party, the limited representation attorney shall be deemed to have made those same certifications as set forth in Rule 7(d) despite the fact the filing need not be signed by the attorney.