

Memo re: District Division Rule 1.28

Date: June 14, 2020

[Advisory Rules Committee docket no. 2020-004]

[From: David Peck, N.H. Supreme Court, 1 Charles Doe Dr., Concord, NH
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I have been reviewing recent amendments to court rules in preparation for the publication of the most recent LexisNexis rule book, and came across an amendment that I believe imposes a court fee that is contrary to statute. If I am correct, the court may wish to take expedited action to amend the rule or otherwise ensure that the fee is not being imposed.

District Division Rule 1.28, which sets forth court fees, was adopted by court order dated October 29, 2019, and took effect on February 12, 2020. The relevant portion of Rule 1.28 follows:

Rule 1.28. Court fees

(I) Fees

(A) Original Entries:

1. Civil Complaint or Counterclaim (including set-off, recoupment, cross-claims and third-party claims)	\$ 150.00
Replevin	\$ 150.00
Landlord/Tenant entry	\$ 125.00
Registration of Foreign Judgment	\$ 175.00

2. Small Claims Entry and Counterclaim, \$5000 or less (including set-off, recoupment, cross-claims and third-party claims)	\$ 80.00
Small Claims Transfer Fee	\$ 145.00
Small Claims Entry and Counterclaim, \$5001 to \$10,000 (including set-off, recoupment, cross-claims and third-party claims)	\$ 135.00

....

(II) Surcharge

Pursuant to RSA 490:26-a, II, the sum of \$25.00 shall be added to each civil filing fee set forth in paragraph (I)(A)(1) above.

Paragraph II provides that pursuant to RSA 490:26-a, II, the surcharge of \$25.00 is to be added to each filing fee set forth in paragraph (I)(A)(1), which includes the filing fee for Landlord/Tenant entries. However, RSA 490:26-a, II states as follows:

II. (a) Except as provided in subparagraph (b), a \$25 surcharge shall be added to each civil filing fee for all courts. This surcharge shall be deposited in the general fund.

(b) The following shall be exempt from the surcharge under subparagraph (a):

- (1) Actions relating to children under RSA 169-B, RSA 169-C, and RSA 169-D.
- (2) Domestic violence actions under RSA 173-B.
- (3) Small claims actions under RSA 503.
- (4) Landlord/tenant actions under RSA 540, RSA 540-A, RSA 540-B, and RSA 540-C.
- (5) Stalking actions under RSA 633:3-a

Thus, it appears that Rule 1.28 is contrary to statute to the extent that it imposes the \$25.00 surcharge on landlord/tenant cases.

The District Division court fee rule that applies prior to February 12, 2020, exempts landlord/tenant actions from the surcharge. See District Division Rule 3.3 (II). Rule 1.28 reorganized the surcharge section, and appears to me to have inadvertently included landlord/tenant actions by mistake. I suggest amending Rule 1.28 so that the \$25.00 surcharge does not apply to landlord/tenant actions. One possibility would be:

(II) Surcharge

Pursuant to RSA 490:26-a, II, the sum of \$25.00 shall be added to each civil filing fee set forth in paragraph (I)(A)(1) above **[other than Landlord/Tenant entry]**.

Or, the section might be rewritten as:

(II) Surcharge

Pursuant to RSA 490:26-a, II, the sum of \$25.00 shall be added to each **[the]** civil filing fee set forth in paragraph ~~(D)(A)(1)~~ above. **[for the following:**

(A) Civil Complaint or Counterclaim (including set-off, recoupment, cross-claims and third-party claims);

(B) Replevin; and

(C) Registration of Foreign Judgment.]