



## State of New Hampshire Judicial Branch

### E-Filing Policy #9 (Certifications)

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**Issue:** (State the issue and whether it is specific to certain level of court or case type)

*Some litigants and members of the public need certified copies of official court records for use in and out of court. What must court officials do to certify that a document is an authentic replica of an official court record? And how may users of an electronically certified court document confirm that they are working with an authentic and unaltered replica of an official court record?*

**Discussion:** (Provide the factual setting or context for the issue)

As part of the NH e-Court Project, a committee on Signatures, Notaries, Certifications and Redactions (SNCR) was established. The Committee concluded that electronic documents filed according to New Hampshire Judicial Branch e-Court protocol shall be official court records. Furthermore, the NH e-Court Project must embed permanent metadata into digital records so that users are able to verify when a digital document is an exact replica of the official court record and that the replica has not been altered. The New Hampshire Judicial Branch must publish a description of the indicators that confirm that a digital court record has not been tampered with in any way. Finally, Committee members recognized that some litigants and members of the public may continue to need paper certified copies of official court records and the NH e-Court Project must provide a simple and efficient means of delivering certified paper copies to those who need them.

**Authorities:** (references to statutes, rules, codes or administrative orders pertinent to the issue)

No statutory authority was found concerning certified court records.

**Alternative Solutions:** (list all identified alternative solutions for the issue)

Members of the SNCR Committee considered whether the digital record would be the official court record; whether the court would continue to issue paper certified copies; and what assurance the NH e-Court Project must give to members of the public to ensure the integrity of the certification process.

**Position/Recommendation:** (does the NH e-Court Advisory Committee have a recommendation on this issue)

The SNCR Committee recommended the following policy:

User/viewers of **digital court records** may verify the authenticity of any official court record, as follows:

1. The official version of a court document shall be the digital version of that document that is stored according to NHJB e-court protocol.
2. The NH E-Court Project shall embed into official court records metadata that identify the digital document as the official court record or an exact replica of the official court record.
3. The metadata embedded into official court records shall be permanent so that when the record travels electronically to another storage site, the metadata travels with the document and identifies the digital document as an exact replica of the official court record, irrespective of where the digital document exists. The metadata shall be embedded in official court records in such a way that any change to a court record shall be apparent to the user/viewer.
4. The NHJB shall publish a description of the appearance of an official court record sufficient to permit a user/viewer to determine whether a document is the official court record or has been altered in any way.

Those who need a **paper certified copy** of an official court record may obtain one as follows:

The NHJB shall authorize the clerk of any court, or his or her designee, to issue a paper certified copy of any official record of the court to which the clerk is appointed.

The NH e-Court Project BPR Team may recommend that the courts certify documents in one or more of the following three ways:

1. The NHJB may authorize a central authority to issue a paper certified copy of any official record of any New Hampshire court.
2. The NHJB may authorize any clerk of any New Hampshire court to issue a paper certified copy of any official record of any New Hampshire court.
3. The NHJB E-Court Project may develop a public work station or kiosk that can issue a paper certified copy of any official record of any New Hampshire court.

Committee members note that there are risks inherent in the current paper-based system of public record certification. Specifically, certification that a document is an official court record does not include any assurance that an official court record is the final or controlling record in a case. A viewer/user could intentionally or negligently hold out an official court record as the controlling document in a case when that document has been superseded by subsequent documented court decision. This risk is beyond the control of the Judicial Branch and may increase if court officials are authorized to certify documents that are not in their custody (See Items #1 and #3 above) or if certification is automated (See Item #4 above).

**Decision:**

The NH e-Court Advisory Committee and the New Hampshire Judicial Branch Administrative Council both recommended that the New Hampshire Supreme Court adopt the SNCR recommendation. The Supreme Court adopted the recommendation.