NEW HAMPSHIRE SUPREME COURT ADVISORY COMMITTEE ON RULES

PUBLIC HEARING NOTICE

The New Hampshire Supreme Court Advisory Committee on Rules will hold a PUBLIC HEARING at 12:30 p.m. on Friday, June 14, 2019, at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar on court rules changes which the Committee is considering for possible recommendation to the Supreme Court.

Comments on any of the court rules proposals which the Committee is considering for possible recommendation to the Supreme Court may be submitted in writing to the secretary of the Committee at any time on or before June 13, 2019 or may be submitted at the hearing on June 14, 2019. Comments may be e-mailed to the Committee on or before June 13, 2019 at:

rulescomment@courts.state.nh.us

Comments may also be mailed or delivered to the Committee at the following address:

N.H. Supreme Court
Advisory Committee on Rules
1 Charles Doe Drive
Concord, NH 03301

Any suggestions for rules changes other than those set forth below may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

Copies of the specific changes being considered by the Committee are available on request to the secretary of the Committee at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Telephone 271-2646). In addition, the changes being considered are available

on the Internet (in the Appendix to the Public Hearing Notice) at:

http://www.courts.state.nh.us/committees/adviscommrules/notices.htm

The changes being considered concern the following rules:

I. 2019-001. Supreme Court Rules 12-D and 20. Non-Precedential Status of Orders.

(This proposal would amend Supreme Court Rules 12-D(3) and 20(2) to make clear that orders issued in confidential cases should not be cited or referenced in pleadings or rulings.)

1. Amend Supreme Court Rule 12-D(3), as set forth in Appendix A.

2. Amend Supreme Court Rule 20(2), as set forth in Appendix B.

II. 2017-018. Supreme Court Rule 37. Attorney Discipline System. Access to Confidential Records.

(This proposal would add subsection (c) to Supreme Court Rule 37(8), setting out a new procedure detailing when, and in what manner, the Attorney Discipline Office may access confidential court files.)

1. Amend Supreme Court Rule 37(8), as set forth in Appendix C.

III. 2019-005. Supreme Court Rule 48-B. Family Mediator Fees.

(This proposal would delete and replace Supreme Court Rule 48-B.)

1. Delete and replace Supreme Court Rule 48-B, as set forth in Appendix D.

IV. 2018-012. Supreme Court Rule 57-A. Custody and Return of Documents Filed in Camera in Trial Courts.

(This proposal would amend Supreme Court Rule 57-A to provide that in cases in which a defendant has not been convicted on any charge, a person with interest may request that records filed in camera be destroyed.)

1. Amend Supreme Court Rule 57-A, as set forth in Appendix E.

V. 2018-010. New Hampshire Rule of Criminal Procedure 50. Confidential Documents and Confidential Information.

(This proposal would adopt on a permanent basis rules applicable to criminal cases filed in Superior Court delineating the procedure for filing documents which are confidential in their entirety or contain confidential information, and for seeking access to documents or information that have been determined to be confidential.)

1. Adopt on a permanent basis amendments to New Hampshire Rule of Criminal Procedure 50 which were adopted on a temporary basis, as set forth in Appendix F.

VI. 2018-011. New Hampshire Rule of Criminal Procedure 50. Confidential Documents and Confidential Information.

(This proposal would further amend New Hampshire Rule of Criminal Procedure 50 to make applicable to criminal cases in Circuit Court the rules delineating the procedure for filing documents which are confidential in their entirety or contain confidential information, and for seeking access to documents or information that have been determined to be confidential.)

1. Amend New Hampshire Rule of Criminal Procedure 50, as set forth in Appendix G.

VII. 2019-002. Circuit Court Rules. Civil Process Amendments Designed to Facilitate Electronic Filing.

(This proposal would amend Circuit Court Rules to make the Circuit Court civil filing process consistent with the Superior Court civil filing process in order to facilitate the implementation of electronic filing in civil cases filed in the Circuit Court.)

1. Amend Circuit Court – District Division Rule 1.3(D) ("Attorneys"), as set forth in Appendix H.

2. Amend Circuit Court – District Division Rule 1.3-A(A) ("Pleadings – copies to all parties"), as set forth in Appendix I.

3. Amend Circuit Court – District Division Rule 1.7 ("Argument of Counsel"), as set forth in Appendix J.

4. Amend Circuit Court – District Division Rule 1.8 ("Motions"), as set forth in Appendix K.

5. Delete Circuit Court – District Division Rule 1.9 (“Depositions and Use of videotape depositions”), as set forth in Appendix L.

6. Delete Circuit Court – District Division Rule 1.10 (“Written interrogatories”), as set forth in Appendix M.

7. Amend Circuit Court – District Division Rule 1.21 (“Periodic Payments”), as set forth in Appendix N.

8. Amend Circuit Court – District Division Rule 1.27 (“Dismissal of Cases Pending Without Action”), as set forth in Appendix O.

9. Adopt Circuit Court – District Division Rule 1.28 (“Court Fees”), as set forth in Appendix P.

10. Delete Circuit Court –District Division Rules 3.1-3.28 (“Civil Rules”) in their entirety and replace them with the rules set forth in Appendix Q.

11. Amend Circuit Court – District Division Rule 5.3 (“Entry of Actions”), as set forth in Appendix R.

12. Amend Circuit Court – District Division Rule 5.6 (“Discovery and Continuances”), as set forth in Appendix S.

13. Amend Circuit Court – Probate Division Rule 169 (“Fees”), as set forth in Appendix T.

14. Adopt Circuit Court – Probate Division Rule 173 (“Name Change Actions”), as set forth in Appendix U.

15. Amend Circuit Court – Family Division Rule 1.3 (“Fees”), as set forth in Appendix V.

16. Amend Circuit Court – Family Division Section 9 (“Name Change Actions”), as set forth in Appendix W.

New Hampshire Supreme Court
Advisory Committee on Rules
By: Patrick E. Donovan, Chairperson
and Carolyn A. Koegler, Secretary

April 23, 2019

APPENDIX A

Amend Supreme Court Rule 12-D(3), as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

(3) Non-precedential Status of Orders. An order issued by a 3JX panel shall have no precedential value, but it may, nevertheless, be cited or referenced in pleadings or rulings in any court in this state, so long as it is identified as a non-precedential order **[and so long as it was issued in a non-confidential case; provided, however, that an order]**~~. Such non-precedential orders~~ may be cited and shall be controlling with respect to issues of claim preclusion, law of the case and similar issues involving the parties or facts of the case in which the order was issued. All citations to non-precedential orders shall identify the court, docket number and date.

APPENDIX B

Amend Supreme Court Rule 20(2), as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

(2) Non-precedential Status of Orders. An order disposing of any case that has been briefed but in which no opinion is issued, whether or not oral argument has been held, shall have no precedential value, but it may, nevertheless, be cited or referenced in pleadings or rulings in any court in this state, so long as it is identified as a non-precedential order **[and so long as it was issued in a non-confidential case; provided however, that an order]**~~. Such non-precedential orders~~ may be cited and shall be controlling with respect to issues of claim preclusion, law of the case and similar issues involving the parties or facts of the case in which the order was issued. *See also* Rule 12-D(3). All citations to non-precedential orders shall identify the court, docket number and date.

APPENDIX C

Amend Supreme Court Rule 37(8) as follows (new material is in **[bold and in brackets]**):

(8) *Discovery and Subpoena Power*:

(a) At any stage prior to the filing of a notice of charges, attorneys from the attorney discipline office may issue subpoenas and subpoenas duces tecum to summon witnesses with or without documents.

(b) At any stage after the filing of a notice of charges, attorneys from the attorney discipline office, counsel for respondent attorneys and respondent attorneys representing themselves may issue subpoenas and subpoenas duces tecum to summon witnesses with or without documents, and may conduct additional discovery, including, but not limited to, interrogatories and depositions. Notice of the issuance of any such subpoena shall be served on the opposing party.

[(c) *Access to Court Records*

(1) *General Rule.* At any stage, attorneys from the attorney discipline office may submit a written request seeking access to records relevant to its investigation into a pending disciplinary matter to a clerk of court. If the records requested by the attorney discipline office do not include any confidential documents or confidential information, the clerk shall provide prompt and complete access to the records, and if requested, copies of the relevant documents. If the records requested by the attorney discipline office include any confidential documents or confidential information, the attorney discipline office shall follow the procedures set forth in section (2).

(2) *Access to Confidential Documents and Confidential Information.*

(A) If the attorney discipline office seeks access to confidential or sealed records, the attorney discipline office need not file a motion to intervene, but shall:

(i) file a written request to gain access to the records explaining how the records are relevant in a pending disciplinary action; and

(ii) file a motion to seal along with the written request.

(B) The court shall promptly provide to all of the parties in the underlying court action notice and copies of the written request and motion to seal.

(C) The parties in the underlying court action shall have 10 days from the date of the notice to file a written objection to the disclosure of the requested materials.

(D) If none of the parties in the underlying court action object to the disclosure of the requested materials within 10 days of the filing of the written request and if the production of records pursuant to this rule does not contravene any statutes governing the production of confidential materials, the court may disclose the materials to the attorney discipline office. If none of the parties object but the court nevertheless is disinclined to release the records to the attorney discipline office, the court shall hold a non-public hearing, at which the attorney discipline office must demonstrate good cause for access to the records.

(E) If one or more parties in the underlying court action object to the disclosure of the requested materials, the court shall promptly schedule a non-public hearing, at which the attorney discipline office must demonstrate good cause for access to the records.

(F) *Protective Orders.* Whenever the court discloses records pursuant to this rule, the court shall issue a protective order governing the disclosure and use of the records. The protective order shall provide that:

(i) the attorney discipline office shall not disclose such records to any person except as necessary in connection with the prosecution or defense of the disciplinary matter;

(ii) any person to whom disclosure is made shall acknowledge in writing prior to the disclosure that he or she has been made aware of and agrees to comply with the protective order;

(iii) at the conclusion of the disciplinary proceeding, each party shall return to the attorney discipline office that party's copy of the records, whereupon the attorney discipline office shall destroy said records; and

(iv) thereafter, the attorney discipline office shall submit an affidavit to the court stating that said records have been destroyed. The Court may modify the foregoing terms of a protective order, or impose such additional terms as may be necessary in a particular case.

(G) Any and all confidential documents and confidential information obtained by the attorney discipline office pursuant to this rule shall be subject to a protective order, as set forth in section (F) of this rule, and shall be available to the respondent in a disciplinary matter, to the adjudicatory bodies of the attorney discipline system, and to the attorney discipline office's and respondent's potential or actual witnesses, including those witnesses designated as experts, as part of formal and informal disciplinary proceedings. To the extent confidential documents or confidential information obtained pursuant to this rule are utilized during a disciplinary hearing or other proceeding, such hearing or proceeding shall be closed to the public during any disclosure of, testimony or discussion involving the confidential document or

confidential information. Such confidential records shall otherwise remain sealed and shall not, absent further court order, become part of the public file maintained by the attorney discipline office.]

APPENDIX D

Delete Supreme Court Rule 48-B and replace it with the following:

Rule 48-B. Family Mediator Fees

(1) *Scope*. The provisions of this rule shall apply to proceedings in which the parties participate in court-connected mediation under RSA 461-A:7 and RSA 458:15-c, including reopened cases under either statute.

(2) *Purpose*. This rule outlines how and when parties engaged in mediation pay their mediation fee. This rule also provides guidance for mediators in collecting fees.

(3) *Services*. Mediators shall be paid according to this rule for conducting mediation sessions, drafting mediated agreements, and performing necessary administrative tasks. Administrative tasks may include reviewing the file, screening for domestic violence, scheduling and rescheduling sessions, and communicating before and after mediation with the parties and, if applicable, counsel. Except as provided below, mediators shall not be paid for travel time; see section (7) below for mileage reimbursement.

(4) *Disclosure of Fees*. Before mediation begins, the mediator shall provide the parties a written mediation agreement disclosing both the set fee of $300, which includes the first four hours of mediation services and up to one hour of administrative work related to the mediation, and the hourly fee for any time that exceeds the five hours. This disclosure of both fees shall be prominently displayed. Before mediation may begin, the mediation agreement shall be signed by the parties, the mediator, and if present, counsel.

(5) *Fees.*

(a) *First Four Hours of Mediation.* For court-connected mediation permissible under RSA 461-A:7 and RSA 458:15-c, the fee is $300, and includes the first four hours of mediation services and up to one hour of administrative work related to the mediation. The court may allocate responsibility for the fee between the parties as the court determines.

(i) For a case mediated under RSA 461-A:7, if a party is indigent as defined by administrative order of the Circuit Court, the party qualifies to have the party's mediation fee paid to the mediator from the Fund established by RSA 490-E:4 (the Fund). If the party chooses to accept such assistance, pursuant to RSA 461-A:18, the party is required to repay the fee to the Office of Cost Containment (OCC) after the mediation occurs.

(ii) For a case mediated pursuant to RSA 458:15-c, if a party is indigent, as defined by administrative order of the Circuit Court, the party qualifies to have that party's mediation fee paid to the mediator from the Fund established by RSA 490-E:4.

(iii) If a party is not indigent, or has not completed the necessary steps to receive a determination of indigence from the court, the party is required to pay the mediation fee directly to the mediator.

1. If, after communication between the mediator and a party about a fee owed, the party fails to pay the mediator, the mediator may decline further mediation services.

2. If the mediator does not receive payment after providing services, the mediator may submit to the court a Notice to Court of Nonpayment of Mediator Fee. The court may raise the issue of non-payment at the next hearing with the party.

(b) *Additional Mediation Beyond Four Hours*.

(i) If the mediator believes mediation beyond four hours will benefit the parties, the mediator may propose additional mediation to the parties after three hours of mediation. The mediator shall share the sliding scale with the parties at that time. If both parties want to continue mediation beyond four hours, and at least one party is indigent, the mediator shall contact the Office of Mediation and Arbitration to receive approval. The Office of Mediation and Arbitration will notify the mediator within seven (7) days if another four hours has been approved. If both parties want to continue mediation beyond four hours and neither party is indigent, the mediator has discretion to proceed.

(ii) If additional hours are agreed upon, each party's fee will be determined by the party's individual gross annual income. Each party shall pay the mediator at the hourly rate listed below, unless the court orders one party to pay all or a portion of the other's fees or payments from an asset, as justice requires.

INDIVIDUAL ANNUAL GROSS INCOME	
$ 10,000 and under	$ 15 hour
$ 10,001 – $ 15,000	$ 20 hour
$ 15,001 – $ 20,000	$ 25 hour
$ 20,001 – $ 30,000	$ 35 hour
$ 30,001 – $ 35,000	$ 45 hour
$ 35,001 – $ 40,000	$ 55 hour
$ 40,001 – $ 50,000	$ 65 hour

$ 50,001 – $100,000	$ 75 hour
$ 100,001 and above	$ 100 hour

(iii) If a party is indigent, a party may pay the mediator directly or may qualify to have that party's mediation fee paid to the mediator from the Fund established by RSA 490-E:4. The party would then repay the fee to the OCC after mediation occurs. Mediators shall advise parties who are indigent of both options for payment.

(iv) If a party is not indigent, or has not completed the necessary steps to receive a determination of indigence from the Court, the party is required to pay the mediation fee directly to the mediator.

(6) *Rescheduling, Cancellation, Non-Appearance*.

(a) *Rescheduling*. If a party wishes to reschedule a mediation session, the party must:

1. contact the other side to obtain consent to reschedule from the other party;
2. notify the mediator at least 2 business days before the session; and
3. provide the mediator with dates and times both parties are available.

(b) *Cancellation*. If a party wishes to cancel mediation and not reschedule, the party must contact the mediator at least 2 business days before the session. If the cancellation occurs before the first mediation session, the parties must file a motion with the court requesting to be excused from mediation. If the cancellation occurs after the first session, the mediator shall indicate "Case did not settle," without further comment.

(c) *Non-appearance*. If a party receives notice but does not appear for a scheduled mediation session, or cancels or reschedules the mediation session less than 2 business days before the session, the case may be scheduled for the next court event. The non-appearing party shall pay the mediator a failure-to-appear fee of $120. If neither party appears, each party shall pay the mediator a failure-to-appear free of $60. The mediator has discretion to waive the failure-to-appear fees.

(7) *Mileage*. For the first mediation session, the mediator shall be reimbursed at the current IRS mileage reimbursement rate. No additional mediation sessions are eligible for mileage reimbursement. To receive reimbursement, the mediator shall, within 45 days of accrual, submit to the Office of Mediation and Arbitration a completed mileage form.

APPENDIX E

Amend Supreme Court Rule 57-A as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 57-A. Custody and Return of Documents and Materials Filed In Camera in Trial Courts.

(a) During the time a case is pending in the trial court, all documents and materials filed in camera with the court shall be maintained by the court.

(b) Civil Cases

(1) Upon the final conclusion of a civil case in the trial court, documents and materials filed in camera will be held at the court until such time as the appeal period has expired. At that time, the clerk shall return the documents and materials filed in camera to the individual or organization that furnished them, unless the court orders otherwise.

(2) If an appeal is filed in a civil case, the documents and materials filed in camera shall remain in the custody of the trial court pending resolution of the appeal unless the supreme court orders that they be transferred for purposes of the appeal. Upon receipt of the mandate from the supreme court, and if no further proceedings are required, the trial court clerk shall return the documents and materials filed in camera to the individual or organization that furnished them, unless the court orders otherwise.

(c) Criminal Cases

(1) Upon the final conclusion of a criminal case in the trial court, documents and materials filed in camera will be held at the court as a part of the official court file for a period of ten (10) years after the appeal period in the case has expired. After ten years, the clerk or designee shall destroy the in camera documents unless a written request has been made prior to that date for the records to be retained for an additional specified period. **[In a case in which a defendant has not been convicted on any charge, any person with interest may file a motion with the court requesting that the records filed in camera be destroyed. If the trial court finds that the person of interest has shown good cause why the records should be destroyed, the trial court shall grant the motion.]**

(2) If an appeal is filed in a criminal case, the documents and materials filed in camera shall remain in the custody of the trial court

pending resolution of the appeal unless the supreme court orders that they be transferred for the purposes of the appeal. The trial court clerk shall retain the documents as part of the official court file for a period of ten (10) years from the date of the supreme court mandate. After ten years, the clerk or designee shall destroy the in camera documents unless a written request has been made prior to that date for the records to be retained for an additional specified period.

APPENDIX F

Adopt on a permanent basis amendments to New Hampshire Rule of Criminal Procedure 50 which were adopted on a temporary basis, by court order dated November 5, 2018 (material adopted, effective January 1, 2019 is in **[bold and brackets]**; material deleted, effective January 1, 2019, is in ~~strikethrough~~ format):, as follows:

Rule 50. ~~Access to Confidential Records – Fees and Notice~~ **[Confidential Documents and Confidential Information].**

(a) ***Circuit Court – District Division.*** **Access to Confidential Records – Fees and Notice.]**

Any person or entity not otherwise entitled to access may file a motion or petition to gain access to: (1) a financial affidavit kept confidential under RSA 458:15-b, I; or (2) any other sealed or confidential court record. *See Petition of Keene Sentinel*, 136 N.H. 121 (1992).

Filing Fee: There shall be no filing fee for such a motion or petition.

Notice: In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the clerk.

[(b) ***Superior Court.***

(1) ***Access to Documents.***

(A) ***General Rule.*** **Except as otherwise provided by statute or court rule, all pleadings, attachment to pleadings, exhibits submitted at hearings or trials, and other docket entries (hereinafter referred to collectively as "documents") shall be available for public inspection. This rule shall not apply to confidential or privileged documents submitted to the court for *in camera* review as required by court rule, statute or case law.**

(B) ***Burden of Proof.*** **The burden of proving that a document or a portion of a document should be confidential rests with the party or person seeking confidentiality.**

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

(2) ***Filing a Document Which Is Confidential In Its Entirety.***

(A) The following provisions govern a party's obligations when filing a "confidential document" as defined in this rule. 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 the document.

(B) A confidential document shall not be included in a pleading if it is neither required for filing nor material to the proceeding. If the confidential document is required or is material to the proceeding, the party must file the confidential document in the manner prescribed by this rule.

(C) A party filing a confidential document must also file a separate motion to seal pursuant to subsection (b)(4) of this rule.

(D) 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 pursuant to subsection (b)(5) of this rule.

(3) ***Documents Containing Confidential Information.***

(A) The following provisions govern a party's obligations when filing a document containing "confidential information" as defined in this rule. If a document is confidential in its entirety, as defined in subsection (b)(2) of this rule, the party must follow the procedures for filing a confidential document set forth in subsection (b)(2).

(B) "Confidential Information" means:

(i) 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

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

(a) the privacy interests of an individual; or

(b) the business, financial, or commercial interests of an individual or entity; or

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

(iii) 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.

(C) The following is a non-exhaustive list of the type of information that should ordinarily be treated as "confidential information" under this rule:

(i) 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

(ii) 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

(iii) 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 criminal cases), 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.

(D) *Filing Documents Containing Confidential Information.*

(i) 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 submitted to the court the party must clearly indicate on the document that the document has been redacted or information has been omitted pursuant to Rule 50(b)(3)(D)(i).

(ii) 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 clerk or court staff to review documents filed by a party to determine whether appropriate omissions or redactions have been made.

(iii) 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 file:

(a) a motion to seal as provided in section (b)(4) of this rule;

(b) for inclusion in the public file, the document with the confidential information redacted by blocking out the text or using some other method to clearly delineate the redactions; and

(d) an unredacted version of the document clearly marked as confidential.

(4) *Motions to Seal.*

(A) No confidential document or document containing confidential information shall be filed under seal unless accompanied by a separate motion to seal consistent with this rule. In other words, labeling a document as "confidential" or "under seal" or requesting the court to seal a pleading in the prayers for relief without a separate motion to seal filed pursuant to this rule will result in the document being filed as part of the public record in the case.

(B) A motion to seal a confidential document or a document containing confidential information shall state the authority for the confidentiality, *i.e.*, the statute, case law, administrative order or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. An agreement of the parties that a document is confidential or contains confidential information is not a sufficient basis alone to seal the record.

(C) The motion to seal shall specifically set forth the duration the party requests that the document remain under seal.

(D) Upon filing of the motion to seal with a confidential document or the unredacted version of a document, the confidential document or unredacted document shall be kept confidential pending a ruling on the motion.

(E) The motion to seal shall itself automatically be placed under seal without separate motion in order to facilitate specific arguments about why the party is seeking to maintain the confidentiality of the document or confidential information.

(F) 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. The order shall include the duration that the confidential document or document containing confidential information shall remain under seal.

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

(H) If the court determines that the document is not confidential, any party or person with standing shall have 10 days from the date of the clerk's notice of the decision to file a motion to reconsider or a motion for interlocutory appeal to the supreme court. The document shall remain under seal pending ruling on a timely motion. The court may issue additional orders as necessary to preserve the confidentiality of a document pending a final ruling or appeal of an order to unseal.

(5) ***Procedure for Seeking Access to a Document or Information Contained in A Document that has been Determined to be Confidential***

(A) Any person who seeks access to a document or portion of a document that has been determined to be confidential shall file a motion with the court requesting access to the document in question. There shall be no filing fee for such a motion.

(B) The person filing a motion to unseal shall have the burden to establish that notice of the motion to unseal was provided to all parties and other persons with standing in the case. If the person filing the motion to unseal cannot provide actual notice of the motion to all interested parties and persons, then the moving person shall demonstrate that he or she exhausted reasonable efforts to provide such notice. Failure to effect actual notice shall not alone be grounds to deny a motion to unseal where the moving party has exhausted reasonable efforts to provide notice.

(C) The Court shall examine the document in question together with the motion to unseal and any objections thereto to determine whether there is a basis for nondisclosure and, if necessary, hold a hearing thereon.

(D) An order shall be issued setting forth the court's ruling on the motion, which shall be made public. In the event that the court determines that the document or information contained in the document is confidential, the order shall include findings of fact and rulings of law that support the decision of nondisclosure.

(E) If the court determines that the document or information contained in the document is not confidential, the court shall not make the record public for 10 days from the date of the clerk's notice of the decision in order to give any party or person with standing aggrieved by the decision time to file a motion to reconsider or appeal to the supreme court.

(6) *Sanctions for Disclosure of Confidential Information.*

If a party knowingly publicly files documents that contain or disclose confidential information in violation of these rules, the court may, upon its own motion or that of any other party or affected person, impose sanctions against the filing party.

Comment

These provisions are intended to ensure that confidential documents and 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).]

APPENDIX G

Amend New Hampshire Rule of Criminal Procedure 50 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 50. Confidential Documents and Confidential Information.

~~(a) *Circuit Court – District Division.* Access to Confidential Records – Fees and Notice.~~

~~Any person or entity not otherwise entitled to access may file a motion or petition to gain access to: (1) a financial affidavit kept confidential under RSA 458:15 b, I; or (2) any other sealed or confidential court record. *See Petition of Keene Sentinel*, 136 N.H. 121 (1992).~~

~~**Filing Fee:** There shall be no filing fee for such a motion or petition.~~

~~**Notice:** In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the clerk.~~

~~(b) *Superior Court.*~~

~~(1)~~ **[(a)]** *Access to Documents*.

~~(A)~~**[(1)]** *General Rule*. Except as otherwise provided by statute or court rule, all pleadings, attachment to pleadings, exhibits submitted at hearings or trials, and other docket entries (hereinafter referred to collectively as "documents") shall be available for public inspection. This rule shall not apply to confidential or privileged documents submitted to the court for *in camera* review as required by court rule, statute or case law.

~~(B)~~**[(2)]** *Burden of Proof*. The burden of proving that a document or a portion of a document should be confidential rests with the party or person seeking confidentiality.

~~(C)~~**[(3)]** The following provisions govern a party's obligations when electronically filing a "confidential document" or documents containing "confidential information" as defined in this rule.

(2)**[(b)]** *Filing a Document Which Is Confidential In Its Entirety*.

~~(A)~~**[(1)]** The following provisions govern a party's obligations when filing a "confidential document" as defined in this rule. 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 the document.

~~(B)~~**[(2)]** A confidential document shall not be included in a pleading if it is neither required for filing nor material to the proceeding. If the confidential document is required or is material to the proceeding, the party must file the confidential document in the manner prescribed by this rule.

~~(C)~~**[(3)]** A party filing a confidential document must also file a separate motion to seal pursuant to subsection ~~(b)(4)~~ **[(d)]** of this rule.

~~(D)~~**[(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 pursuant to subsection ~~(b)(5)~~ **[(f)]** of this rule.

~~(3)~~**[(c)]** *Documents Containing Confidential Information.*

~~(A)~~**[(1)]** The following provisions govern a party's obligations when filing a document containing "confidential information" as defined in this rule. If a document is confidential in its entirety, as defined in subsection (b)~~(2)~~ of this rule, the party must follow the procedures for filing a confidential document set forth in subsection (b)~~(2)~~.

~~(B)~~**[(2)]** "Confidential Information" means:

~~(i)~~**[(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

~~(ii)~~**[(B)]** Information which, if publicly disclosed, would substantially impair:

~~(a)~~**[(i)]** the privacy interests of an individual; or

~~(b)~~**[(ii)** the business, financial, or commercial interests of an individual or entity; or

~~(c)~~**[(iii)]** the right to a fair adjudication of the case; or

~~(iii)~~**[(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.

~~(C)~~**[(3)]** The following is a non-exhaustive list of the type of information that should ordinarily be treated as "confidential information" under this rule:

~~(i)~~**[(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

~~(ii)~~**[(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

~~(iii)~~**[(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 criminal cases), 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.

~~(D)~~ **[(4)]** *Filing Documents Containing Confidential Information.*

~~(i)~~**[(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 submitted to the court the party must clearly indicate on the document that the document has been redacted or information has been omitted pursuant to Rule 50~~(b)(3)(D)(i)~~**[(c)(4)(A)]**.

~~(ii)~~**[(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 clerk or court staff to review documents filed by a party to determine whether appropriate omissions or redactions have been made.

~~(iii)~~**[(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 file:

~~(a)~~**[(i)]** a motion to seal as provided in section ~~(b)(4)~~**[(d)]** of this rule;

~~(b)~~**[(ii)]** for inclusion in the public file, the document with the confidential information redacted by blocking out the text or using some other method to clearly delineate the redactions; and

~~(c)~~**[(iii)]** an unredacted version of the document clearly marked as confidential.

~~(4)~~**[(d)]** *Motions to Seal.*

~~(A)~~**[(1)]** No confidential document or document containing confidential information shall be filed under seal unless accompanied by a separate motion to seal consistent with this rule. In other words, labeling a document as "confidential" or "under seal" or requesting the court to seal a pleading in the prayers for relief without a separate motion to seal filed pursuant to this rule will result in the document being filed as part of the public record in the case.

~~(B)~~**[(2)]** A motion to seal a confidential document or a document containing confidential information shall state the authority for the confidentiality, *i.e.*, the statute, case law, administrative order or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. An agreement of the parties that a document is confidential or contains confidential information is not a sufficient basis alone to seal the record.

~~(C)~~**[(3)]** The motion to seal shall specifically set forth the duration the party requests that the document remain under seal.

~~(D)~~**[(4)]** Upon filing of the motion to seal with a confidential document or the unredacted version of a document, the confidential document or unredacted document shall be kept confidential pending a ruling on the motion.

~~(E)~~**[(5)]** The motion to seal shall itself automatically be placed under seal without separate motion in order to facilitate specific arguments about why the party is seeking to maintain the confidentiality of the document or confidential information.

~~(F)~~**[(6)]** 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. The order shall include the duration that the confidential document or document containing confidential information shall remain under seal.

~~(G)~~**[(7)]** A party or person with standing may move to seal or redact confidential documents or confidential information that is contained or disclosed in the party's own filing or the filing of any other party and may request an immediate order to seal the document pending the court's ruling on the motion.

~~(H)~~**[(8)]** If the court determines that the document is not confidential, any party or person with standing shall have 10 days from the date of the clerk's notice of the decision to file a motion to reconsider or a motion for interlocutory appeal to the supreme court. The document shall remain under seal pending ruling on a timely motion. The court may issue additional orders as necessary to preserve the confidentiality of a document pending a final ruling or appeal of an order to unseal.

~~(5)~~**[(e)]** *Procedure for Seeking Access to a Document or Information Contained in A Document that has been Determined to be Confidential*

~~(A)~~**[(1)]** Any person who seeks access to a document or portion of a document that has been determined to be confidential shall file a motion with the court requesting access to the document in question. There shall be no filing fee for such a motion.

~~(B)~~**[(2)]** The person filing a motion to unseal shall have the burden to establish that notice of the motion to unseal was provided to all parties and other persons with standing in the case. If the person filing the motion to unseal cannot provide actual notice of the motion to all interested parties and persons, then the moving person shall demonstrate that he or she exhausted reasonable efforts to provide such notice. Failure to effect actual notice shall not alone be grounds to deny a motion to unseal where the moving party has exhausted reasonable efforts to provide notice.

~~(C)~~**[(3)]** The Court shall examine the document in question together with the motion to unseal and any objections thereto to determine whether there is a basis for nondisclosure and, if necessary, hold a hearing thereon.

~~(D)~~**[(4)]** An order shall be issued setting forth the court's ruling on the motion, which shall be made public. In the event that the court determines that the document or information contained in the document is confidential, the order shall include findings of fact and rulings of law that support the decision of nondisclosure.

~~(E)~~**[(5)]** If the court determines that the document or information contained in the document is not confidential, the court shall not make the record public for 10 days from the date of the clerk's notice of the decision in order to give any party or person with standing aggrieved by the decision time to file a motion to reconsider or appeal to the supreme court.

~~(6)~~**[(f)]** *Sanctions for Disclosure of Confidential Information.*

If a party knowingly publicly files documents that contain or disclose confidential information in violation of these rules, the court may, upon its own motion or that of any other party or affected person, impose sanctions against the filing party.

Comment

These provisions are intended to ensure that confidential documents and 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).

APPENDIX H

Amend Circuit Court – District Division Rule 1.3(D)("Attorneys") (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format) as follows:

D. (1) ~~In all cases other than small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, no person who is not a lawyer will be permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, unless of good character and until there is on file with the Clerk: (1) a power of attorney signed by the party for whom he or she seeks to appear and witnessed and acknowledged before a Justice of the Peace or Notary Public, constituting said person his or her attorney to appear in the particular action; and (2) an affidavit under oath in which said person discloses (a) all of said person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (b) all instances in which said person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, (c) all prior proceedings in which said person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court, (d) all prior proceedings in which said person has not been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court, and (e) all prior proceedings in which said person's permission to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court has been revoked. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.~~

~~In small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, n~~**[N]**o person who is not a lawyer will be permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, unless of good character and until there is on file with the Clerk: (1) a valid authorizing document constituting said person his or her attorney to appear in the particular action; and (2) a written statement in which said

person discloses (a) all of said person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (b) all instances in which said person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, (c) all prior proceedings in which said person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court, (d) all prior proceedings in which said person has not been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court, and (e) all prior proceedings in which said person's permission to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court has been revoked. This statement shall be signed and shall indicate the person's understanding that making a false statement in the pleading may subject that person to criminal penalties. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

(2) *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 District Court Rule 1.3(E) shall apply to every pleading and motion signed by the limited representation attorney. An attorney who has filed a limited appearance, and who later files a pleading or motion 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 writ, petition, counterclaim, cross-claim or any amendment thereto which 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.

APPENDIX I

Amend Circuit Court – District Division Rule 1.3-A(A)("Pleadings – copies to all parties) (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format) as follows:

(A) Copies of all pleadings filed and communications addressed to the Court shall be furnished forthwith to all other counsel or to the opposing party if ~~appearing pro se~~ **[self-represented]**. When an attorney has filed a limited appearance under Rule 1.3.D.(2) on behalf of an opposing party, copies of pleadings filed and communications addressed to the Court shall be furnished both to the opposing party who is receiving the limited representation and to the limited representation attorney. After the limited representation attorney files that attorney's "withdrawal of limited appearance" form, as provided in Rule 1.3.I.(2), no further service need be made upon that attorney. All such pleadings or communications shall contain a statement of compliance herewith.

APPENDIX J

Amend Circuit Court – District Division Rule 1.7 ("Argument of Counsel") (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format) as follows:

Rule 1.7. Argument of counsel.

~~A.~~ Each party shall be allowed such time for argument as the Court shall order. The defendant shall argue first. The plaintiff, or the prosecutor in criminal cases, shall argue last.

~~B. In civil cases, unless otherwise ordered for good cause shown, all requests for findings and rulings and written memoranda of law must he submitted to the Presiding Justice no later than the close of evidence.~~

In criminal cases where the defendant has moved that certain evidence be suppressed, requests for findings of fact and rulings of law, and memoranda must be submitted to the Presiding Justice at the close of the hearing on said motion. The Presiding Justice will make sufficient findings and rulings to permit meaningful appellate review.

APPENDIX K

Amend Circuit Court – District Division Rule 1.8 ("Motions") (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format) as follows:

Rule 1.8. Motions.

A. Any request for action by the Court shall be by motion. All motions, other than those made during trial or hearing, shall be made in writing unless otherwise provided by these rules. They shall state with particularity the grounds upon which they are made and shall set forth the relief or order sought.

B. ~~In any case, other than small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, *see* http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm the Court will not hear any motion grounded upon facts unless they are verified by affidavit, or are apparent from the record or from the papers on file in the case, or are agreed to and stated in writing signed by the parties or their attorneys; and the same rule will be applied as to all facts relied on in opposing any motion.~~

~~In small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, *see* http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, t~~**[T]**he Court will not hear any motion grounded upon facts, unless the moving party indicates in writing an understanding that making a false statement in the pleading may subject that party to criminal penalties, or the facts are apparent from the record or from the papers on file in the case, or are agreed to and stated in writing signed by the parties or their attorneys; and the same rule will be applied as to all facts relied on in opposing any motion.

C. Any party filing a motion shall certify to the Court that a good faith attempt to obtain concurrence in the relief sought has been made, except in the case of dispositive motions, motions for contempt or sanctions, or comparable motions where it can be reasonably assumed that the party or counsel will be unable to obtain concurrence.

D. In any case, other than small claims cases ~~filed in district division locations in which the electronic filing pilot program has been implemented, *see* http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm~~, unless

the opposing party requests a hearing upon any motion and sets forth the grounds of the objection by a pleading and, if required, an affidavit within ten days after the filing of the motion, that party shall be deemed to have waived a hearing and the court may act thereon.

In small claims cases ~~filed in district division locations in which the electronic filing pilot program has been implemented, *see* http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm~~, unless the opposing party requests a hearing upon any motion and sets forth the grounds of the objection by a pleading and, if required, a written statement indicating an understanding that making a false statement in the pleading may subject that party to criminal penalties, within ten days after the filing of the motion, that party shall be deemed to have waived a hearing and the court may act thereon.

E. Any motion which is capable of determination without the trial of the general issue shall be raised before trial, but may, in the discretion of the Court, be heard during trial.

F. The Court may assess reasonable costs, including reasonable counsel fees, against any party whose frivolous or unreasonable conduct makes necessary the filing of or hearing on any motion.

~~G. Motions to dismiss will not be heard prior to the trial on the merits, unless counsel shall request a prior hearing, stating the grounds therefor; all counsel shall be prepared, at any such hearing, to present all necessary evidence.~~

[G. *Motions to Dismiss.* Upon request of a party, hearings on motions to dismiss shall be scheduled as soon as practicable, but no later than 30 days prior to the date set for trial on the merits, unless the court shall otherwise order in the exercise of discretion. All parties shall be prepared, at any such hearing, to present all necessary arguments.

H. *Motions to Recuse.* All grounds for recusal that are known or should reasonably be known prior to trial or hearing shall be incorporated in a written motion for recusal and filed promptly with the court. Grounds for recusal that first become apparent at the time of or during the hearing shall be immediately brought to the attention of the court. Failure to raise a ground for recusal shall constitute a waiver as specified herein of the right to request recusal on such ground. If a record of the proceedings is not available, the court shall make a record of the request, the court's findings, and its order. The court's ruling on the motion shall issue promptly. If the motion is denied, the court's ruling shall be

supported by findings of fact with respect to the allegations contained in the motion.

I. *Motions to Reconsider*. A party intending to file a motion for reconsideration or to request other post-decision relief shall do so within 10 days of the date on the written Notice of the order or decision, which shall be mailed or electronically delivered by the clerk on the date of the Notice. The Motion shall state, with particular clarity, points of law or fact that the court has overlooked or misapprehended and shall contain such argument in support of the Motion as the movant desires to present; but the motion shall not exceed 10 pages. To preserve issues for an appeal to the Supreme Court, an appellant must have given the court the opportunity to consider such issues; thus, to the extent that the court, in its decision, addresses matters not previously raised in the case, a party must identify any alleged errors concerning those matters in a motion under this rule to preserve such issues for appeal. A hearing on the motion shall not be permitted except by order of the court.

(1) No Answer or Objection to a Motion for Reconsideration or other post-decision relief shall be required unless ordered by the court.

(2) If a Motion for Reconsideration or other post-decision relief is granted, the court may revise its order or take other appropriate action without rehearing or may schedule a further hearing.

(3) The filing of a motion for reconsideration or other post-decision relief shall not stay any order of the court unless, upon specific written request, the court has ordered such a stay.]

J. No filing which is contained in a letter, will be accepted by the clerk, as such, or acted on by the court. All pleadings, motions, objections and forms filed shall be in the format of 8 1/2 x 11 inch documents either typewritten or printed double spaced, on one side of the paper, so they are clearly legible.

K. All pleadings, motions and objections shall set forth the factual allegations in numbered paragraphs.

L. No attorney, non-attorney representative or party to litigation shall directly address himself or herself by pleading, motion, or objection to any judge but shall file such pleading, motion, or objection with the clerk.

M. All motions must contain the word "Motion" in the title. Filers shall not combine multiple motions seeking separate and distinct relief into a single filing. Separate motions must be filed. Objections to pending motions and affirmative motions for relief shall not be combined in one filing.

N. The court may in all cases order either party to plead and also to file a statement in sufficient detail to give to the adverse party and to the Court reasonable knowledge of the nature and grounds of the action or defense.

O. Documents shall not be withdrawn from the court files except by leave of court and upon the filing of a receipt therefor.]

APPENDIX L

Delete Circuit Court – District Division Rule 1.9 ("Depositions and Use of videotape depositions") as follows:

~~Rule 1.9. Depositions and use of video tape depositions.~~

~~A. No notice to the adverse party of the taking of depositions shall be deemed reasonable unless served at least three days, exclusive of the day of service and the day of caption, before the day on which they are to be taken. Provided, however, that twenty days' notice shall be deemed reasonable in all cases, unless otherwise ordered by the Court. No deposition shall be taken within twenty days after service of the writ or bill, except by agreement or by leave of Court for good cause shown.~~

~~B. Depositions may not be taken within thirty days of scheduled trial date.~~

~~C. The petition of a party seeking to take a deposition within the State shall contain the name of the stenographer proposed to record the testimony. Failure to object in writing to the stenographer within five days of the filing of the petition for depositions shall be deemed agreement to the use of the stenographer proposed in the petition.~~

~~D. Where the statute requires notice of the taking of depositions to be given to the adverse party, it may be served on such party, or served in hand on the attorney of record of such party. In cases where the action is in the name of a nominal party, and the writ or docket discloses the real party in interest, service shall be made on the party in interest, or in hand on the attorney of record of such party. If a subpoena duces tecum is to be served on the deponent, the notice to the adverse party must be served before service of the subpoena, and the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment.~~

~~E. The interrogatories shall be put by the attorneys and the interrogatories and answers shall be taken in shorthand or other form of verbatim reporting approved by the Court and transcribed by a competent stenographer agreed upon by the parties or their attorneys present at the deposition. In the absence of such agreement, the stenographer shall be designated by the Court.~~

~~No deposition, as transcribed, shall be changed or altered, but any alleged errors may be set forth in a separate document attached to the original and copies.~~

~~The magistrate shall cause to be noted any objection to any interrogatory or answer without deciding its competency. If complaint is made of interference~~

~~with any witness, the magistrate shall cause such complaint to be noted, and shall certify the correctness or incorrectness thereof in the caption.~~

~~Upon motion, the Court may order the filing of depositions, and, upon failure to comply with such order, the Court may take such action as justice may require.~~

~~F. In civil actions, the signature of a person outside the State, acting as an officer legally empowered to take depositions or affidavits, with a seal affixed, where one is required, to the certificate of an oath administered in the taking of affidavits or depositions, will be prima facie evidence of authority to act.~~

~~G. The deponent, on deposition or on written interrogatory, shall ordinarily be required to answer all questions not subject to privilege or excused by the statute relating to depositions, and it is not grounds for refusal to answer a particular question that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence and does not violate any privilege.~~

~~If any deponent refuses to answer any question propounded on deposition, or any party fails or refuses to answer any written interrogatory authorized by these rules, or fails to comply within twenty days after written request to make discovery or permit inspection, the party propounding the question or making the request may, upon notice to all persons affected thereby, apply by motion to the Court for an order compelling an answer, discovery or inspection. If the motion is granted, and if the Court finds that the refusal was without substantial justification or was frivolous or unreasonable, the Court may, and ordinarily will, require the refusing party or deponent and the party or attorney advising the refusal, or either of them, to pay the examining or requesting party the reasonable expenses incurred in obtaining the order, including reasonable counsel fees.~~

~~If the motion is denied and if the Court finds that the motion was made without substantial justification or was frivolous or unreasonable, the Court may, and ordinarily will, require the examining or requesting party or the attorney advising the motion, or both of them, to pay to the refusing party or witness the reasonable expenses incurred in opposing the motion, including reasonable counsel fees.~~

~~H. The Court, within its discretion, with the agreement of all counsel participating in the trial, may allow the use of video tape depositions. At the commencement of the video tape deposition, counsel representing the deponent should state whose deposition it is, what case it is being taken for, where it is being taken, who the lawyers are that will be asking the questions, and the date and the time of the deposition. Care should be taken to have the witnesses speak slowly and distinctly and that papers be readily available for reference~~

~~without undue delay and unnecessary noise. Counsel and witnesses shall conduct themselves at all times as if they were actually in the courtroom.~~

~~If any problem arises as to the admissibility or inadmissibility of evidence, this should be handled in the same manner as written depositions.~~

APPENDIX M

Delete Circuit Court – District Division Rule 1.10 ("Written interrogatories") as follows:

~~Rule 1.10. Written interrogatories.~~

~~A. Any party desiring to obtain answers to written interrogatories from an adverse party shall deliver a copy thereof, by mail or in hand, to the adverse party or counsel to be answered by the adverse party, or, if the adverse party is a public or private corporation or a partnership or an association, by any officer or agent, who shall furnish such information as is available to the adverse party. Interrogatories may be delivered at any time after service of the action. The interrogatories shall be answered separately and fully in writing, under oath, and signed by the person making such answers. The party, upon whom the interrogatories have been served, shall deliver the original and a copy of his answers, by mail or in hand, to the party or counsel submitting the interrogatories within thirty days, unless the parties agree otherwise, or unless the Court, on motion and notice for good cause shown, enlarges or shortens the time. The parties may agree to transmit interrogatories electronically or by computer disk, enabling the answering party to provide answers directly after each separate question using the party's available word processing technology.~~

~~B. If the party upon whom interrogatories have been served shall fail to answer said interrogatories within thirty days, unless written objection to the answering of said interrogatories is filed within that period, then the party submitting the interrogatories may inform the Court and the Court shall make such orders as justice requires including the entry of a conditional default.~~

~~C. Repealed.~~

~~D. A party may file more than one set of interrogatories to an adverse party, but the total number of interrogatories shall not exceed thirty, unless the Court otherwise orders for good cause shown after the proposed additional interrogatories have been filed. In determining what constitutes an interrogatory for the purpose of applying this limitation in number, it is intended that each question be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another question, and however the questions may be grouped, combined or arranged.~~

~~E. The adverse party shall have the same privileges in answering written interrogatories as the deponent in the taking of a deposition, and such interrogatories may be used at the trial to the same extent as depositions.~~

~~F. Written interrogatories shall not be used in criminal cases except by leave of court for good cause shown.~~

~~G. Any party propounding interrogatories shall provide the opponent with notice, substantially as set forth in the following form, of the obligation to answer said interrogatories within thirty days. The notice shall be at the top of the first page and printed in capital, typewritten letters or in ten-point, bold-face print. The form of the notice in substance shall be as follows:~~

~~THESE INTERROGATORIES ARE PROPOUNDED IN ACCORDANCE WITH DISTRICT DIVISION RULE 1.10. YOU MUST ANSWER EACH QUESTION SEPARATELY AND FULLY IN WRITING AND UNDER OATH. YOU MUST RETURN THE ORIGINAL AND ONE COPY OF YOUR ANSWERS WITHIN THIRTY (30) DAYS OF THE DATE YOU RECEIVED THEM TO THE PARTY OR COUNSEL WHO SERVED THEM UPON YOU. IF YOU OBJECT TO ANY QUESTION, YOU MUST NOTE YOUR OBJECTION AND STATE THE REASON THEREFOR. IF YOU FAIL TO RETURN YOUR ANSWERS WITHIN THIRTY (30) DAYS, THE PARTY WHO SERVED THEM UPON YOU MAY INFORM THE COURT, AND THE COURT SHALL MAKE SUCH ORDERS AS JUSTICE REQUIRES, INCLUDING THE ENTRY OF A CONDITIONAL DEFAULT AGAINST YOU.~~

APPENDIX N

Amend Circuit Court – District Division Rule 1.21 ("Periodic Payments") (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format) as follows:

Rule 1.21. Periodic Payments.

(1) A judgment creditor who seeks an order for periodic payments under RSA 524:6-a shall file a Motion for Periodic Payments, setting out specific grounds for relief. An unsatisfied execution is not required as a prerequisite for such a motion. Such a motion shall be made orally in court if the defendant is present when the verdict or judgment is awarded; in which case, the court shall conduct a hearing, pursuant to subdivision (3).

Comment

A "Motion for Periodic Payments" form that may be used to comply with this paragraph is available at the clerk's office of any Circuit Court and on the Judicial Branch website at http://www.courts.state.nh.us/district/forms/allforms.htm#civil

(2) Upon the filing of a written motion under subdivision (1), a notice of hearing will issue, requiring the judgment debtor to appear at a time and date named therein and to submit to an examination relative to the judgment debtor's property and ability to pay the judgment. The judgment creditor shall cause the notice of hearing to be served either in-hand or by certified mail, restricted delivery, return receipt requested. If the judgment creditor elects to serve the notice of hearing by certified mail, restricted delivery, return receipt requested, and if the return receipt is returned without indication that the notice of hearing has been properly served, then in-hand service shall be required.

(3) On hearing, the judgment debtor may be required to submit ~~an affidavit which conforms to the Affidavit~~ **[a Statement of]** of Assets and Liabilities**[, which shall be confidential as to non-parties,]** ~~form~~ and may be examined under oath as to the judgment debtor's property and ability to pay the judgment. Either party may introduce oral and written evidence as the court deems relevant. Technical rules of evidence do not apply.

Comment

The "~~Affidavit~~ **[Statement]** of Assets and Liabilities" form referred to in this paragraph is available at the clerk's office of any Circuit Court and on the Judicial Branch website at
http://www.courts.state.nh.us/district/forms/allforms.htm#civil

(4) If the judgment debtor fails to appear at the hearing, the court may proceed, and orders may be made in the judgment debtor's absence or an order for arrest may be issued. Attendance by the plaintiff or plaintiff's counsel ~~shall not be required unless ordered by the court.~~**[is required unless excused by the court.]**

(5) If the court is satisfied that the judgment debtor has property not exempt from attachment or execution, the court may order the property to be produced or so much thereof as may be sufficient to satisfy the judgment and cost of the proceedings so it may be taken on execution. If the judgment debtor is able to make periodic payments on the judgment, the court may, after allowing the judgment debtor an appropriate amount for support and support of the judgment debtor's family, if any, order the judgment debtor to make such periodic payments as are deemed as appropriate. The court may order a combination of the foregoing.

(6) The court may prescribe the times, places, amounts of payments and other details in making any order. The court may at any time review, revise, modify, suspend or revoke any order. Failure to obey any lawful order of the court without just cause shall constitute a contempt of court. Contempt proceedings may be initiated by the judgment creditor by motion or ~~Affidavit of Noncompliance~~ **[Motion for Contempt for Non-Compliance with Payment Order]** and will result in the issuance of an order of notice to appear before the court to show cause why the defendant should not be held in contempt of court. The judgment creditor shall cause the order of notice to be served either in-hand or by certified mail, restricted delivery, return receipt requested. If the judgment creditor elects to serve the order of notice by certified mail, restricted delivery, return receipt requested, and if the return receipt is returned without indication that the order of notice has been properly served, then in-hand service shall be required.

Comment

A~~n~~ **[Motion for Contempt for Non-Compliance with Payment Order]** ~~"Affidavit of Noncompliance"~~ form that may be used to comply with this paragraph is available at the clerk's office of any Circuit Court and on the Judicial Branch website at
http://www.courts.state.nh.us/district/forms/allforms.htm#civil

(7) At the contempt hearing following an order to show cause, the court may require an investigation by probation or other appropriate agency. The court, after hearing, may find the defendant in contempt and may make such orders as are appropriate, including a commitment to the house of correction until contempt is discharged.

(8) A sentence for contempt shall not end the proceedings nor satisfy any order for periodic payments. Future violations of the order on which the sentence was founded may likewise be dealt with as a contempt.

(9) If a motion for periodic payments is denied for want of property or ability to pay, the judgment creditor shall not file another motion against the same debtor upon the same judgment within three months unless the court otherwise allows for good cause.

(10) All costs and fees incurred by the plaintiff in carrying out the provisions of this rule shall be paid by the defendant.

APPENDIX O

Amend Circuit Court – District Division Rule 1.27 ("Dismissal of cases pending without action") (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format) as follows:

Rule 1.27. Dismissal of Cases Pending Without Action

With the exception of a case which has been accepted for appeal by the New Hampshire Supreme Court, any non-criminal matter which has been pending without action for ~~two~~ **[three]** calendar years from the date of the last court action may be dismissed by the court. Thirty days prior to dismissal the court shall send a notice of the pending dismissal to the last known address of all parties and counsel of record. A case may be considered "pending without action" in the following circumstances:

1. No court hearing has been scheduled or requested;
2. No pleadings are pending before the court;
3. No judgment has been entered in the case; and
4. No court order has been issued to stay the case.

APPENDIX P

Adopt Circuit Court – District Division Rule 1.28 ("Court fees") as 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

(B) General and Miscellaneous

Motion for Periodic Payments	$ 25.00
Petition to annul criminal record (does not include Petition to Annul record of arrest only for which there is no fee)	$ 125.00
Original writ	$ 1.00
Writ of Execution	$ 40.00
Petition/Motion for Ex Parte Attachment, or Writ of Trustee Process	$ 40.00
Reissued Orders of Notice	$ 25.00
Application to Appear *Pro Hac Vice*	$ 250.00

(C) Certificates & Copies

Certificate of Judgment	$ 10.00
Exemplification of Judgment	$ 40.00
Certified Copies	$ 10.00

All copied material (except transcripts)	$ .50/page
Printing from court kiosks and computer screen printouts	$ .25/page

(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.

(III) Records Research Fees

(A) Records Research Fees. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of $20 per name will be assessed per name for up to 5 names. Additional names will be assessed $5 per name. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.

(B) The Clerk may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.

(IV) Electronic Case Filing Surcharge

(A) The sum of $20.00 shall be added to each civil filing fee set forth in paragraph I(A)(1) above.

(B) The sum of $10.00 shall be added to each filing fee set forth in paragraph I(A)(2) above, with the exception of the small claim transfer fee.

Note: The electronic case filing surcharge is not an entry fee subject to the escrow fund for court facility improvements or the judicial branch information technology fund. All revenue from the electronic case filing surcharge shall be deposited into the general fund to partly offset capital fund expenditures for the NH e-Court Project.

APPENDIX Q

Delete Circuit Court – District Division Rules 3.1-3.28 ("Civil Rules")

in their entirety and replace them with the following:

CIVIL RULES

I. GENERAL PRINCIPLES

Rule 3.1. Scope, Purpose, Enforcement, Waiver and Substantial Rights

(a) These rules govern the procedure in New Hampshire circuit court in all civil actions in which money damages are sought, excluding small claims and those actions which are subject to specific procedures established by statute. In all cases that involve a statutory reference to a "return day," the Answer and Appearance deadline shall be considered the "return day."

(b) The rules shall be construed and administered to secure the just, speedy, and cost-effective determination of every action.

(c) Upon the violation of any of these rules, the court may take such action as justice requires, which action may include, without limitation, the imposition of monetary sanctions against either counsel or a party, fines to be paid to the court, and reasonable attorney's fees and costs to be paid to the opposing party.

(d) As good cause appears and as justice may require, the court may waive the application of any rule except where precluded by law.

(e) A plain error that affects substantial rights may be considered and corrected by the court of its own initiative or on the motion of any party.

(f) The clerk may refuse to accept, by notification in writing, any filing that the clerk determines does not comply with these rules. In the event an objection is made to such determination, a written motion may be made to the court to rule on such determination. The written notification shall state: (1) all the reasons why the filing is not being accepted; and (2) that in the event the filing party objects to such determination, a written motion shall be made to the court to rule on such determination within 15 days of the date of the notification.

Rule 3.2 Computation of time

See Rule 1.1A.

Rule 3.3 Filing and Service

See Rule 1.3A.

II. COMMENCEMENT OF ACTION

Rule 3.4. Preliminary Process

(a) To initiate a civil action for monetary damages which is not filed as a small claim pursuant to RSA 503, the plaintiff files with the court: (i) the Complaint; (ii) an Appearance (indicating the plaintiff's representative by name, address, email address, telephone number, and New Hampshire Bar Association identification number); and (iii) either the filing fee or a motion to waive the filing fee. *See* Rule 1.28. For purposes of complying with the statute of limitations or analogous time limit, an action shall be deemed commenced on the date the Complaint is filed.

(b) Upon receipt of the Complaint and, if the filing fee is not waived, the filing fee, the court will process the action and provide plaintiff with the completed Summons for service. The Summons will identify: (i) the date the Complaint is filed; (ii) the court-ordered deadline for service; and (iii) a hearing date, if appropriate. Plaintiff will cause the Summons together with a copy of the Complaint to be served on defendant no later than the court-ordered deadline for service, service to be made as specified in RSA 510, or as otherwise allowed by law. Proof of service shall be filed with the court within 21 days of the court-ordered deadline for service. If a defendant is not served within the court-ordered deadline for service, the court shall dismiss the action with or without prejudice, as justice may require.

(c) In all cases of notice by publication where the time may be fixed by the court, the order shall be for publication in some newspaper or newspapers named by the court in general or special orders, once a week for 3 successive weeks. The last publication shall not be later than the time fixed by the court.

(d) Appearances and Answers or other responsive pleadings are due within 30 days of the date the defendant is served with the Summons and Complaint. *See* Rule 3.9.

Rule 3.5. Case Structuring Order

(a) Within 20 days of the Answer date counsel, or parties if unrepresented, may confer to discuss the claims, defenses and counterclaims and to attempt to reach agreement on the following matters: (1) a proposed date for trial and

the estimated length of trial; (2) dates for the disclosure of expert reports; (3) status of waiver of RSA 516:29-b requirements; (4) deadlines for the parties to propound interrogatories; (5) deadlines for the completion of all depositions; (6) deadlines for the completion of all discovery; (7) deadline for filing all dispositive motions, which shall not be less than 120 days prior to the trial date; (8) deadlines for filing all other pre-trial motions, which shall be filed not later than 14 days prior to trial; (9) the type of alternative dispute resolution (ADR) procedures that shall be utilized and the deadline for completion of ADR; and (10) deadline for filing witness and exhibit lists, which shall not be later than the trial management conference.

(b) If the parties reach agreement as to all information required by Rule 3.5(a) above, they may file a completed written stipulation setting forth their agreement on all of the required matters within the said 20 days. Upon review by the court, if those stipulations are deemed acceptable, they shall become the case structuring order of the court.

(c) If the parties are unable to reach agreement as to any of the matters set forth in Rule 3.5(a), do not confer and file a written stipulation or if the court rejects their proffered stipulations, the matter may be scheduled for a telephonic case structuring conference between the court and counsel, or parties if unrepresented. The case structuring conference shall be held no later than 75 days after the Answer is filed. The court may order the parties to appear in court for the hearing if the court deems this necessary for the efficient progression of the case. Should counsel, or parties if unrepresented, be unable to reach an acceptable agreement as to any of the required matters, the court may issue such orders as it deems appropriate. The fact that a structuring conference has not yet been held or a case structuring order has not yet been issued does not preclude any party from pursuing discovery and does not constitute grounds for any party to fail to comply with its discovery obligations.

(d) Following the case structuring conference (if one is necessary), the court will issue a case structuring order.

Rule 3.6. Pleadings Allowed

(a) The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses. There shall be allowed a Complaint and an Answer; an Answer to a counterclaim denominated as such; an Answer to a cross-claim, if the Answer contains a cross-claim; a Third-Party Complaint, if a person who was not an original party is summoned to appear in an action; a Third-Party Answer, if a Third-Party Complaint is served; and a Reply, if an affirmative defense is set forth in an Answer and the pleader wishes

to allege any matter constituting an avoidance of the defense. No other pleading shall be allowed as of right.

(b) Demurrers, Pleas, and Exceptions for insufficiency of a pleading shall not be used.

Rule 3.7. Pleadings, Motions and Objections, General

See Rules 1.8 and 1.8A.

Rule 3.8. Complaint

(a) Except as may be more specifically provided by these rules in respect of specific actions, a pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain a statement of the material facts known to the pleading party on which the claim is based, showing that the pleader is entitled to relief, and a demand for judgment for the relief to which the pleader claims entitlement; provided, however, that in any personal action a pleading shall not allege the amount of damages claimed, but shall state only that the damages claimed are within the jurisdictional limits of the court.

(b) An amendment to a pleading relates back to the date of the original pleading when:

(1) a statute that provides the applicable statute of limitations allows relation back;

(2) the amendment asserts a claim or defense that arose out of the conduct, transaction or occurrence set out – or attempted to be set out – in the original pleading; or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 3.8(b)(2) is satisfied and if, within the period provided for serving the summons and complaint, the party to be brought in by amendment:

(A) received such notice of the action that it will not be prejudiced in defending on the merits; and

(B) knew or should have known that the action would have been brought against it, but for a mistake or lack of information concerning the proper party's identity.

(c) A plaintiff against whom a counterclaim is filed and who is entitled to a trial by jury and desiring a trial by jury shall so indicate at the time plaintiff files an Answer to such counterclaim. Failure to request a jury trial in accordance with this rule shall constitute a waiver by the plaintiff thereof.

(d) Every Complaint shall contain in the caption, or in the body of the Complaint, the names and addresses of all parties to the proceedings.

Rule 3.9. Answers; Defenses; Forms of Denials

(a) An Answer or other responsive pleading shall be filed with the court within 30 days after the person filing said pleading has been served with the pleading to which the Answer or response is made. It shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. A pleader who intends in good faith to deny only a part or a qualification of an allegation shall specify so much of it as is true and material and deny only the remainder. The pleader may not generally deny all the allegations but shall make the denials as specific denials of designated allegations or paragraphs. An Answer, to the effect that an allegation is neither admitted nor denied, will be deemed an admission. All facts well alleged in the Complaint and not denied or explained in the Answer, will be held to be admitted.

In addition, within the same 30 days, the person filing an Answer or other responsive pleading shall also file an appearance in accordance with Rule 3.17. No attorney, non-attorney representative or self-represented party will be heard until his or her Appearance is so entered.

(b) Instead of an Answer, a person responding to a pleading to which a response is required may, within 30 days after the person has been served with the pleading to which the Answer or response is required file a Motion to Dismiss. If a Motion to Dismiss is submitted and denied, an Answer must be filed within 30 days after the date on the Notice of the Decision finally denying the motion; provided, however, that if a Motion to Dismiss which challenges the court's personal jurisdiction, the sufficiency of process and/or the sufficiency of service of process is filed, an Answer must be filed within the time specified in section (e) of this rule.

(c) To preserve the right to a jury trial, a defendant entitled to a trial by jury must indicate his or her request for a jury trial upon the first page of the Answer at the time of filing. Failure to request a jury trial in accordance with this rule shall constitute a waiver by the defendant thereof.

(d) Failure to plead as affirmative defenses or file a Motion to Dismiss based on affirmative defenses, including the statute of limitations, within the time allowed in section (b) of this rule will constitute waiver of such defenses. Affirmative defenses include the following:

(1) accord and satisfaction;
(2) arbitration and award;
(3) assumption of risk;
(4) contributory negligence;

(5) duress;
(6) estoppel;
(7) failure of consideration;
(8) fraud;
(9) illegality;
(10) injury by fellow servant;
(11) laches;
(12) license;
(13) payment;
(14) release;
(15) res judicata;
(16) statute of frauds;
(17) statute of limitations; and
(18) waiver.

(e) A party does not waive the right to file a Motion to Dismiss challenging the court's personal jurisdiction, sufficiency of process and/or sufficiency of service of process by filing an Answer or other pleadings or motions addressing other issues. However, a party who wishes to challenge the court's personal jurisdiction, sufficiency of process, and/or sufficiency of service of process must do so in a Motion to Dismiss filed within 30 days after he or she is served. If a party fails to do so within this time period, he or she will be deemed to have waived the challenge. If the trial court denies the Motion to Dismiss:

(1) The party will be deemed to have waived the challenge if the party does not seek review of the denial by the Supreme Court within 30 days of the clerk's final written notice of the trial court's decision. If the party does not seek review of the denial by the supreme court, the party must file an Answer within 30 days of the clerk's final written notice of the trial court's decision.

(2) If the party appeals the denial, and the supreme court declines the appeal, the party must file an Answer within 30 days after the date of the supreme court's final written notice declining the appeal. The supreme court's declining to accept the appeal does not preclude a party who has complied with this section from challenging the trial court's ruling on personal jurisdiction, sufficiency of process and/or sufficiency of service of process in an appeal from a final judgment of the trial court.

(3) If the Supreme Court accepts the appeal and rejects the party's challenge, the party must file an Answer within 30 days after the date of the supreme court's final decision rejecting the challenge.

Rule 3.10. Counterclaims, Cross-claims and Third-Party Claims

(a) *Compulsory Counterclaims*. A pleading shall state as a counterclaim any claim which at the time of serving the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter

of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

(b) *Permissive Counterclaims*. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory so long as a right of action existed thereon at the time of the filing of the complaint.

(c) A pleading may state as a cross-claim any claim by one party against a co-party which arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim therein.

(d) Unless otherwise provided by law, whenever a third party may be liable to a defendant in any pending action for any of the plaintiff's claim against said defendant, or if said defendant may have a claim against a third party depending upon the determination of an issue or issues in said pending action, said defendant may bring an action against said third party and, unless otherwise ordered on motion of any party, such action will be consolidated for trial with the pending action or, if justice requires, said third party may be made a party to the pending action, for the purpose of being bound by the determination of any common issues. However, except for good cause shown to prevent injustice and upon such terms as the court may order, no such action will be consolidated with or said third party joined in said pending action, unless suit is brought against said third party within 30 days following filing of the defendant's Answer in said pending action.

(e) A third party against whom an action is brought in accordance with this rule and a plaintiff against whom a counterclaim has been filed may, under the same circumstances prescribed by this rule, use the same procedure with respect to another person and the same time limitation shall apply, except that as to a plaintiff the 30 days will begin to run on the date the counterclaim is filed.

(f) This rule shall not be construed to limit or abridge in any way the existing common law practice of joining parties in pending actions whenever justice and convenience require, or the giving of notice to third parties to come in and defend any pending action or be bound by the outcome thereof.

(g) This rule does not apply to a defendant who contends that a third party is solely liable to the plaintiff or to a defendant in a tort action as to a possible joint tortfeasor against whom said defendant has no right to contribution or reimbursement.

(h) For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims or third-party claims.

Rule 3.11 Motions

See Rules 1.8, 1.8A and 1.8B.

Rule 3.12. Motions – Specific

(a) *Motions to Amend.*

(1) No plaintiff shall have leave to amend a pleading, unless in matters of form, after a default until the defendant has been provided with notice and an opportunity to be heard, to show cause why the amendment should not be allowed.

(2) Amendments in matters of form will be allowed or ordered, as of course, on motion; but, if the defect or want of form be shown by the adverse party, the order to amend will be made on such terms as justice may require.

(3) Amendments in matters of substance may be made on such terms as justice may require.

(4) Amendments may be made to the Complaint or Answer upon the order of the court, at any time and on such terms as may be imposed.

(b*) Motions to Consolidate*. Whenever a Motion is filed in any Circuit Court requesting the transfer of an action there pending to another Circuit Court for trial with an action there pending, arising out of the same transaction or event or involving common issues of law, and/or fact, the court may, after notice to all parties in all such pending actions and hearing, make such order for consolidation in any one of such Circuit Courts in which such actions are pending, as justice and convenience require.

(c) *Motions for Summary Judgment*.

(1) Motions for summary judgment shall be filed, defended and disposed of in accordance with the provisions of RSA 491:8-a as amended. Such motions and responses thereto shall provide specific page, paragraph, and line references to any pleadings, exhibits, answers to interrogatories, depositions, admissions, and affidavits filed with the court in support of or in opposition to the Motion for Summary Judgment. Only such materials as are essential and specifically cited and referenced in the Motion for Summary Judgment, responses, and supporting memoranda shall be filed with the court. In addition, except by permission of the court received in advance, no such motion, response, or supporting memorandum of law shall exceed 20 double-spaced pages. The purpose of this rule is to avoid unnecessary and duplicative filing of materials with the court. Excerpts of documents and discovery materials shall be used whenever possible.

(2) The non-moving party shall have 30 days to respond to a motion for summary judgment, unless another deadline is established by agreement of the parties or order of the court.

(3) Where a plaintiff successfully moves for summary judgment on the issue of liability or a defendant concedes liability and the case proceeds to trial,

the parties must provide the trial judge or trier of fact with a statement of agreed facts sufficient to explain the case and place it in a proper context so that the trier of fact might more readily understand what she/he will be hearing in the remaining portion of the trial.

(4) Any party filing a Motion for Summary Judgment shall provide the opposing party with notice, substantially as set forth in the following form, of the obligation to file an objection and supporting affidavit within 30 days. The form of the notice in substance shall be as follows:

NOTICE TO THE DEFENDANT/OR PLAINTIFF

THIS MOTION FOR SUMMARY JUDGMENT IS FILED IN ACCORDANCE WITH RSA 502-A:27-c AND RSA 491:8-a. IF YOU OBJECT TO THE FACTS SET FORTH IN THIS MOTION, YOU MUST FILE YOUR WRITTEN OBJECTION WITHIN 30 DAYS. YOUR OBJECTION MUST BE ACCOMPANIED BY AN AFFIDAVIT SETTING FORTH SPECIFIC FACTS SHOWING THAT THERE IS A GENUINE ISSUE FOR TRIAL. IF YOU FAIL TO FILE AN OBJECTION AND ACCOMPANYING AFFIDAVIT WITHIN 30 DAYS, THIS MOTION MAY BE ACTED UPON WITHOUT A HEARING OR TRIAL, AND JUDGMENT ENTERED IN FAVOR OF THE PARTY WHO FILED THE MOTION.

(d) See also Rules 1.8 and 1.8A.

Rule 3.13. Objections

(a) A non-moving party may object or otherwise respond to a motion within 10 days after filing thereof unless: (1) the party is responding to a Motion for Summary Judgment, *see* RSA 491:8-a; or (2) another deadline is established by court order.

(b) Unless a party requests oral argument or an evidentiary hearing on any motion filed by the party, or on any objection thereto by another party, setting forth by memorandum, brief statement or written offer of proof the reasons why the oral argument or evidentiary hearing will further assist the court in determining the pending issue(s), no oral argument or evidentiary hearing will be scheduled and the court may act on the motion on the basis of the pleadings and record before it. Except with respect to motions that fall within Rules 3.13(a)(1) and (2) above, such memorandum, brief statement or written offer of proof shall be filed within 10 days after the filing of the motion. With respect to motions that fall within Rule 3.13(a)(1), such memorandum, brief statement or written offer of proof shall be filed within 30 days after the filing of the motion. With respect to motions that fall within Rule 3.13(a)(2), such memorandum, brief statement or written offer of proof shall be filed within the deadline established by court order. Failure to object shall not, in and of itself, be grounds for granting the motion.

Rule 3.13A. Reply and Surreply

Any party may file a reply within ten (10) days of the filing of an objection to a motion. A party who intends to file a reply to an objection shall advise the clerk within three (3) days of the Court's receipt of the objection. Surreplies may only be filed with permission of the Court.

III. PARTIES AND THEIR REPRESENTATIVES

Rule 3.14. Third Parties

In addition to the participation of plaintiffs and defendants, a civil action may also involve third parties whenever third parties may be liable to a defendant in any pending action for all or part of the plaintiff's claim against said defendant or if said defendant may have a claim against third parties, depending upon the determination of an issue or issues in said pending action.

Rule 3.15. Intervention

Any person shown to be interested may become a party to any civil action upon filing and service of an Appearance and pleading briefly setting forth his or her relation to the cause; or, upon motion of any party, such person may be made a party by order of court notifying him or her to appear therein. If a party, so notified, neglects to file an Answer or other responsive pleading on or before the date established by the court, that party shall be defaulted. No such default shall be set aside, except by agreement or by order of the court upon such terms as justice may require.

Rule 3.16. Reserved for Future Use.

Rule 3.17. 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 must file an Appearance and shall state in the Appearance that the party is choosing to represent himself or herself. If the self-represented party includes all of the information required in paragraph (a) above, with the exception of the New Hampshire Bar Association member identification number 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. The failure of a self-represented 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.

(c) 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.

(d) 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) Limited Appearance of Attorneys – see Rule 1.3(D)(2).

(f) 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.

Rule 3.18. Counsel

See Rule 1.3.

Rule 3.19. Out-of-State Counsel (Admission *Pro Hac Vice*)

See Rule 1.3.

Rule 3.20 Non-attorney Representatives

See Rule 1.3.

IV. DISCOVERY

Rule 3.21. General Provisions

(a) *Discovery Methods*. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical or mental examinations; and requests for admission.

(b) *Scope of Discovery*. Unless otherwise limited by order of the court in accordance with these rules, parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Privilege Log*. When a party withholds materials or information otherwise discoverable under this rule by claiming that the same is privileged, the party shall promptly and expressly notify the opposing party of the privilege claim and, without revealing the contents or substance of the materials or information at issue, shall describe its general character with sufficient specificity as to enable other parties to assess the applicability of the privilege claim. Failure to comply with this requirement shall be deemed a waiver of any and all privileges.

(d) *Discovery Abuse; Sanction.*

(1) The court may impose appropriate sanctions against a party or counsel for engaging in discovery abuse. Upon a finding that discovery abuse has occurred, the court should normally impose sanctions unless the offending party or counsel can demonstrate substantial justification for the conduct at issue or other circumstances that would make the imposition of sanctions unfair. Discovery abuse includes, but is not limited to, the following:

(A) employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or undue burden or expense;

(B) employing discovery methods otherwise available which result in legal expense disproportionate to the matters at issue;

(C) making, without substantial good faith justification, an unmeritorious objection to discovery;

(D) responding to discovery in a manner which the responding party knew or should have known was misleading or evasive;

(E) producing documents or other materials in a disorganized manner or in a manner other than the form in which they are regularly kept;

(F) failing to confer with an opposing party or attorney in a good faith effort to resolve informally a dispute concerning discovery;

(2) The sanctions which may be imposed for discovery abuse include, but are not limited to, the following:

(A) a monetary sanction in an amount equal to the unnecessary expenses incurred, including reasonable attorney's fees, as the result of the abusive conduct;

(B) an issue sanction that orders that designated facts be taken as established by the party who has been adversely affected by the abuse;

(C) an evidence sanction that prohibits the offending party from introducing certain matters into evidence;

(D) a terminating sanction that strikes all or parts of the claims or defenses, enters full or partial judgment in favor of the plaintiff or defendant, or stays the proceeding until ordered discovery has been provided.

(e) *Trial Preparation.*

(1) A party may obtain discovery of documents, electronically stored information and tangible things otherwise discoverable and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his or her attorney, non-attorney representative, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(2) A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. For purposes of this paragraph, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(f) *Sequence and Timing of Discovery*. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(g) *Supplementation of Responses*. A party, who has responded to a request for discovery with a response that was complete when made, is under no duty to supplement his or her response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his or her response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he or she is expected to testify, and the substance of his or her testimony.

(2) A party is under a duty seasonably to amend a prior response if he or she obtains information upon the basis of which (a) he or she knows that the response was incorrect when made, or (b) he or she knows that the response, though correct when made, is no longer true.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Rule 3.22. Automatic Disclosures

(a) *Materials that Must Be Disclosed*. Except as may be otherwise ordered by the court for good cause shown, a party must without awaiting a discovery request, provide to the other parties:

(1) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support his or her claims or defenses, unless the use would be solely for impeachment, and, unless such information is contained in a document provided pursuant to Rule 3.22 (a)(2), a summary of the information believed by the disclosing party to be possessed by each such person;

(2) a copy of all documents, electronically stored information, and tangible things that the disclosing party has in his or her possession, custody or control and may use to support his or her claims or defenses, unless the use would be solely for impeachment;

(3) a computation of each category of damages claimed by the disclosing party together with all documents or other evidentiary materials on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(4) for inspection and copying, any insurance agreement or policy under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(b) *Time for Disclosure*. Unless the court orders otherwise, the disclosures required by Rule 3.22(a) shall be made as follows:

(1) by the plaintiff, not later than 30 days after the defendant to whom the disclosure is being made has filed his or her Answer to the Complaint; and

(2) by the defendant, not later than 60 days after the defendant making the disclosure has filed his or her Answer to the Complaint.

(c) *Duty to Supplement*. Each party has a duty to supplement that party's initial disclosures promptly upon becoming aware of the supplemental information.

(d) *Sanctions for Failure to Comply*. A party who fails to timely make the disclosures required by this rule may be sanctioned as provided in Rule 3.21.

Rule 3.23 Written Interrogatories

(a) Any party may serve, by mail or delivery by hand, upon any other party written interrogatories relating to any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) A party may propound more than one set of interrogatories to an adverse party, but the total number of interrogatories shall not exceed 25, unless the court otherwise orders for good cause shown after the proposed additional interrogatories have been filed with the court. In determining what constitutes an interrogatory for the purpose of applying this limitation in number, it is intended that each question be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another question, and however the questions may be grouped, combined or arranged.

(c) Any party propounding interrogatories shall provide the opponent with notice, substantially as set forth in the following form, of the obligation to answer said interrogatories within thirty days. The notice shall be at the top of the first page and printed in capital, typewritten letters or in ten-point, bold-face print. The form of the notice in substance shall be as follows:

THESE INTERROGATORIES ARE PROPOUNDED IN ACCORDANCE WITH RULE 1.10 OF THE RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE APPLICABLE IN CIVIL ACTIONS. YOU MUST ANSWER EACH QUESTION SEPARATELY AND FULLY IN WRITING AND UNDER OATH. YOU MUST RETURN THE ORIGINAL AND ONE COPY OF YOUR ANSWERS WITHIN THIRTY (30) DAYS OF THE DATE YOU RECEIVED THEM TO THE PARTY OR COUNSEL WHO SERVED THEM UPON YOU. IF YOU OBJECT TO ANY QUESTION, YOU MUST NOTE YOUR OBJECTION AND STATE THE REASON THEREFORE. IF YOU FAIL TO RETURN YOUR ANSWERS WITHIN THIRTY (30) DAYS, THE PARTY WHO SERVED THEM UPON YOU MAY INFORM THE COURT, AND THE COURT SHALL MAKE SUCH ORDERS AS JUSTICE

REQUIRES, INCLUDING THE ENTRY OF A CONDITIONAL DEFAULT AGAINST YOU.

(d) Interrogatories may be served at any time after service of the action.

(e) The party serving the interrogatories shall furnish the answering party with an original and two copies of the interrogatories. The interrogatories shall be so arranged that after each separate question shall appear a blank space reasonably calculated to enable the answering party to have his or her answer typed in. The parties may agree to transmit interrogatories electronically or by computer disk, enabling the answering party to provide answers directly after each separate question using the party's available word processing technology. In the event of such an agreement, the requirement of providing space between each question sufficient to manually insert answers is obviated.

(f) Interrogatories shall be answered in writing under oath by the party upon whom served, if an individual, or, if a public or private corporation, a partnership or association, by an officer or agent who shall furnish all information available to the party.

(g) Each question shall be answered separately, fully and responsively in such manner that the final document shall have each interrogatory immediately succeeded by the separate answer.

(h) If, in any interrogatory, copies of papers, documents or electronically stored information are requested, such interrogatory shall be deemed to be a request for production pursuant to Rule 24.

(i) The party, who is served with interrogatories, shall serve his or her answers thereto, by mail or delivery in hand, upon the party propounding them within 30 days after service of such interrogatories. The parties may extend such time by written agreement.

(j) The answers shall be served, together with the original and one copy of the interrogatories, upon the propounding party. If copies of papers are annexed to answers, they need be annexed to only one set.

(k) (1) If a party, upon whom interrogatories are served, objects to any questions propounded therein, he or she may answer the question by objecting and stating the grounds. The party shall make timely answer, however, to all questions to which he or she does not object. The propounder of a question to which another party objects may move to compel an answer to the question, and, if the motion is granted, the question shall be answered within such time as the court directs. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) When objections are made to interrogatories or requests for admissions, before there is any court hearing regarding said objections, counsel for the parties shall attempt in good faith to settle the objections by agreement. It shall be the responsibility of counsel for the objecting party to initiate such attempt and to notify the clerk if the objections are settled by agreement.

(3) If, following such conference, counsel are unable to settle objections, counsel for the objecting party shall notify the clerk and request a hearing on such objections as remain unsettled.

(4) Where an objection to an interrogatory has been withdrawn by agreement of counsel or has been overruled by the court, the answer to such interrogatory shall be served within 10 days thereafter.

(l) The adverse party shall have the same privileges in answering written interrogatories as the deponent in the taking of a deposition.

(m) If a party, who has furnished answers to interrogatories, thereafter obtains information which renders such answers incomplete or inaccurate, amended answers shall be served as follows:

(i) A party is under a duty seasonably to supplement his or her response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he or she is expected to testify, and the substance of his or her testimony.

(ii) A party is under a duty seasonably to amend a prior response if he or she obtains information upon the basis of which (a) he or she knows that the response was incorrect when made, or (b) he or she knows that the response, though correct when made, is no longer true.

(iii) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(n) Interrogatories and answers may be used at the trial to the same extent as depositions. If less than all of the interrogatories and answers thereto are introduced or read into evidence by a party, an adverse party may introduce or read into evidence any other of the interrogatories and answers or parts thereof necessary for a fair understanding of the parts read or otherwise introduced into evidence.

(o) Neither the interrogatories nor the answers need be filed with the court unless the court otherwise directs.

Rule 3.24. Production of Documents

(a) *Scope*. Any party may serve on any other party a request:

(1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form, or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 3.21(b) and which are in the possession, custody or control of the party upon whom the request is served; or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 3.21(b).

(b) *Procedure*.

(1) The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts

(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts.

(3) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

Rule 3.25. Discovery of Electronically Stored Information (ESI)

(a) Promptly after litigation is commenced, the parties must meet and confer about preservation of any electronically stored information (ESI). In the absence of an agreement, any party may move for an order governing preservation of ESI. Because the parties require a prompt response, the court must make an order governing preservation of ESI as soon as possible.

(b) The parties have a duty to preserve all potentially relevant ESI once the party is aware that the information may be relevant to a potential claim. Counsel for the parties have a duty to notify their clients to place a "litigation hold" on all potentially relevant ESI.

(c) Requests for ESI shall be made in proportion to the significance of the issues in dispute. If the request for ESI is considered to be out of proportion to the issues in the dispute, at the request of the responding party, the court may determine the responsibility for the reasonable costs of producing such ESI.

(d) A party may serve on another party a request for designated ESI, including documents, email messages and other electronically recorded messages and communications, photographs, sound recordings, drawings, charts, graphs and other data or data compilations, including back-up and archived copies of ESI – stored in any medium from which information could be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

(e) The request must describe with reasonable particularity each item or category of items to be produced. The request must also state the form or forms in which ESI is to be produced.

(f) The responding party must respond to each item or category of items or state an objection to the request including the basis of the objection, within 30 days of the receipt of the request.

(g) The responding party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request.

(h) The responding party need not produce the same ESI in more than one form.

(i) The responding party does not waive privileged information by its inadvertent disclosure under this rule.

(j) Inadvertently disclosed privileged ESI is subject to "claw-back" at the request of the responding party. If agreement is not reached by opposing counsel or the litigants concerning any "claw-back" requests, the court may decide any disputes.

(k) A party may also serve on another party a request to permit the requesting party and or its representatives to inspect, copy, test or sample the ESI in the responding party's possession or control.

Rule 3.26 Depositions

(a) A party may take as many depositions as necessary to adequately prepare a case for trial so long as the combined total of deposition hours does not exceed 20 unless otherwise stipulated by counsel or ordered by the court for good cause shown.

(b) No notice to the adverse party of the taking of depositions shall be deemed reasonable unless served at least 3 days, exclusive of the day of service and the day of caption, before the day on which they are to be taken. Provided, however, that 20 days' notice shall be deemed reasonable in all cases, unless otherwise ordered by the court. No deposition shall be taken within 30 days after service of the Complaint, except by agreement or by leave of court for good cause shown.

(c) Every notice of a deposition to be taken within the State shall contain the name of the stenographer proposed to record the testimony.

(d) When a statute requires notice of the taking of depositions to be given to the adverse party, it may be given to such party or the party's representative of record. In cases where the action is in the name of a nominal party and the Complaint or docket discloses the real party in interest, notice shall be given either to the party in interest or that party's attorney of record. Notices given pursuant to this rule may be given by mail or by service in hand. If a subpoena duces tecum is to be served on the deponent, the notice to the adverse party must be served before service of the subpoena, and the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment.

(e) The interrogatories shall be put by the attorneys or non-attorney representatives and the interrogatories and answers shall be taken in shorthand or other form of verbatim reporting approved by the court and transcribed by a competent stenographer agreed upon by the parties or their attorneys present at the deposition. In the absence of such agreements, the stenographer shall be designated by the court. Failure to object in writing to a stenographer in advance of the taking of a deposition shall be deemed agreement to the stenographer recording the testimony.

(f) No deposition, as transcribed, shall be changed or altered, but any alleged errors may be set forth in a separate document attached to the original and copies.

(g) The stenographer shall cause to be noted any objection to any interrogatory or answer without deciding its competency. If complaint is made of interference with any witness, the stenographer shall cause such complaint

to be noted and shall certify the correctness or incorrectness thereof in the caption.

(h) Upon motion, the court may order the filing of depositions, and, upon failure to comply with such order, the court may take such action as justice may require.

(i) The signature of a person outside the State, acting as an officer legally empowered to take depositions or affidavits, with his or her seal affixed, where one is required, to the certificate of an oath administered by him or her in the taking of affidavits or depositions, will be prima facie evidence of his or her authority so to act.

(j) The deponent, on deposition or on written interrogatory, shall ordinarily be required to answer all questions not subject to privilege or excused by the statute relating to depositions, and it is not grounds for refusal to answer a particular question that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence and does not violate any privilege.

(k) If any deponent refuses to answer any question propounded on deposition, or any party fails or refuses to answer any written interrogatory authorized by these rules, or fails to comply within 30 days after written request to comply, the party propounding the question may, upon notice to all persons affected thereby, apply by motion to the court for an order compelling an answer. If the motion is granted, and if the court finds that the refusal was without substantial justification or was frivolous or unreasonable, the court may, and ordinarily will, require the deponent or the party, attorney, or non-attorney representative advising the refusal, or both of them, to pay the examining or requesting party the reasonable expenses incurred in obtaining the order, including reasonable counsel fees.

If the motion is denied and if the court finds that the motion was made without substantial justification or was frivolous or unreasonable, the court may, and ordinarily will, require the examining party or the attorney advising the motion, or both of them, to pay to the witness the reasonable expenses incurred in opposing the motion, including reasonable counsel fees.

(l) *Videotape Depositions*.

(1) A party may, at such party's expense, record a videotape deposition, provided the party indicates the intent to record the videotape deposition in the notice of deposition. At the commencement of the videotape deposition, counsel representing the deponent should state whose deposition it is, what case it is being taken for, where it is being taken, who the lawyers are that will be asking the questions, and the date and the time of the deposition. Care should be

taken to have the witnesses speak slowly and distinctly and that papers be readily available for reference without undue delay and unnecessary noise. Counsel and witnesses shall comport themselves at all times as if they were actually in the courtroom.

(2) If any problem arises as to the admissibility or inadmissibility of evidence, this should be handled in the same manner as written depositions.

(3) A party objecting to a question asked of, or an answer given by, a witness whose testimony is being taken by videotape shall provide the court at the Trial Management Conference with a transcript of the videotape proceedings that is sufficient to enable the court to act upon the objection before the trial of the case, or the objection shall be deemed waived.

(m) *Notice or Subpoena Directed to An Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (m) does not preclude a deposition by any other procedure allowed by these rules.

Rule 3.27. Expert Witnesses

(a) Within 30 days of a request by the opposing party, or in accordance with any order of the court issued pursuant to Rule 3.5, a party shall make a disclosure of expert witnesses (as defined in Evidence Rule 702), whom he or she expects to testify at trial.

(b) Said disclosure shall conform with RSA 516:29-b, unless waived by agreement of the parties.

Rule 3.28. Requests for Admissions

(a) (i) Any party, desiring to obtain admission of the signature on or the genuineness of any relevant document or of any relevant facts which he or she believes not to be in dispute, may, after 30 days after the date the defendant is served with the Summons and Complaint, without leave of court, serve an original request therefor, accompanied by any documents involved, to the adverse party or his or her representative. Each of the matters of which an

admission is requested shall be deemed admitted unless within 30 days after such service the party requested serves a copy thereof to the party requesting such admission, or his or her attorney or non-attorney representative, either a sworn denial thereof or a written objection on the ground of privilege or that it is otherwise improper.

(ii) Notwithstanding (i) above, signatures and endorsements of all written instruments declared on will be considered as admitted unless the party disputing the signature or endorsement shall serve notice on the opposing party that they are disputed within 30 days after the date the defendant files an Answer. *See* Rule 3.37(c)

(b) If objection is made to part of a request, the remainder shall be answered within the time limit, and when good faith requires that a party qualify his or her answer or deny only part of a matter, he or she shall specify so much of it as is true and qualify or deny the remainder.

(c) Any party, who without good reason or in bad faith, denies under this rule any signature or fact which has been requested and which is thereafter proved, or who without good reason or in bad faith requests such admission under this rule and thereafter fails to prove it, may, on motion of the other party, be ordered to pay the reasonable expense, including counsel fees, incurred by such other party in proving the signature or fact or in denying the request, as the case may be.

Rule 3.28A. Medical Injuries and Special Damages

(a) *Medical Examinations*. In actions to recover damages for personal injuries, the defendant shall have the right to a medical examination of the plaintiff prior to trial. The defendant shall seek and obtain the medical examination of the plaintiff within the expert disclosure deadlines set forth by statute, rule, or in the structuring order issued by the court. The court may order a medical examination of the plaintiff to take place outside of the expert disclosure deadlines, including during trial, only for good cause shown.

(b) *Medical Reports*. Copies of all medical reports relating to the litigation, in the possession of the parties, will be furnished to opposing counsel on receipt of the same.

(c) *Medical Records*. Any party shall have the right to procure from opposing counsel an authorization to examine and obtain copies of hospital records and X-rays involved in the litigation.

(d) *Special Damages*. Any party claiming damages shall furnish to opposing counsel, within 6 months after entry of the action, a list specifying in detail all special damages claimed; copies of bills incurred thereafter shall be furnished

on receipt. Any party claiming loss of income shall furnish opposing counsel, within six months after the entry of the action, as soon as each is available, copies of the party's Federal Income Tax Returns for the year of the incident giving rise to the loss of income, and for two years before, and one year after, that year, or, in the alternative, written authorization to procure such copies from the Internal Revenue Service.

Rule 3.29. Discovery Motions

(a*) Protective Orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (a) that the discovery not be had; (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (e) that discovery be conducted with no one present except persons designated by the court; (f) that a deposition after being sealed be opened only by order of the court; (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(b) Motions for a protective order relating to trade secrets, confidential research, development or commercial information, or other private or confidential information sought through discovery shall be filed within the time set by these rules to respond to the discovery request or within 30 days of the date of automatic disclosure required by Rule 3.22, including any extensions agreed to by the parties or ordered by the court, or within ten days of an order of production of records. All protective orders, whether assented to or not, must be approved by the court.

(c) If a motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(d) *Conditional Default.* If the party upon whom interrogatories or requests for production have been served, shall fail to answer said interrogatories or requests for production within 30 days, or any enlarged period, unless written objection to the answering of said interrogatories or requests is filed within that period, said failure will result in a conditional default being entered by the clerk upon motion being filed indicating such failure to answer. The party failing to answer shall receive notice of the conditional default. The conditional

default shall be vacated if the defaulted party answers the interrogatories or requests within 10 days of receiving notice thereof and moves to strike the conditional default. If the defaulted party fails to move to strike the conditional default within 10 days of receiving notice thereof, the adverse party may move to have a default judgment entered and damages assessed in connection therewith. If, upon review of an affidavit of damages, the court determines that it does not provide a sufficient basis for determining damages, the court may, in its discretion, order a hearing thereon.

(e) *Motion to Compel*. Before any Motion to Compel discovery may be filed, counsel for the parties shall attempt in good faith to settle the dispute by agreement. If a Motion to Compel regarding requested discovery is filed, the moving party shall be deemed to have certified to the court that the moving party has made a good faith effort to obtain concurrence in the relief sought.

(f) Where a discovery dispute has been resolved by court order in favor of the party requesting discovery by court order, the requested discovery shall be provided within 10 days thereafter or within such time as the court may direct.

(g) Motions for protective order or to compel responses to discovery requests shall include a statement summarizing the nature of the action and shall include the text of the requests and responses at issue.

(h) If the court finds that a motion, which is made pursuant to this rule, was made frivolously or for the purpose of delay or was necessitated by action of the adverse party that was frivolous or taken for the purpose of delay, the court may order the offending party to pay the amount of reasonable expenses, including attorney's fees, incurred by the other party in making or resisting the motion.

V. ALTERNATIVES TO TRIAL

Rule 3.30. Mediation

(a) *Purpose*. The District Court establishes these Civil Complaint mediation rules to increase access to justice; to increase parties' satisfaction with the outcome; to reduce future litigation by the same parties; to make more efficient use of judicial resources; and to expand dispute resolution resources available to the parties.

(b) *Definitions*. For the purpose of this rule, the following definitions apply.

(1) *Mediation*. Mediation is a process in which a mediator facilitates settlement discussions between parties.

(A) The mediator has no authority to make a decision or impose a settlement upon the parties.

(B) The mediator attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions.

(C) Any settlement is entirely voluntary.

(D) In the absence of settlement, the parties lose none of their rights to a resolution of their dispute through litigation.

(2) Mediation is based upon principles of communication, negotiation, facilitation and problem solving that emphasize:

(A) The needs and interest of the parties
(B) Fairness
(C) Procedural flexibility
(D) Privacy and confidentiality
(E) Full disclosure
(F) Self determination

(3) *Mediator*. An impartial person who facilitates discussions between the parties to a mediation. The role of the mediator includes but is not limited to assisting the parties in identifying issues, reducing obstacles to communication, and providing the parties an opportunity for each to be heard in a dignified and thoughtful manner. The mediator's focus will be on encouraging and supporting the parties' presentations to and reception from one another allowing them to find a resolution that is appropriate.

(4) *Party*. Any person whose name is designated on the record as plaintiff or defendant and their attorney or any other person who has filed an appearance.

(c) *Mediator Qualifications*. Mediators shall satisfy the qualifications and criteria specified by the Supreme Court. Minimum qualifications include: completion of a 20-hour mediation process training; two years experience as a mediator or equivalent experience, and an understanding of civil and landlord/tenant law is helpful. All mediators serving as civil complaint mediators shall contract with the Administrative Office of the Courts for a term of one year.

(d) *Referral of cases to mediation*. The Civil Complaint mediation program is voluntary. Cases may be referred to mediation where parties have not filed an "opt-out" notice with the Court and all remaining parties indicate that they desire to proceed with mediation.

(e) *Continuances*. If a party files a Motion to Continue Mediation for good cause, the Court has discretion to continue the mediation and set a new mediation date if no prior Motions to Continue Mediation have been granted. The Court will not grant multiple requests to continue mediation.

(f) *Failure to Attend Mediation*. If either party fails to attend mediation without good cause and without providing sufficient notice to the other party(ies) and to the Court, the parties shall lose the opportunity to participate in the mediation program. Under those circumstances the matter shall not be rescheduled for mediation and the matter shall be returned to the trial docket.

(g) *Mediator Assignment*. The Administrative Judge of the Circuit Court, in consultation with the Office of Mediation and Arbitration, shall determine the mediation needs for each Circuit Court in the Civil Complaint program. Assignment of mediators shall be based on the mediator needs of each court. Each Circuit Court shall schedule civil complaint cases and allocate mediator(s) in a manner that accommodates the case load of the Court.

(h) *Payment of mediator fees*. Civil complaint mediators shall be paid on a per case fee set by the Supreme Court. Payments shall be made out of the Office of Mediation and Arbitration ("OMA") Fund established under RSA 490-E:4. No additional fees or reimbursements shall be made.

(i) *Disclosure of Conflict*. Upon receipt of a notice of appointment in a case, the mediator shall disclose any circumstances likely to create a conflict of interest, the appearance of conflict of interest, a reasonable inference of bias or other matter that may prevent the process from proceeding as scheduled.

(1) If the mediator withdraws, has a conflict of interest or is otherwise unavailable, another mediator shall be appointed by the Court.

(2) The burden of disclosure rests on the mediator. After appropriate disclosure, the mediator may serve if both parties so desire. If the mediator believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.

(j) *Impartiality*. Impartiality shall be defined as freedom from favoritism or bias in word, action and appearance.

(1) Impartiality implies a commitment to aid all parties, as opposed to an individual party, when moving toward an agreement. A mediator shall be impartial and shall advise all parties of any circumstances bearing on possible bias, prejudice or impartiality.

(2) A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of the proposed options for settlement.

(3) A mediator shall withdraw from mediation if the mediator believes the mediator can no longer be impartial.

(4) A mediator shall not give or accept a gift, request, favor, loan, or any other item of value to or from a party, attorney or any other person involved and arising from the mediation process.

(k) *Prohibitions*. A mediator shall not provide counseling or therapy to any party during the mediation process nor shall a mediator who is an attorney represent either party, or give legal advice during or after the mediation. The mediator shall not use the mediation process to solicit or encourage future professional services with either party.

(l) *Self determination*. A mediator shall assist the parties in reaching an informed and voluntary settlement. Decisions are to be made voluntarily by the parties.

(1) A mediator shall not coerce or unfairly influence a party into a settlement agreement and shall not make a substantive decision for any party to a mediation process.

(2) A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation.

(3) A mediator shall promote consideration of the interest of persons affected by actual or potential agreements who are not present during a mediation.

(4) The mediator shall promote mutual respect amongst the parties throughout the process.

(m) *Professional Advice*. A mediator shall only provide information the mediator is qualified by training or experience to provide.

(1) When a mediator believes a non represented party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the participants to seek independent legal counsel.

(2) While a mediator may point out a possible outcome of the case, under no circumstances may a mediator offer a personal or professional opinion as to how the Court in which the case is filed will resolve the dispute.

(n) *Confidentiality*. A mediator shall preserve and maintain the confidentiality of all mediation proceedings. Any communication made during the mediation which relates to the controversy mediated, whether made to the mediator or a party, or to any other person present at the mediation is confidential.

(1) A mediator shall keep confidential from the other parties any information obtained in an individual caucus unless the party to the caucus permits disclosure.

(2) All memoranda, work products and other materials contained in the case file of a mediator are confidential. The mediator shall render anonymous all identifying information when materials are used for research, training or statistical compilations.

(3) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceedings except for any of the following:

(A) Where the parties to the mediation agree in writing to waive the confidentially.

(B) When a subsequent action between the mediator and a party to the mediation for damages arises out of the mediation.

(C) Where there are threats of imminent violence to self or others.

(D) Where reporting is required by state law.

(o) *Inadmissibility of Mediation Proceeding*. Mediation proceedings under this rule are non-binding and shall not impair the right of the litigants to demand a trial. Any settlement reached at mediation shall be binding on the parties and entered as a judgment. Information, evidence or the admission of any party shall not be disclosed or used in any subsequent proceeding.

(1) Statements made and documents prepared by a party, attorney, or other participant in the aid of such proceedings shall be privileged and shall not be disclosed to any Court or construed for any purpose as an admission against interest.

(2) All mediation proceedings are deemed settlement conferences as prescribed by Court rule and the Rules of Evidence. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there has been a mediation proceeding.

(3) Evidence that would otherwise be admissible at trial shall not be rendered inadmissible as a result of its use in a mediation proceeding under this rule.

(4) A mediator shall not be called as a witness in any subsequent proceeding relating to the parties' negotiation and participation except as set forth in Section N of this rule.

(p) *Concluding Mediation*. If an agreement is reached during the mediation process, the parties shall reduce their agreement to a written memoranda on the points on which agreement has been reached, and the memoranda shall be reviewed and signed by all parties before the mediation ends, unless the parties otherwise agree that additional time is necessary to ensure that the parties have time to consult with counsel about their agreement if unrepresented at the time of the mediation. In that case, the parties shall submit the written agreement to the Court within thirty days of the mediation session. Within 48 hours of the mediation session, the mediator shall submit an ADR report indicating the status of the agreement either attaching it to the ADR report, or, indicating that it will be filed with the Court within the next thirty days. If an agreement is not reached during the mediation process, the mediator shall notify the Court via the ADR report that the mediation failed to resolve the issue in conflict or if the mediation successfully resolved part of the matter, the ADR report will so indicate.

(q) *Immunity*. The mediator will not be acting as legal advisor or legal representative. The parties should recognize that, because the mediator is performing quasi-judicial functions and is performing under the auspices of the

Circuit Court, each such mediator has immunity from suit, and shall not be called as a witness in any subsequent proceeding relating to the parties' negotiations and participation except as set forth in Section N of this rule.

(r) *Removal from list of Civil Complaint mediators*. Appointment to the Civil Complaint roster in the Circuit Court confers no vested rights to the mediator, but is a conditional privilege that is revocable.

(1) At any time during the one year rostering period, upon notice and opportunity to be heard, a civil complaint mediator who is found to have engaged in conduct that reflects adversely on his/her impartiality or in the performance of his/her duties as a mediator, or is found to have persistently failed to carry out the duties of a mediator, or is found to have engaged in conduct prejudicial to the proper administration of justice, shall be removed from the list of civil complaint mediators.

(2) All complaints regarding a mediator's performance shall be forwarded to the NH Judicial Branch Director of the Office of Mediation and Arbitration and the Administrative Judge of the Circuit Court. The Director of the OMA will investigate the complaint and will make recommendations to address the complaint to the Administrative Judge of the Circuit Court.

(3) All civil complaint mediators must inform the Director of the Judicial Branch Office of Mediation and Arbitration and the Administrative Judge of the Circuit Court within 30 days of a change in circumstances such as a conviction of a felony or loss of professional license. Civil complaint mediators who are convicted of a felony or misdemeanor involving moral turpitude, or who have a professional license revoked, shall be denied certification.

Rule 3.31 Reserved for future use.

Rule 3.32 Reserved for future use.

Rule 3.33 Reserved for future use.

Rule 3.34 Reserved for future use.

VI. TRIALS

Rule 3.35. Trial Management Conference

The court may direct the parties to attend a Trial Management Conference. Written pretrial statements are not required unless ordered by the court.

Requests for findings of fact and rulings of law shall be submitted in writing in accordance with a schedule to be determined by the court.

Rule 3.36. Standing Trial Orders – Procedures

(a) *Addressing the Court*. Anyone addressing the court or examining a witness shall stand. The rule may be waived if the person is physically unable to stand or for other good cause. No one should approach the bench to address the court except by leave of the court.

(b) *Opening Statements and Closing Arguments*. Opening statements shall be at the discretion of the Court. Closing arguments shall also be at the discretion of the Court. Before any person shall read any excerpt of testimony from a transcript prepared by the designated court transcriber, he or she shall furnish the opposing party with a copy thereof.

(c) *Copies of Documents for Court*. Counsel shall seasonably furnish for the convenience of the court, as it may require, copies of the specifications, contracts, letters or other papers offered in evidence.

(d) *Examination of Witnesses*.

(1) Only one counsel on each side will be permitted to examine a witness.

(2) A witness cannot be re-examined by the party calling him or her, after his or her cross-examination, unless by leave of court, except so far as may be necessary to explain his or her answers on his or her cross-examination, and except as to new matter elicited by cross-examination, regarding which the witness has not been examined in chief.

(3) After a witness has been dismissed from the stand, the witness cannot be recalled without permission of the court.

(4) No person, who has assisted in the preparation of a case, shall act as an interpreter at the trial thereof, if objection is made.

(e) *Objections*. When stating an objection, counsel will state only the basis of the objection (e.g., "leading," "non-responsive," or hearsay"), provided, however, that upon counsel's request, counsel shall be permitted a reasonable opportunity to approach the bench to elaborate and present additional argument or grounds for the objection.

(f) *Submission of Case*. In all trials, the plaintiff shall put in his or her whole case before resting and shall not thereafter, except by permission of the court for good cause shown, be permitted to put in any evidence except such as may be strictly rebutting; and the defendant shall, before resting, put in his or her whole defense, and shall not thereafter introduce any evidence except such as may be in reply to the rebutting evidence.

Rule 3.37. Standing Trial Orders – Proof

(a) *Bills*. If, after an action has been entered for 3 months, a party submits copies of bills incurred to the other party, and no objection has been made within 30 days, the bills may be introduced without formal proof.

(b) *Criminal Record*.

(1) If a party plans to use or refer to any prior criminal record, for the purpose of attacking or affecting the credibility of a party or witness, the party shall first furnish a copy of same to the opposing party, and then obtain a ruling from the court as to whether the opposing party or a witness may be questioned with regard to any conviction for credibility purposes.

(2) Evidence of a conviction under this rule will not be admissible unless there is introduced a certified record of the judgment of conviction indicating that the party or witness was represented by counsel at the time of the conviction unless counsel was waived.

(c) *Documents*. The signatures and endorsements of all written instruments declared on will be considered as admitted unless the defendant shall serve a notice that they are disputed within 30 days after the date the defendant files an Answer.

(d) *Expert Files*. All experts, including doctors and law enforcement personnel, who are to testify at a trial, will be advised by the party calling the expert to testify to bring their original records and notes to court with them.

(e) *Life Expectancy*. The life expectancy tables published by the United States Center for Disease Control and Prevention, National Center for Health Statistics and available at http://www.cdc.gov/nchs are admissible as evidence to prove life expectancy.

(f) *Medical Records*. X-rays and hospital records (which are certified as being complete records) if otherwise admissible and competent may be introduced without calling the custodian or technician.

(g) *Motor Vehicles*.

(1) *Speed*. The issue of speed of a motor vehicle on a public highway, if material, will be submitted on the grounds of reasonableness without regard to statutory provisions relative to rates of speed that are prima facie reasonable, unless a party objects thereto at the Trial Management Conference, or files written objection thereto at least 7 days before the trial.

(2) *Licensing*. No claim is to be made at any trial that the operator of a motor vehicle involved in the case was not properly licensed, unless the claim has been made at the Trial Management Conference, or unless the claim was filed in writing at least 7 days before the trial.

(h) *Proof of Highway Waived Unless Demanded*. In any case in which a road or way is alleged to be a "way" as defined in RSA 259:125 or a public highway, a party shall notify the opposing party at least 10 days prior to trial if said "way" or public highway must be formally proved; otherwise, the need to formally prove said "way" or public highway will be deemed to be waived.

(i) *Stipulations*. Unless otherwise expressly provided by these rules, all stipulations affecting a civil action, except stipulations which are made in the presence of the court and entered on the record, or embodied in an order of the court, shall be in writing and shall be signed by attorneys of record, non-attorney representatives of record, or by parties if self-represented. The court may require handwritten stipulations to be replaced by fully executed, typewritten stipulations within 10 days.

Rule 3.38 Reserved for future use.

VII. JUDGMENT

Rule 3.39. Settlements

(a) Whenever an attorney, non-attorney representative or self-represented party states orally or in writing to the court that a particular case has been settled and that agreements will be filed, the court shall forthwith notify by mail or through electronic delivery the parties of record or their representatives of such statement, and, if the agreements and/or docket markings are not filed within thirty days after the date of mailing or electronic delivery of such notice, the court shall take such action as justice may require.

(b) In order that the court may seasonably make up and complete the court's record, the parties shall seasonably file all papers and documents necessary to make up and enter the judgment and to complete the record of the case and no execution shall issue, or final order or decree be entered, until such papers are filed.

Rule 3.40. Approval of Settlements: Minors

(a) All petitions for approval of settlement of actions on behalf of minors shall be signed by the parent, next friend or guardian of the minor.

(b) Court approval is not required for the settlement of any suit or claim brought on behalf of a minor in which the net amount is equal to or less than $10,000.00. Any settlement of such suit or claim in which the net amount exceeds $10,000.00 shall require court approval.

(c) In any suit or claim on behalf of a minor if the amount to be paid to the minor before the age of majority exceeds $10,000.00, the court shall require proof in the form of a certified statement from the Circuit Court-Probate Division that the guardian ad litem, parent, next friend, or other person who receives money on behalf of the minor whether through settlement, judgment, decree or other order, has been appointed guardian of the estate of such minor and is subject to the duties prescribed under RSA 463:19. In the event of a structured settlement where an amount will be paid to the minor both before and after the minor reaches the age of majority, no guardian of the estate of such minor is required if the amount to be paid to the minor before the age of majority is $10,000.00 or less. If the amount to be paid to the minor before the age of majority in such structured settlement exceeds $10,000.00, then a guardian of the estate of such minor is required. In determining whether the net amount of a settlement exceeds $10,000.00, all sums covering attorney's fees, court costs and other expenses related to the claim including medical expenses are to be excluded.

(d) The petition shall contain the following information where applicable:

(1) A brief description of the accident and of all injuries sustained and the age of the minor.

(2) An itemized statement of all medical expenses and special damages incurred by the minor.

(3) The total amount of the settlement and whether any bills or expenses are to be paid out of the total settlement or are being paid in addition as part of the parent's claim. If the parent is being paid anything directly, the petition should contain a statement of the total amount being paid to the parent and a specification of the items covered.

(4) Whether the settlement was negotiated by counsel actually representing the minor.

(5) A statement from the attorney or non-attorney representative for the minor as to whether there was medical payment insurance available to the minor and whether or not a claim has been made for said benefits or whether payment has been received.

(6) A statement from the attorney for the minor as to whether any liens for medical providers have been asserted or are assertable and how the settlement would resolve those liens.

(7) The net amount to be received on behalf of the minor.

(8) A request that the settlement be approved.

(e) The petition must be accompanied with the following material:

(1)A photocopy of the minor's birth certificate.

(2) An itemized statement from counsel detailing the nature of the work performed and the time spent on the case. An attorney's fee in excess of 25% of the settlement amount will not be ordinarily allowed unless upon good cause shown. In the event that counsel seeks an attorney's fee in excess of 25%, counsel shall file a motion requesting such an approval which motion shall

contain the reasons for the request. A copy of that motion shall be provided to the next friend at least 10 days prior to the hearing or conference relative to approval of the settlement.

(f) The court will not authorize the next friend to settle the action or authorize the execution of releases and will not make any order respecting indemnity agreements, and the petition should make no such request.

(g) The court, upon its own motion, may appoint a guardian ad litem to represent the interests of the minor child and/or to review the proposed settlement. The fees of the guardian ad litem shall be paid by defendant.

(h) The attorney or non-attorney representative, minor, parent, guardian, or next friend, will ordinarily be required to appear in all cases in support of the petition unless attendance has been excused by the court upon prior motion of counsel or upon the court's review of the file. In all cases where the minor has not actually been represented in the negotiation of the settlement, the minor, parent, and the next friend or guardian shall be required to appear with the attorney or non-attorney representative for the minor.

(i) A full medical report, including a recent and detailed prognosis from the attending physician, will ordinarily be required. "Recent" shall mean a report dated not more than 6 months prior to the date of the filing of the petition for approval of a settlement.

(j) (1) Court approval of a net settlement of $10,000.00 or less is not required by statute; however, if a party desires court approval, the court's order will ordinarily be in substantially the following form:

> Settlement approved. All bills listed in the petition are to be paid. Counsel fees in the amount of $_____ allowed (if settlement was actually negotiated by counsel representing the minor). The balance, amounting to $_____, shall be deposited in a savings account in the _____ Bank at _____ in the name of _____, as Trustee for _____, no withdrawals to be made prior to the 18th birthday of said minor, except on written approval of the court. Said savings institution is authorized to pay over the full amount remaining in said account to the said _____ upon satisfactory proof that he/she has reached the age of 18 years. Approval is conditional upon compliance with this order with respect to payment of bills and deposit.

(2) If the net amount of a settlement exceeds $10,000.00, court approval is required, and the court's order will ordinarily be in substantially the following form:

> Settlement approved. All medical bills and other approved expenses listed in the petition are to be paid. Counsel fees in the amount of $_____ allowed (if settlement was actually negotiated by counsel representing the minor). The balance amounting to $_____, shall

be paid over to _____, as guardian over the estate of the minor.

Said funds shall, upon payment, be under the jurisdiction of the appropriate Circuit Court-Probate Division and shall be administered in accordance with the requirements of the Circuit Court-Probate Division. Any requests for withdrawal shall be addressed to the Circuit Court-Probate Division for its consideration.

Approval is conditional upon compliance with this order with respect to payment of bills and deposit of funds in accordance with this order. Counsel for the minor shall be responsible for the settlement funds until said funds shall have actually been deposited in the appropriate guardianship account pursuant to the terms of this order and pursuant to the terms of the guardianship.

(k) In the event that the parties desire to enter into a structured settlement, which is defined as a settlement wherein payments are made on a periodic basis, the following rules shall also apply:

(1) Counsel for the defendants shall provide the court with an affidavit from an independent certified public accountant, or an equivalent professional, specifying the present value of the settlement and the method of calculation of that value.

(2) If the settlement is to be funded by an annuity, the annuity shall be provided by an annuity carrier meeting at least the following criteria:

(A) The annuity carrier must be licensed to write annuities in New Hampshire and, if affiliated with the liability carrier or the person or entity paying the settlement, must be separately capitalized, licensed and regulated and must have a separate financial rating;

(B) The annuity carrier must have a minimum of $100,000,000.00 of capital and surplus, exclusive of any mandatory security valuation reserve;

(C) The petition shall contain the following information about the annuity and the annuity carrier:

(i) a description of the structure of the annuity arrangement;

(ii) a description of the history and size of the annuity carrier and its experience in issuing annuities;

(iii) a certificate from the New Hampshire Insurance Department stating that the annuity carrier is in good standing in New Hampshire;

(iv) whether the annuity carrier is domiciled or licensed in a state accredited by the National Association of Insurance Commissioners under that organization's Financial Regulation Standards program; and

(v) the annuity carrier's most recent ratings from at least two of the commercial rating services listed in subparagraph (D);

(D) The annuity carrier must have one of the following ratings from at least two of the following rating organizations:

(i) A.M. Best Company: A++, A+, A, or A-;

(ii) Moody's Insurance Financial Strength Rating: Aaa or Aa;

(iii) Standard & Poor's Corporation Insurer Claims-Paying Ability Rating: AAA, AA+, AA, or AA-;

(iv) Duff & Phelps Credit Rating Company Insurance Company Claims Paying Ability Rating: AAA, AA+, AA, or AA-;

(E) The annuity carrier must meet any other requirement the court considers reasonably necessary to assure that funding to satisfy periodic payment settlements will be provided and maintained;

(F) The annuity carrier issuing an annuity contract pursuant to a qualified funding plan under these rules may not enter into an assumption reinsurance agreement for the annuity contract without the prior approval of the court and the owner of the annuity contract and the claimant having the beneficial interest in the annuity contract. The court shall not approve assumption reinsurance unless the reinsurer is also qualified under these rules;

(G) The annuity carrier and the broker procuring the policy shall each furnish the court with an affidavit certifying that the carrier meets the criteria set forth in subsection (D) above as of the date of the settlement and that the qualification is not likely to change in the immediate future. The broker's affidavit shall also contain the following certification: "This determination was made with due diligence by the undersigned based on rating information which was available or should have been available to an insurance broker in the structured settlement trade";

(H) In the event that the parties to the action desire to place the annuity with an annuity carrier licensed in New Hampshire which does not meet the above criteria, the court may consider approving the same, but only if the annuity obligation is bonded by an independent insurance or bonding company, licensed in New Hampshire, in the full amount of the annuity obligation; and

(I) The court reserves the right to require other reasonable security in any structured settlement if the circumstances should so require.

(3) The court may, for good cause shown, approve a structured settlement that does not comply with the provisions of paragraph (k). If the Court approves a settlement that does not comply with the provisions of paragraph (k), the court shall make specific findings on the record explaining the reason(s) for approving the settlement.

Rule 3.41 Reserved for future use.

Rule 3.42. Default

(a) When a party against whom a Complaint or other pleading (see Rule 3.6) requiring a response has been filed fails to timely Answer or otherwise defend, the party shall be defaulted. No such default shall be stricken off, except by agreement, or by order of the court upon such terms as justice may require. The court shall strike the default only upon motion and affidavit of defense,

specifically setting forth the defense and the facts on which the defense is based.

(b) Final default may be entered by the court, sua sponte, where appropriate, or by motion of a party, a copy of which shall be sent to all parties defaulted or otherwise.

(c) In all cases in which final default is entered, whether due to failure to file an Answer or otherwise, the case shall be marked "final default entered, continued for entry of judgment or decree upon compliance with Rule 3.42." A copy of the court's order and any subsequent orders shall be mailed or electronically delivered to all parties, defaulted or otherwise.

(d) The non-defaulting party may then request entry of final judgment or decree, by filing a motion, together with an affidavit of damages. Where the default is based on a failure to file an Answer, the motion shall include a military service statement. The moving party shall certify to the court that a copy of all pleadings has been mailed to the defaulting party and shall include a notice that entry of final judgment or decree is being sought. Any party may request a hearing as to final judgment or decree. All notices under this rule shall be sufficient if mailed to the last known address of the defaulting party.

(e) A hearing as to final judgment or decree shall be scheduled upon the request of any party. Otherwise, the court may enter final judgment or decree based on the pleadings submitted or exercise its discretion to hold a hearing depending on the circumstances of the default, the sufficiency of the pleadings and the nature of the damages sought or relief requested.

(f) If the court schedules a hearing, all parties, defaulted or otherwise, shall receive notice and an opportunity to be heard.

Rule 3.43. Procedure After Trial

A motion to set aside verdict or decree shall be filed within 10 days from the date on the court's written notice with respect to same, which shall be mailed by the court on the date of the notice. In each case, the motion shall fully state all reasons and arguments relied on.

Rule 3.44. Verdict upon Negotiable Instrument

When a verdict is rendered upon a negotiable instrument, or similar evidence of indebtedness, the original shall be filed with the clerk before judgment or execution is issued, unless the court otherwise orders.

Rule 3.45. Taxation of Costs

(a) *Costs*. Costs shall be allowed as of course to the prevailing party as provided by these rules, unless the court otherwise directs.

(1) *Taxation of Costs*. Upon written request, the clerk shall tax costs in any case, which shall include the fees of the court and fees for service of process which are documented in the court file.

(2) Any party claiming other allowable costs shall file a motion to allow costs together with an itemized, verified bill of all costs requested, to be ruled upon by the court. Any party aggrieved by the court's order concerning costs may appeal therefrom within 30 days from the date of notice of such order, regardless of whether an appeal concerning the underlying judgment is sought.

(b) *Allowable Costs*. The following costs shall be allowed to the prevailing party: Fees of the court, fees for service of process, witness fees, expense of view, cost of transcripts, and such other costs as may be provided by law. The court, in its discretion, may allow the stenographic cost of an original transcript of a deposition, plus one copy, including the cost of videotaping, and may allow other costs including, but not limited to, actual costs of expert witnesses, if the costs were reasonably necessary to the litigation.

Rule 3.46. Appeals and Transfers to Supreme Court

(a) *Interlocutory Appeals*. Whenever any question of law is to be transferred by interlocutory appeal from a ruling or by interlocutory transfer without ruling, counsel shall seasonably prepare and file with the trial court the interlocutory appeal statement or interlocutory transfer statement pursuant to Supreme Court Rule 8 or Supreme Court Rule 9, and after the court has signed the statement, counsel shall mail the number of copies provided for by the rules of the Supreme Court to the clerk thereof.

(b) *Denial of Motion to Dismiss Challenging Personal Jurisdiction, Process and/or Service of Process*. When, pursuant to Rule 3.9(e), a party files a timely Motion to Dismiss challenging the court's personal jurisdiction, sufficiency of process and/or sufficiency of service of process and the motion is denied, the order denying the motion may be appealed pursuant to Supreme Court Rule 7. See Rule 3.9(e) (a party will be deemed to have waived a challenge to personal jurisdiction, sufficiency of process and/or sufficiency of service if the party does not seek review by the supreme court of the denial of the Motion to Dismiss within 30 days; the supreme court's declining to accept the appeal will not preclude the party from challenging the trial court's ruling on personal jurisdiction, sufficiency of process and/or sufficiency of service of process in an appeal from a final judgment of the trial court).

(c) *Judgment on Multiple Claims or Involving Multiple Parties*.

(1) When, in a civil action that presents more than one claim for relief – whether as a claim, counterclaim, cross-claim, or third party claim – or where multiple parties are involved, the court enters an order that finally resolves the case as to one or more, but fewer than all, claims or parties, the court may direct that its order, or a portion of its order, be treated as a final decision on the merits as to those claims or parties if the court:

(A) explicitly refers to this rule;

(B) identifies the specific order or part thereof that is to be treated as a final decision on the merits;

(C) articulates the reasons and factors warranting such treatment; and

(D) finds that there is an absence of any just reason for delay as to the party or claim that is to be severed from the remainder of the case.

An order bifurcating or otherwise severing a civil action shall not, by itself, result in any order being treated as an appealable final decision on the merits unless all of the requirements of Rule 3.46(c)(1) are met.

(2) Procedure on Appeal.

(A) Any appeal from such an order shall be considered a mandatory appeal for purposes of Supreme Court Rule 7 if a final decision on the merits of the entire case would be a mandatory appeal, and shall be filed in accordance with Supreme Court Rules.

(B) Prior to accepting an appeal from an order that the Circuit Court directed be treated as a final decision on the merits pursuant to Rule 3.46(c)(1), the Supreme Court may review the trial court's reasons and factors warranting treating the order as a final decision on the merits. If the Supreme Court determines, after notice to the parties and an opportunity for the filing of brief memoranda, that the Circuit Court clearly erred by directing that the order be treated as a final decision on the merits, the Supreme Court shall vacate the portion of the order directing that it be treated as a final decision on the merits, and otherwise dismiss the appeal without prejudice.

(d) *Final Judgment*. In all actions in which a verdict is entered, or in which a motion for a nonsuit or directed verdict is granted, or in which any motion is acted upon after verdict, all appeals relating to the action shall be deemed waived and final judgment shall be entered as follows, unless the court has otherwise ordered, or unless a Notice of Appeal has then been filed with the Supreme Court pursuant to its Rule 7:

(1) Where no motion, or an untimely filed motion, has been filed after verdict, on the 31st day from the date on the court's written notice that the court has made the aforementioned entry, grant or dismissal; or

(2) Where a timely filed motion has been filed after verdict, on the 31st day from the date on the court's written notice that the court has taken action on the motion.

(e) The court shall not grant any requests for extensions of time to file an appeal document in the Supreme Court or requests for late entry of an appeal document in the Supreme Court; such requests shall be filed with the Supreme Court. *See* Supreme Court Rule 21(6).

(f) In civil actions in which a mistrial is declared, appeals from the denial of motions for nonsuit or directed verdict shall not be transferred to the Supreme Court before verdict following further trial unless the court shall approve an interlocutory appeal pursuant to Supreme Court Rule 8.

(g) The procedure for preparation of a transcript for cases appealed or transferred to the Supreme Court is governed by Supreme Court Rule 15.

X. PROVISIONAL AND FINAL REMEDIES

Rule 3.47. Attachments

(a) *Attachments with Notice*. The following procedure is to be used where the plaintiff requests that the court authorize an attachment of the defendant's property, using the method requiring notice to the defendant and an opportunity for the defendant to be heard before the court renders its decision.

(1) The Motion to Attach shall be executed under oath, and accompanied by the Notice to defendant as well as a copy of the Order form.

(2) The Motion to Attach shall be fastened to the Complaint, unless the case is electronically filed.

(3) Copies of the Complaint and Summons are then to be given to the sheriff or his or her deputy for service on the defendant; immediately after such service, that Complaint, together with the sheriff's Return of Service, is to be entered with the court.

(4) If the Motion to Attach is granted, the plaintiff's attorney, non-attorney representative or self-represented plaintiff is authorized to fill out a Writ of Attachment in accordance with the Order granting the motion. If permission is granted to make a real estate attachment, the attachment Writ together with the court's Order thereon may be served on the Registry of Deeds by the sheriff, or his or her deputy, the plaintiff, his or her attorney or any other person to effect the real estate attachment. To effect all other attachments, the Attachment Writ together with the court's Order thereon must be served by the sheriff, or his or her deputy. The Return of Service is to be filed with the court immediately on completion of the attachment. No additional service upon the defendant is required to perfect an attachment, provided that a Notice of Intent has been served upon the defendant as provided in RSA 511-A:2.

(b) *Attachments without Notice (Ex Parte).* The following procedure is to be used where the plaintiff requests permission to attach using the method that does not require notice to the defendant prior to the attachment:

(1) The Motion for Attachment shall be executed under oath, and accompanied with the Notice to defendant and Order form;

(2) The motion, and copies, along with the Complaint, are to be filed in court, and an entry fee paid;

(3) If the motion is denied, the plaintiff may move for attachment under the provisions of RSA 511-A:3.

(4) If the motion is granted, the plaintiff or his or her representative is authorized to prepare a Writ of Attachment in accordance with the Order granting the request.

(5) A certified copy of the Motion, the Notice to the defendant, and the court's order thereon shall be fastened to the face of the Writ of Attachment.

(6) The Writ of Attachment, Complaint, and Summons, together with copies, shall be delivered to the sheriff with directions to serve them within the time directed by the court's order. In those cases where permission is granted to make a real estate attachment, the Attachment Writ together with the court's Order thereon may be served on the Registry of Deeds by the sheriff, or his or her deputy, the plaintiff, his or her attorney or any other person to effect the real estate attachment before the Writs of Attachment and Summons, together with copies, are delivered to the sheriff. The Returns of Service are to be filed immediately after service has been completed.

Rule 3.48 Reserved for future use.

Rule 3.49. Security

When the plaintiff is a non-resident, he or she shall furnish security for costs in such amount and within such time as the court may order.

Rule 3.50. Deposit in Court

(a) In proper cases, the defendant may pay into court any sum of money which he or she admits to be due, accompanied by the general issue as to the balance; and, if the plaintiff shall refuse to accept the same with his or her costs, in full satisfaction of his or her claim, such sum shall be struck out of the Complaint; and unless the plaintiff shall prove that a larger sum be due him or her, he or she shall have no costs, but the defendant shall be allowed costs from the time of such payment.

(b) When a set-off, counterclaim or recoupment shall be filed and a sum of money paid into court as the balance due the plaintiff, the costs of the plaintiff

up to that time shall also be paid into court; and the defendant, if he or she prevails, shall be allowed only his or her subsequent costs.

Rule 3.51 Periodic Payments

See Rule 1.21.

Rule 3.52 Reserved for future use.

APPENDIX R

Amend Circuit Court – District Division Rule 5.3 ("Entry of Actions")

(new material is in **[bold and brackets]**; deleted material is in

~~strikethrough~~ format) as follows:

Rule 5.3. Entry of Actions.

A. Landlord and Tenant Writs shall be entered with the Court prior to service of process on the defendant. At the time of entry, the entry fee is payable to the Clerk of Court and the case shall be docketed. At the time of entry, the writ shall be accompanied by proof of service of the eviction notice. Proof of service must be shown by a true and attested copy of the notice accompanied by an affidavit of service, but the affidavit need not be sworn under oath. See RSA 540:5.

B. Writs may be accepted by the Court where a mailing address has been listed by the landlord, provided that the landlord also signs a statement on the writ attesting that the Court has jurisdiction over the action.

C. The return of service of process upon the defendant shall be filed by the plaintiff with the Court on or before the earlier of the following: (1) the day following the return day named in the writ; or (2) the time at which the hearing scheduled pursuant to RSA 540:13, V is scheduled to begin.

D. ~~The Clerk may refuse to accept any pleading or motion that the Clerk determines does not comply with these rules. In the event an objection is made to such determination, a written motion may be made to the Court to rule on such determination.~~

[The clerk may refuse to accept, by notification in writing, any filing that the clerk determines does not comply with these rules. In the event an objection is made to such determination, a written motion may be made to the court to rule on such determination. The written notification shall state: (1) all the reasons why the filing is not being accepted; and (2) that in the event the filing party objects to such determination, a written motion shall be made to the court to rule on such determination within 15 days of the date of the notification.]

APPENDIX S

Amend Circuit Court – District Division Rule 5.6 ("Discovery and Continuances") (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format) as follows:

Rule 5.6. Discovery and Continuances.

A. Both parties to a landlord and tenant action shall have a right to engage in discovery prior to the hearing on the merits, subject to the time frames set forth below:

1. All requests for discovery shall be made within five (5) days of the RETURN DAY.

2. **[Written interrogatories shall be governed by Rule 3.23 with the exception of the following: responses to interrogatories shall be made within 14 days after receipt of the interrogatories.]**~~Responses to interrogatories, r~~**[R]**equests for admissions and production of documents shall be made within fourteen (14) days after receipt of said requests.

3. Depositions shall be taken no less than three (3) days from the date of the notice of deposition and within no less than seven (7) days of the scheduled trial date.

B. Upon the request of any party, the Court may grant a continuance of the scheduled trial date to allow time to complete discovery. Landlord and tenant actions shall be given priority on the Court's docket and, whenever possible, rescheduled within thirty (30) days.

APPENDIX T

Amend Circuit Court – Probate Division Rule 169 ("Fees") (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format) as follows:

(I) ENTRY FEES:

(a) Original Entry of any Equity Action or Counterclaim (including set-off, recoupment, cross-claims and third-party claims) $ 225.00

(b) Petition File and Record Authenticated Copy of Will, Foreign Wills; Petition Estate Administration for estates with a gross value greater than $25,000; Petition Administration of Person Not Heard From; Petition Guardian, Foreign Guardian or Conservator (RSA 464-A) $ 195.00

(c) Petition Termination of Parental Rights; Petition Guardian Minor Estate and Person and Estate (RSA 463) $ 155.00

(d) Petition Adoption, includes one certificate (no entry fee when accompanied by a Petition for termination); Motion to Reopen (estate administration); Motion to Bring Forward $ 125.00

(e) Petition Estate Administration for estates having a gross value of $25,000 or less; ~~Petition Change of Name (includes one certificate)~~; Petition Guardian Minor Person (RSA 463) $ 85.00

(f) ~~Marriage Waiver $ 75.00~~
[Petition Change of Name (includes one Certificate) . . . .$ 85.00

(g) Motion Prove Will in Common and/or Solemn Form (administration required); Motion to Re-examine Will Petition to Prove Will (During Life of Testator) (no administration); Petition to Determine Validity of Trust; Petition for Parentage Order $ 155.00

(h) Petition Appoint Trustee $ 155.00

(i) Motion Successor Trustee, Administrator, Executor, or Guardian of Estate and Person and Estate (RSA 463)

(RSA 464-A); All Executor/Administrator Accounting for estates with a gross value greater than $25,000; Trustees Accounting; Guardian/Conservator Accounting; Motion for Summary Administration $ 85.00

(j) Petition Change of Venue (includes authenticated copy fee); Motion Successor Guardian of Person (RSA 463) (RSA 464-A); Motion Sue on Bond; Motion Remove Fiduciary; Motion Fiduciary to Settle Account $ 50.00

(k) Landlord Tenant Entry pursuant to ancillary jurisdiction under RSA 547:3-l $ 125.00

(l) Small Claim Entry and Counterclaim, $5000 or less (including set-off, recoupment, cross-claims and third-party claims) pursuant to ancillary jurisdiction under RSA 547:3-l $ 80.00

(m) Small Claim Transfer Fee pursuant to ancillary jurisdiction under RSA 547:3-l $ 145.00

(n) Civil ~~Writs of Summons~~ **[Complaints]** and Counterclaims (including set-off, recoupment, cross-claims and third-party claims) pursuant to ancillary jurisdiction under RSA 547:3-l $ 150.00

(o) Replevin pursuant to ancillary jurisdiction under RSA 547:3-l $ 150.00

(p) Small Claim Entry and Counterclaim, $5001 to $7500 (including set-off, recoupment, cross-claims and third-party claims) pursuant to ancillary jurisdiction under RSA 547:3-l $ 135.00

(q) Pursuant to RSA 490:26-a, II, the sum of $25.00 shall be added to each civil filing fee set forth in subsections (a), (b), (c), (d), (e), (f), (h), (n), and (o) above.

(II) ENTRY FEES INCLUDE:

Preparation and issuance of Original Orders of Notice, Notice, Copies of Decrees, mailing costs, certificate to discharge surety.

(III) ENTRY FEES DO NOT INCLUDE:

Notice by publication. The Party or the Attorney for the Party from whom the notice is required shall pay this fee. The clerk of each county shall determine the cost of publication. The request may require that payment be made directly to the publisher of the notice.

In-hand service. If service by a law enforcement officer is required, the Party or the Attorney for the Party from whom the notice is required shall pay the cost of service to the appropriate county sheriff's department.

Additional copies. If additional copies of any document, or additional certificates are requested beyond those included in normal processing as indicated above, the Party or the Attorney for the Party requesting the additional copies shall pay the costs in advance as indicated under "Certificates & Copies."

(IV) OTHER:

Defaults (RSA 545:26-a)	$ 25.00/each occurrence
Citations/show cause (RSA 545:26-a and 550:2)	$ 50.00/each occurrence
Duplicate Audio	$ 25.00/each CD or download
Application to Appear *Pro Hac Vice*	$ 250.00
Ex Parte Petition for Attachment, Ex Parte Petition for Writ of Trustee Process	$ 40.00
Motion for Periodic Payments	$ 25.00
Reissued Orders of Notice	$ 25.00
Writ of Execution	$ 40.00

(V) CERTIFICATES & COPIES:

Certificates	$ 10.00
Certification	$ 10.00 plus copy fee
All copied material	$ .50/page
Printing from court kiosks and computer screen printouts	$ .25/page
Original writ (form)	$ 1.00
Authenticated Copy of Probate	$ 40.00/each
Certificate of Judgment	$ 10.00
Exemplification of Judgment	$ 40.00

"Certificates & Copies" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

(VI) RECORDS RESEARCH FEES:

Records Research Fees. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of $20 per name will be assessed for up to 5 names. Additional names will be assessed $5 per name.

The clerk may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.

[(VII) Electronic Case Filing Surcharge

The sum of $20.00 shall be added to the filing fee set forth in paragraph I(f) above.]

APPENDIX U

Adopt Circuit Court – Probate Division Rule 173 ("Name Change Actions") as follows:

Rule 173 – Name Change Actions

Jurisdiction: All name change petitions shall be filed in the Circuit Court, pursuant to RSA 547:3-i or RSA 490-D:2, X.

Petition Required: To obtain a name change, a petition must be filed unless:

1. An individual seeks to restore a former name prior to the issuance of a final decree of divorce under RSA 458; or
2. An individual seeks to change a child's name as part of an adoption proceeding.

Proper Filing: A properly filed name change request includes:

1. For name change of an adult:
   a. A Petition for Change of Name, with filing fee; and
   b. A copy of a valid photograph identification showing petitioner's current name and current address as stated in the petition. If the address is not current, another document must be filed showing petitioner's current New Hampshire address to establish jurisdiction.
2. For name change of a minor:
   a. A Petition for Change of Name, with filing fee;
   b. A copy of child's birth certificate; and
   c. A signed consent form, if the parent/guardian is in agreement with the name change.

Notice: Notice of a petition for change of name is not required except as set forth below:

1. If the petition seeks to change the name of a minor, and the non-petitioning parent/guardian has not consented in writing, and rights have not been terminated, petitioner shall provide notice to the non-consenting parent/guardian by certified mail, return receipt requested or by sheriff's service.
2. If the petition seeks to change the name of a person who is incarcerated or who is on probation or parole, petitioner must have the sheriff's department serve a copy of the petition on the department of corrections.
3. If the petition seeks to change the name of a person who is required to register as a sexual offender or an offender against children pursuant to RSA 651-B, and who is no longer subject to supervision by

the department of corrections, petitioner must have the sheriff's department serve a copy of the petition on the department of safety.

Hearing: The petition may be ruled upon by the court without hearing unless the court determines a hearing is necessary.

APPENDIX V

Amend Circuit Court – Family Division Rule 1.3 ("Fees") (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format) as follows:

1.3 Fees:

A. The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.

B. 18.22% of the entry fee paid in each petition and cross-petition in marital cases ($41.00) shall be deposited into the mediation and arbitration fund to be used to pay for mediation where both parties are indigent.

C. (1) Original Entry of all Marital Matters, Parenting Petitions (including Order of Notice and Guardian ad Litem Fee) and Foreign Decrees	$225.00
(2) Cross Petition in all original entry Marital Matters and Parenting Petitions	$225.00
(3) Petition to Change Court Order in all Marital Matters and Parenting Petitions	
(a) With full agreement	$100.00
(b) Without full agreement	$225.00
D. (1) Divorce Certificate (VSR) only	$10.00
(2) Divorce Certificate, Certified Copy of Decree and if applicable, Agreement, QDRO, USO, and other Decree-related documents	$40.00
E. Petition for Ex Parte Attachment; Ex Parte Petition for Writ of Trustee Process	$40.00
F. Reissued Orders of Notice	$25.00
G. Writ of Execution	$40.00
H. Petition for Termination of Parental Rights	$155.00

I. Petition for Guardian Minor Person~~; Petition Change of Name (includes one certificate)~~ $85.00

[J. Petition Change of Name (includes one certificate) $85.00]

[K]~~J.~~ Petition for Adoption, includes one certificate (no entry fee when accompanied by a Petition for termination) $125.00

[L]~~K~~. Motion for Successor Guardian of Person $50.00

[M] Marriage Waiver $75.00]

[N]~~L~~. Surcharges and Additional Fees

(1) Pursuant to RSA 490:26-a, II, the sum of $25.00 shall be added to each civil filing fee set forth in paragraphs (C)(1), (C)(2), (C)(3), (H), (I), ~~and~~ (J)**[, (K) and (M)]** above, except for the following types of cases which pursuant to RSA 490:26-a, II(b) are exempt from the surcharge:

(a) Actions relating to children under RSA 169-B, RSA 169-C, and RSA 169-D.

(b) Domestic violence actions under RSA 173-B.

(2) On the commencement of any proceeding involving the determination of parental rights and responsibilities for which a fee is required, including petitions and cross-petitions for divorce with minor children, an additional fee of $2.00 shall be paid by the petitioner or cross-petitioner.

[O]~~M~~. OTHER FEES:

(1) Defaults in Minor Guardianship Actions $25.00/each occurrence

(2) Citations in Minor Guardianship Actions $50.00/each occurrence

(3) Duplicate Audio $25.00/each CD or download

(4) Application to Appear *Pro Hac Vice* $250.00

[P]~~N.~~ CERTIFICATES & COPIES:

(1) Certificates $10.00

(2) Certification $10.00 plus copy fee
All other copied material $.50/page

(3) Certificate of Judgment $10.00

(4) Exemplification of Judgment $40.00

"Certificates & Copies" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

[Q]~~O~~. The family division may waive any fee for good cause shown.

[R]~~P~~. Records Research Fees:

(1) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of $20 per name will be assessed for up to 5 names. Additional names will be assessed $5 per name.

(2) The Clerk may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.

[S. Electronic Case Filing Surcharge

The sum of $20.00 shall be added to the filing fee set forth in paragraphs (J) and (M) above.]

APPENDIX W

Amend Circuit Court – Family Division Section 9, (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format) as follows:

SECTION 9 -- NAME CHANGE ACTIONS

9.1 Scope: **[See Probate Rule 173.]** ~~Pursuant to RSA 490-D:2(X), a petition to change name may be filed in matters related to cases within the jurisdiction of the family division. All other name change actions must be filed in the probate court.~~

~~9.2 Separate Petition Required: To obtain a name change, a separate petition must be filed unless:~~

~~(a) An individual seeks to restore a former name prior to the issuance of a final decree of divorce under RSA 458; or~~

~~(b) An individual seeks to change a child's name as part of an adoption proceeding.~~

~~9.3 Jurisdiction: Petitions for name change may be filed if they relate to an open or closed case within the jurisdiction of the family division, even if not originally filed or heard in a family division location.~~

~~9.4 Proper Filing: A properly filed name change request includes:~~

~~A Petition for Change of Name Relating to family division jurisdiction;~~
~~A Name Change Affirmation;~~
~~A Personal Data Sheet;~~
~~Certified copy of birth certificate;~~
~~A Criminal Record Release Authorization (for name change of anyone 17 years of age or older);~~
~~A valid photograph identification (for name change of an adult);~~
~~The filing fee; and~~
~~If the petition relates to a minor, a consent if the parent/guardian is in agreement with the change.~~

~~9.5 Criminal Background Check: Results of criminal record checks are confidential and shall not be disclosed to anyone other than a party to the case, without prior Court approval.~~

~~9.6 Notice: Absent good cause shown, the petitioner shall provide notice to all parties involved in the case. In open cases, notice may be provided~~

~~by regular US mail. In closed cases, notice shall be by certified mail, return receipt requested.~~

~~9.7 Minor Child Name Change: If the name change request pertains to a minor child, notice is not required if the non-petitioning parent/guardian has consented in writing under oath, or if that parent's rights have been terminated.~~

~~9.8 Hearing Not Required: The Court, in its discretion, may act upon the petition without a hearing, under circumstances where no objections have been filed and where the criminal record check results report no finding.~~

~~9.9 Presence at Hearing of Older Child: If the request pertains to a minor child who is fourteen (14) years or older, a hearing must be held and that child must attend the hearing.~~

~~9.10 Certificate of Change of Name: If the Court grants the petition to change name, a Certificate of Change of Name will be issued to the petitioner for filing with appropriate agencies.~~