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, December 14, 2012, 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 December 14, 2012, or may be submitted at the hearing on December 14, 2012. Comments may be e-mailed to the Committee on or before December 14, 2012, 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 (Tel. 271-2646). In addition, the changes being considered are available on the Internet (in the Appendix to this Notice of Public Hearing) at:

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

The changes being considered concern the following rules:

I. Exchange of Pleadings by Email

(This proposal would allow counsel to agree that pleadings filed and communications addressed to the court may be furnished to all other counsel by email.)

1. Amend Supreme Court Rule 26(3), regarding filing and service, as set forth in Appendix A.

2. Amend Superior Court Rule 21, as set forth in Appendix B.

3. Amend Circuit Court - District Division Rule 1.3-A, regarding pleadings – copies to all parties, as set forth in Appendix C.

4. Amend Circuit Court - Probate Division Rule 21, regarding pleadings – copies to all parties, as set forth in Appendix D.

5. Amend Circuit Court - Family Division Rule 1.23, regarding pleadings, as set forth in Appendix E.

II. Notice of Appeal Deadline

(This proposal would resolve an ambiguity in Supreme Court Rule 7 regarding the Notice of Appeal deadline when a trial court grants a motion for reconsideration.)

1. Amend Supreme Court Rule 7(1), regarding appeals from trial court decisions on the merits, as set forth in Appendix F.

III. Appeals in Family Law Cases

(This proposal would address a concern that Supreme Court Rule 3 is unlawful and unconstitutional to the extent that it provides for

mandatory review of appeals involving married parents but discretionary review of appeals involving non-married parents.)

1. Amend Supreme Court Rule 3, regarding the definition of "mandatory appeal," as set forth in Appendix G.

IV. Admission to the Bar of Foreign Law School Graduates

(This proposal would change what graduates of law schools in foreign countries are required to prove to be eligible to sit for the bar examination in New Hampshire or to apply for admission upon motion.)

1. Amend Supreme Court Rule 42(V)(c) by deleting it in its entirety and replacing it, as set forth in Appendix H.

V. Transcripts of Court Proceedings

(These proposals would adopt on a permanent basis temporary amendments to the rules and forms relating to the preparation of transcripts of court proceedings and appeal transcripts.)

1. Adopt on a permanent basis Supreme Court Rule 15, regarding transcripts, which was amended on a temporary basis by Supreme Court Order dated April 27, 2012, as set forth in Appendix I.

2. Adopt on a permanent basis Supreme Court Rule 59, regarding preparation of transcripts of court proceedings; designation of transcriber and approval of transcript fees, which was amended on a temporary basis by Supreme Court Order dated April 27, 2012, as set forth in Appendix J.

3. Adopt on a permanent basis Supreme Court Rule 7 Notice of Discretionary Appeal form, which was amended on a temporary basis by Supreme Court Order dated April 27, 2012, as set forth in Appendix K.

4. Adopt on a permanent basis Supreme Court Rule 7 Notice of Mandatory Appeal form, which was amended on a temporary basis by Supreme Court Order dated April 27, 2012, as set forth in Appendix L.

VI. Law Clerk Code of Conduct

(This proposal would adopt on a permanent basis temporary amendments to Supreme Court Rule 46, relating to the Law Clerk Code of Conduct, governing the law clerks' use of writing samples for job search purposes.)

1. Adopt on a permanent basis Supreme Court Rule 46, Canon 2, regarding the Law Clerk Code of Conduct, which was amended on a temporary

basis by Supreme Court Order dated July 17, 2012, as set forth in Appendix M.

VII. Juror Questionnaires

(*These proposals seek to amend the proposed Superior Court Rules and new Rules of Criminal Procedure as set forth in the Advisory Committee on Rules August 31, 2010 Annual Report, not Court rules currently in effect. In May 2011, a staff attorney at the New Hampshire Supreme Court referred to the Advisory Committee on Rules a comment the Court received when the proposed Superior Court Rules and new Rules of Criminal procedure were put out for public comment. A subcommittee on juror questionnaires formed to consider the comment submitted recommendations to the Committee relating to: (1) what information should be requested from prospective jurors; (2) who should have access to the juror questionnaires and for what period of time; and (3) the length of time the questionnaires should be preserved after the juror's term is over. These proposals would amend the proposed court rules and forms in accordance with the subcommittee's recommendations.)*

1. Amend the existing juror questionnaire form, NHJB-2103-S, as set forth in Appendix N.

2. Amend proposed Superior Court Rule 33, as set forth in Appendix O.

3. Adopt proposed Criminal Rule of Procedure 22, without change, as set forth in Appendix P.

4. Amend Paragraph 6 of Supreme Court Administrative Order 2009-03 (Management and Retention of Superior Court Files), as set forth in Appendix Q.

New Hampshire Supreme Court
Advisory Committee on Rules

By: Robert J. Lynn, Chairperson
and Carolyn A. Koegler, Secretary

November 7, 2012

APPENDIX A

Amend Supreme Court Rule 26(3) as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

(3) **[(a)]** Service may be personal or by first class mail. Personal service includes delivery of the copy to a secretary or other responsible person at the office of counsel. Service by first class mail is complete on mailing.

[(b) In any case when all parties are represented by lawyers, all parties' counsel may agree that pleadings filed and communications addressed to the court may be furnished to all other counsel by email. An agreement may be filed with the court by stipulation. Such agreement shall list the email address(es) at which counsel agrees to be served. The email header shall include the caption of the case and its docket number. Pleadings and communications furnished in accord with this rule shall be attached to the email in .PDF file format. Documents so furnished may have on their signature lines a copy of counsel's signature, a facsimile thereof, "/s/ [counsel's name]" as used in the federal ECF system, or similar notation indicating the document was signed.]

APPENDIX B

Amend Superior Court Rule 21 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

21. **[(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. When an attorney has filed a limited appearance under Rule 14(d) 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 15(e), no further service need be made upon that attorney. All such pleadings or communications shall contain a statement of compliance herewith.

[(b) In any case when all parties are represented by lawyers, all parties' counsel may agree that pleadings filed and communications addressed to the court may be furnished to all other counsel by email. An agreement may be filed with the court by stipulation. Such agreement shall list the email address(es) at which counsel agrees to be served. The email header shall include the caption of the case and its docket number. Pleadings and communications furnished in accord with this rule shall be attached to the email in .PDF file format. Documents so furnished may have on their signature lines a copy of counsel's signature, a facsimile thereof, "/s/ [counsel's name]" as used in the federal ECF system, or similar notation indicating the document was signed.]

[(c)] A no contact order in a domestic violence, stalking, or similar matter shall not be deemed to prevent either party from filing appearances, motions, and other appropriate pleadings, through the Court. At the request of the party filing the pleading, the Court shall forward a copy of the pleading to the party or counsel on the other side of the case. Furthermore, the no contact provisions shall not be deemed to prevent contact between counsel, when both parties are represented.

APPENDIX C

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

Rule 1.3-A. Pleadings – copies to all parties.

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. 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.

[In any case when all parties are represented by lawyers, all parties' counsel may agree that pleadings filed and communications addressed to the court may be furnished to all other counsel by email. An agreement may be filed with the court by stipulation. Such agreement shall list the email address(es) at which counsel agrees to be served. The email header shall include the caption of the case and its docket number. Pleadings and communications furnished in accord with this rule shall be attached to the email in .PDF file format. Documents so furnished may have on their signature lines a copy of counsel's signature, a facsimile thereof, "/s/ [counsel's name]" as used in the federal ECF system, or similar notation indicating the document was signed.]

A no contact order in a domestic violence, stalking, or similar matter shall not be deemed to prevent either party from filing appearances, motions, and other appropriate pleadings, through the Court. At the request of the party filing the pleading, the Court shall forward a copy of the pleading to the party or counsel on the other side of the case. Furthermore, the no contact provisions shall not be deemed to prevent contact between counsel, when both parties are represented.

APPENDIX D

Amend Circuit Court - Probate Division Rule 21 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 21. PLEADINGS - Copies to all Parties.

[A.] Any Person filing a Pleading or correspondence with the Court shall forthwith furnish copies to all Attorneys, Pro Se Parties appearing of record, and to all Persons Beneficially Interested, unless excused by the Court for good cause shown. When an attorney has filed a limited appearance under Rule 14 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 20.A.5., no further service need be made upon that attorney. All such Pleadings shall contain a statement of compliance. This rule shall not apply to any Pleading for which orders of notice are issued and served upon the parties.

[B. In any case when all parties are represented by lawyers, all parties' counsel may agree that pleadings filed and communications addressed to the court may be furnished to all other counsel by email. An agreement may be filed with the court by stipulation. Such agreement shall list the email address(es) at which counsel agrees to be served. The email header shall include the caption of the case and its docket number. Pleadings and communications furnished in accord with this rule shall be attached to the email in .PDF file format. Documents so furnished may have on their signature lines a copy of counsel's signature, a facsimile thereof, "/s/ [counsel's name]" as used in the federal ECF system, or similar notation indicating the document was signed.]

APPENDIX E

Amend Circuit Court - Family Division Rule 1.23 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

1.23 Pleadings:

A. Copies of all pleadings filed and communications addressed to the court shall be provided to all other counsel or to the opposing party if appearing pro se. When an attorney has filed a limited appearance under Family Division Rule 1.19 A, 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 Family Division Rule 1.19 C, no further service need be made upon that attorney. All such pleadings and communications shall contain a statement of compliance with this rule.

B. A no contact order in a domestic violence, stalking, or similar matter shall not be deemed to prevent either party from filing appearances, motions, and other appropriate pleadings with the court. At the request of the party filing the pleading, the court shall forward a copy of the pleading to the party or counsel on the other side of the case. Furthermore, the no contact provisions shall not be deemed to prevent contact between counsel when both parties are represented.

[C. In any case when all parties are represented by lawyers, all parties' counsel may agree that pleadings filed and communications addressed to the court may be furnished to all other counsel by email. An agreement may be filed with the court by stipulation. Such agreement shall list the email address(es) at which counsel agrees to be served. The email header shall include the caption of the case and its docket number. Pleadings and communications furnished in accord with this rule shall be attached to the email in .PDF file format. Documents so furnished may have on their signature lines a copy of counsel's signature, a facsimile thereof, "/s/ [counsel's name]" as used in the federal ECF system, or similar notation indicating the document was signed.]

APPENDIX F

Amend Supreme Court Rule 7(1) as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 7. Appeal from Trial Court Decision on the Merits.

(1)(A) *Mandatory appeals.*

Unless otherwise provided by law or by these rules, a mandatory appeal, other than an appeal in a parental notification case under RSA 132:34, shall be by notice of appeal in the form of notice of appeal approved by the supreme court for the filing of a mandatory appeal ("Notice of Mandatory Appeal" form). Such an appeal shall be filed by the moving party within 30 days from the date on the clerk's written notice of the decision on the merits.

(B) *Other appeals from trial court decisions on the merits.*

The supreme court may, in its discretion, decline to accept an appeal, other than a mandatory appeal, or any question raised therein, from a trial court after a decision on the merits, or may summarily dispose of such an appeal, or any question raised therein, as provided in Rule 25. Unless otherwise provided by law or by these rules, an appeal from a trial court decision on the merits other than a mandatory appeal shall be by notice of appeal in the form of notice of appeal approved by the supreme court for the filing of such an appeal ("Notice of Discretionary Appeal" form). Such an appeal shall be filed by the moving party within 30 days from the date on the clerk's written notice of the decision on the merits.

(C) The definition of "decision on the merits" in Rule 3 includes decisions on motions made after an order, verdict, opinion, decree or sentence. A timely filed post-~~trial~~**[decision]** motion stays the running of the appeal period for all parties to the case in the trial court including those not filing the motion. **[If the trial court's decision on a post-decision motion creates a newly-losing party, and the newly-losing party files a timely motion for reconsideration, such motion will further stay the running of the appeal period for all parties to the case in the trial court including those not filing the motion.** Untimely filed post-~~trial~~ **[decision]** motions will not stay the running of the appeal period unless the trial court waives the untimeliness within the appeal period. Successive post-~~trial~~ **[decision]** motions **[filed by a party that is not a newly-losing party]** will not stay the running of the

appeal period. *See Petition of Ellis*, 138 N.H. 159 (1993)**[; <u>see also</u> Superior Ct. Rule 59-A]**.

In criminal appeals, the time for filing a notice of appeal shall be within 30 days from the date of sentencing or the date of the clerk's written notice of disposition of post-trial motions, whichever is later, provided, however, that the date of the clerk's written notice of disposition of post-trial motion shall not be used to calculate the time for filing a notice of appeal in criminal cases if the post-trial motion was filed more than 10 days after sentencing.

APPENDIX G

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

Rule 3. Definitions.

Administrative agency": Includes agency, board, commission, or officer.
"Appeal": Appellate review of rulings adverse to a party, after a final decision on the merits in a trial court.

"Appeal document": Includes notice of mandatory appeal (Rule 7), notice of discretionary appeal (Rule 7), interlocutory appeal (Rule 8), interlocutory transfer without ruling (Rule 9), appeal from administrative agency by petition (Rule 10), and petition for original jurisdiction (Rule 11).

"Appeal from administrative agency by petition": Appellate review of a party's grounds for asserting that an administrative agency's final order or decision on the merits is unlawful or unreasonable.

"Briefs":

"Opening brief": The brief filed first pursuant to court order.

"Opposing brief": The brief filed by the opposing party after the filing of the opening brief.

"Reply brief": See Rule 16(7).

"Supplemental brief": See Rule 16(7).

"Clerk": Where the context refers to the clerk of a trial court, "clerk" includes a clerk of a trial court, a register of probate, or the administrative agency official who is the equivalent of a clerk of court or who is charged with performing the duties associated with a clerk of court, and their respective assistants and deputies; where the context refers to the clerk of the supreme court, "clerk" includes his or her assistants and deputies.

"Decision on the merits": Includes order, verdict, opinion, decree, or sentence following a hearing on the merits or trial on the merits and the decision on motions made after such order, verdict, opinion, decree or sentence. Untimely filed post-trial motions will not stay the running of

the appeal period unless the trial court waives the untimeliness within the appeal period.

"Declination of acceptance order": The supreme court does not deem it desirable to review the issues in a case, as a matter of sound judicial discretion and with no implication whatever regarding its views on the merits.

"First class mail": First class postage prepaid, whether certified, registered, uncertified, or unregistered.

"Interlocutory appeal": Appellate review of rulings adverse to a party, before a final decision on the merits in a trial court.

"Interlocutory transfer without ruling": Appellate review of questions of law transferred by a trial court or administrative agency before a final decision on the merits in the trial court or administrative agency and without ruling by the trial court or administrative agency.

"Mandatory appeal": A mandatory appeal shall be accepted by the supreme court for review on the merits. A mandatory appeal is an appeal filed by the State pursuant to RSA 606:10, or an appeal from a final decision on the merits issued by a superior court, district court, probate court, or family division court, that is in compliance with these rules. Provided, however, that the following appeals are NOT mandatory appeals:

(1) an appeal from a final decision on the merits issued in a post-conviction review proceeding (including petitions for writ of habeas corpus and motions for new trial);

(2) an appeal from a final decision on the merits issued in a collateral challenge to any conviction or sentence;

(3) an appeal from a final decision on the merits issued in a sentence modification or suspension proceeding;

(4) an appeal from a final decision on the merits issued in an imposition of sentence proceeding;

(5) an appeal from a final decision on the merits issued in a parole revocation proceeding;

(6) an appeal from a final decision on the merits issued in a probation revocation proceeding.;

(7) an appeal from a final decision on the merits issued in a landlord/tenant action filed under RSA chapter 540 or in a possessory action filed under RSA chapter 540; and

(8) an appeal from an order denying a motion to intervene; and

(9) an appeal from a final decision on the merits**[, other than the first final order,]** issued in, or arising out of, a domestic relations matter filed under RSA Title XLIII (RSA chapters 457 to 461-A)~~; provided, however, that an appeal from a final divorce decree or decree of legal separation shall be a mandatory appeal~~.

Comment

A trial court order denying a motion by a non-party to intervene in a trial court proceeding is treated as a "final decision on the merits" for purposes of appeal. Thus, such an order is immediately appealable to the supreme court. Pursuant to this rule, however, such an appeal is not a mandatory appeal. Therefore, a non-party who wishes to appeal the trial court's denial of the non-party's motion to intervene must file an appeal pursuant to Rule 7(1)(B) within the time allowed for appeal under that rule.

Under paragraph (9), only appeals from final divorce decrees or decrees of legal separation are mandatory appeals. Any other appeal from a final decision on the merits issued in, or arising out of, a domestic relations matter filed under RSA Title XLIII (RSA chapters 457 to 461-A) is not a mandatory appeal. The amendment to this rule that added paragraph (9) shall apply to any appeal in which the notice of appeal is docketed in the supreme court on or after January 1, 2008.

"Moving party": The plaintiff in an interlocutory transfer, the party appealing by appeal or by interlocutory appeal, or the party petitioning that the supreme court exercise its original jurisdiction.

"Notice of appeal": The notice filed to initiate an appeal from the trial court's final decision on the merits, in the form prescribed by these rules.

"Petition for original jurisdiction": Request that the supreme court exercise its original jurisdiction, whether exclusive or nonexclusive and whether in aid of its appellate jurisdiction or its supervisory jurisdiction, and that the court issue an extraordinary writ or grant other suitable relief.

"Trial court reporter": Trial court or administrative agency reporter.

APPENDIX H

Amend Supreme Court Rule 42(V)(c) by deleting it in its entirety, and replacing it with the following:

(c) **Foreign Law Graduate.** Notwithstanding the foregoing paragraph, an applicant who has graduated from a law school in a foreign country and who is: (1) a member in good standing of the bar of that country; or (2) a member of the bar of one of the States of the United States who was admitted after examination and is in good standing, may qualify to sit for the New Hampshire Bar Examination or may apply for admission upon motion by providing to the board satisfactory proof of his or her educational sufficiency. Any person who seeks admission to practice law in the State of New Hampshire who is a graduate of a law school in a foreign country shall have the burden of proving that the requirements of this section have been met. In addition to filing the petition and questionnaire for admission, any foreign law school graduate seeking admission must file an affidavit, signed under oath, attesting that the requirements of this section have been met, and submitting information sufficient for the board to determine that the requirements have been met. To prove educational sufficiency, an applicant must prove:

(1) that he or she successfully completed a period of law study in a law school or law schools each of which, throughout the period of the applicant's study therein, was recognized by the competent accrediting agency of the government of such other country, or a political subdivision thereof, as qualified and approved; and

(2) that such other country is one whose jurisprudence is based upon the principles of English Common law; and

(3) that the program and course of law study successfully completed by the applicant were substantially equivalent in substance to the legal education provided by a law school accredited by the American Bar Association. An applicant will be deemed to have a legal education equivalent in substance to that provided by law schools accredited by the American Bar Association if the applicant successfully completed, as part of the law school education or at a law school accredited by the American Bar Association, at least 24 semester credit hours of coursework dealing with either the law of the United States or the law of one of the States of the United States, including a course in basic constitutional law and professional responsibility. Distance study, correspondence study and on-line programs are not acceptable. At least sixteen (16) of the semester credit hours must have been from among at least five of the following categories:

(A) Evidence
(B) Taxation
(C) Civil or Criminal Procedure
(D) Contracts
(E) Decedents' Estates
(F) Real Property
(G) Corporations or business organizations
(H) Torts
(I) Criminal Law

(4) If the applicant has met the requirements of paragraphs (1) and (2), but the applicant's program and course of law study does not meet the requirements of paragraph (3), the board may nevertheless determine that the applicant has proved educational sufficiency based upon the board's consideration of the following factors:

(A) The course of study that was completed as compared to that offered in a law school approved by the American Bar Association;

(B) The attorney's pre-legal education as compared to that offered in a US high school and college or university;

(C) The length and nature of prior legal practice or teaching, if any;

(D) The applicant's familiarity with the American constitutional, common-law and statutory legal systems;

(E) The applicant's successful completion of additional legal studies.

APPENDIX I

Adopt on a permanent basis Supreme Court Rule 15, which was amended on a temporary basis by Supreme Court order dated April 27, 2012, as follows (no changes are being proposed to the temporary rule now in effect):

Rule 15. Transcripts.

(1) The parties shall attempt to enter into stipulations, such as an agreed statement of facts, that will reduce the size of transcripts or avoid them completely. If such a stipulation is entered into, an original and 8 copies thereof must be filed with the clerk's office if it is not included in the notice of appeal.

(2) (a) *Mandatory appeals.* The moving party shall have completed the notice of appeal form which includes the transcript information, including the dates of the proceedings to be transcribed, the length of the proceedings, and the deposit required. A transcript of the parts of the proceedings necessary for appeal and not already on file in the trial court shall be prepared. The supreme court clerk's office shall issue a scheduling order notifying the moving party that within 15 days from the date on the written notice, the moving party must pay the deposit to the transcriber designated by the court to prepare the transcript or to the transcriber's agent. If payment is not received by the date specified, the appeal may be deemed waived and the case dismissed. Upon timely receiving the required deposit, the transcriber shall proceed with the transcription. If the required deposit is not timely received, the transcriber shall immediately so notify the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may be considered a moving party, and in cases of multiple appeals (including cross-appeals), the clerk, within the clerk's discretion, may assess transcription costs as justice requires.

(b) *Other appeals from trial court decisions on the merits*. The moving party shall have completed the notice of appeal form which includes the transcript information, including the dates of the proceedings to be transcribed, the length of the proceedings, and the deposit required. If the appeal is accepted by the court for briefing, the supreme court clerk's office shall issue a scheduling order notifying the moving party that within 15 days from the date on the written notice, the moving party

must pay the deposit to the transcriber designated by the court to prepare the transcript or to the transcriber's agent. If payment is not received by the transcriber by the date specified, the appeal may be deemed waived and the case dismissed. Upon timely receiving the required deposit, the transcriber shall proceed with the transcription. If the required deposit is not timely received, the transcriber shall immediately so notify the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may be considered a moving party, and in cases of multiple appeals (including cross-appeals), the clerk, within the clerk's discretion, may assess transcription costs as justice requires.

(3) If the moving party intends to argue in the supreme court that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless otherwise ordered by the supreme court, the transcript shall contain all the oral proceedings except opening statements, medical testimony, arguments, and charge.

(4) Unless the parties agree, or the court otherwise orders, the transcriber shall produce an electronic version of the transcript for the court, which shall be deemed the official transcript, as well as a paper copy of the transcript. The transcriber shall also produce an electronic copy of the transcript for each party to the case requiring a transcript. The transcript shall be completed as early as possible within 45 days after receiving the recording of the proceedings from the trial court clerk. Requests for extensions of time in which to prepare a transcript shall not be favored, but the transcriber may request that the supreme court grant an extension of time. Such a request shall give the reasons for the need for an extension.

(5) The supreme court may order that the preparation of a transcript in a case be given immediate attention.

Comment

It is a long-standing rule that parties may not have judicial review of matters not raised in the forum of trial. Absent a transcript of the proceedings below, the supreme court will generally assume that the evidence was sufficient to support the result reached by the trial court. It is the burden of the appealing party to provide the supreme court with a record sufficient to decide the issues on appeal, as well as to demonstrate that those issues were properly raised before the trial court. In deciding whether a transcript of the trial court's proceedings is necessary, the appealing party should keep in mind that the appealing party is responsible for providing the supreme court with a sufficient record to decide the issues on appeal. If the appealing party fails to provide a sufficient record, the appeal may be dismissed or the supreme court may not review an issue that the appealing party has raised. *See Bean v. Red Oak Prop. Mgmt.*, 151 N.H. 248 (2004).

APPENDIX J

Adopt on a permanent basis Supreme Court Rule 59, which was amended on a temporary basis by Supreme Court order dated April 27, 2012, as follows (no changes are being proposed to the temporary rule now in effect):

Rule 59. Preparation Of Transcripts Of Court Proceedings; Designation Of Transcriber And Approval Of Transcript Fees.

(1) *Preparation of A Transcript Other Than for A Supreme Court Appeal*

(a) Any person may request that a transcript be prepared of a recorded court proceeding except when the case or proceeding is confidential by statute or court rule or order. In a confidential case or proceeding, a request for a transcript made by a person who is not a party ordinarily will be denied.

A transcript will be prepared from the recording of the proceeding by the transcriber designated by the court in accordance with paragraph 3 of this rule.

(b) A person requesting the preparation of a transcript (requesting party) will be required to pay the cost of preparing the transcript in accordance with the fee schedule approved by the Supreme Court pursuant to paragraph 3 of this rule. Requests to have a transcript prepared at the expense of the State or other governmental entity are governed by paragraph (j) below. Preparation of transcripts at the request of a court is governed by paragraph (k) below.

(c) The requesting party will be required to pay the transcriber a deposit for preparation of the transcript before the transcriber begins work. The deposit is an estimate of the cost of preparing the transcript. The cost of the transcript will be determined by the fee schedule approved by the Supreme Court. If the deposit amount is insufficient to cover the cost of the transcript, the requesting party may be required to pay the balance of the transcript cost before receiving the transcript. If the deposit exceeds the cost of the transcript, the excess deposit will be refunded.

(d) The requesting party shall submit a request for preparation of a transcript to the transcriber. The requesting party shall identify the

court where the proceeding was held (the court of record) and specify the portion or portions of a court proceeding to be transcribed. An excerpt of a proceeding may be requested, provided that if any portion of the testimony of a witness is requested, the entire testimony of that witness must be transcribed.

(e) Upon receipt of a transcript request and any required deposit, the transcriber shall request the recording of the proceeding(s) and case information from the court of record. Immediately upon receipt of the request from the transcriber, the court of record shall send the transcriber the recording of the court proceeding(s) to be transcribed, along with pertinent case information.

(f) The transcriber shall proceed to transcribe the court proceeding upon receipt of the recording and pertinent case information. The transcriber shall complete the transcript within the time requested. If the transcriber cannot prepare the transcript within the time requested, the transcriber shall notify the requesting party. The time allowed the transcriber for completion of the transcript shall be calculated from the date that the transcriber receives the recording of the proceeding from the court of record.

(g) The transcriber shall certify that the completed transcript is an accurate transcription of the court proceeding. The certification shall be in the following form:

To the best of my professional ability, skill, and knowledge, I certify that this transcript is a true and accurate record of the recording.

Name: Date:

(h) The transcriber shall provide the court of record with the certified transcript, which shall be digitally signed, in PDF-A format. Unless the requesting party has arranged for another format, the transcriber shall provide the requesting party with a certified, digitally-signed copy of the transcript in PDF-A format.

(i) Requests for transcripts previously requested or prepared:

A copy of a completed transcript of a court proceeding that was prepared in an electronic format may be requested from the transcriber or from the court of record, for a fee to be determined in accordance with the fee

schedule approved by the Supreme Court. A copy of a completed transcript of a court proceeding that is not available in an electronic format may be obtained from the court of record for a fee to be determined in accordance with the fee schedule approved by the Supreme Court.

(j) Requests for transcripts in cases in which the requesting party is entitled to preparation of a transcript at the expense of the State or other governmental entity:

(i.) Any person requesting that a transcript of a proceeding be prepared at the expense of the State or other governmental entity must file a motion for authorization to obtain services other than counsel in the court where the matter is pending. If the motion is granted, counsel shall submit the transcript request and a copy of the approved motion for services to the court-designated transcriber. Upon receipt of the request, the transcriber will request copies of the recorded court proceeding and other pertinent case information from the court of record. No deposit shall be required for preparation of the transcript in such cases.

(ii.) Upon completion of the transcript, the transcriber shall send the transcript to the requesting party, to the court that granted the motion, and to the court of record, if different from the court that granted the motion. If the motion was granted by the Superior Court, the transcriber shall send a Statement for Services Other than Counsel with the transcript to the Superior Court. If the motion was granted by a division of the Circuit Court, the transcriber shall send a Statement for Services Other than Counsel to the Circuit Court Transcript Center.

(iii.) Upon receipt of the transcript and Statement for Services Other than Counsel, and after verification that the Statement is correct, payment of the transcriber's Statement shall be approved by the Superior Court or the Administrative Judge of the Circuit Court and sent to the authority responsible for payment along with the necessary paperwork.

(iv.) In all other respects, the procedures set forth in paragraphs (a)-(i) will govern the preparation of a transcript prepared in such cases.

(k) Preparation of transcript for court use:

(i.) When a court orders a transcript for the court's use, it shall issue an order requiring that the transcript be prepared at the expense of the judicial branch. The court clerk or the clerk's designee shall submit the transcript request and a copy of the court order, with the recording of the court proceeding and pertinent case information to the transcriber.

No deposit shall be required for preparation of a transcript for use by a court.

(ii.) Upon completion of the transcript, the transcriber shall send the completed transcript to the requesting court. If the requesting court is the Superior Court, the transcriber shall send an itemized invoice with the transcript to the Superior Court. If the requesting court is a division of the Circuit Court, the transcriber shall also send an itemized invoice with the transcript to the Circuit Court Transcript Center.

(iii.) Upon receipt of the transcript and itemized invoice, and after verification that the invoice is correct, payment of the transcriber's invoice shall be approved by the requesting Superior Court or by the Circuit Court Administrative Judge and sent to the Administrative Office of the Courts for payment along with the order approving payment.

(iv.) In all other respects, the procedures set forth in paragraphs (a)-(i) will govern the preparation of a transcript prepared in such cases.

(2) *Preparation of Transcripts for Appeal*

The preparation of a transcript for appeal is governed by Supreme Court Rule 15.

(3) *Designation of Transcriber and Approval of Fees*

(a) The Supreme Court shall designate a person or entity which shall be responsible for transcribing all court proceedings.

(b) The Supreme Court shall approve a fee schedule for the preparation of transcripts.

(c) After a transcript of court proceedings has been prepared by the transcriber and provided to the court of record, the transcript shall become the property of the judicial branch, and the judicial branch shall have the right to make copies of the transcript for its own use and to provide copies to others with or without charge. The transcriber may provide a copy of a nonconfidential transcript for a fee determined in accordance with the Supreme Court fee schedule, but it shall not be entitled to payment of any additional fees for copies made by the judicial branch.

(4) *Official Record*

(a) When a transcript of a court proceeding is prepared by the transcriber designated by the Supreme Court, the certified, digitally-

signed transcript provided to the court of record or the Supreme Court in the case of an appeal shall be considered the official record of the court proceeding.

(b) Any person may request a copy of the audio recording of a hearing except when a case or proceeding is confidential by statute or court rule or order. The recording will be provided on CD or audiotape for a fee of $25.00 per audiotape or CD. A copy of the recording of a court proceeding shall not be deemed to be the official record of the proceeding.

APPENDIX K

Adopt on a permanent basis the Supreme Court Rule 7 Notice of Discretionary Appeal form, which was amended on a temporary basis by Supreme Court Order dated April 27, 2012 (no changes are being proposed to the temporary form now in effect):

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

RULE 7 NOTICE OF DISCRETIONARY APPEAL

This form should be used only for an appeal from a final decision on the merits issued by a superior court or circuit court in (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A, except that an appeal from a final divorce decree or from a decree of legal separation should be filed on a Rule 7 Notice of Mandatory Appeal form.

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

_____

_____

_____

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

_____

_____

3A. NAME AND MAILING ADDRESS OF APPEALING PARTY. IF REPRESENTING SELF, PROVIDE E-MAIL ADDRESS AND TELEPHONE NUMBER

_____

_____

_____

_____

_____

E-Mail address: _____

Telephone number: _____

3B. NAME, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS AND TELEPHONE NUMBER OF APPEALING PARTY'S COUNSEL

_____

_____

_____

_____

_____

E-Mail address: _____

Telephone number: _____

4A. NAME AND MAILING ADDRESS OF OPPOSING PARTY. IF OPPOSING PARTY IS REPRESENTING SELF, PROVIDE E-MAIL ADDRESS AND TELEPHONE NUMBER

E-Mail address: _____

Telephone number: _____

4B. NAME, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS AND TELEPHONE NUMBER OF OPPOSING PARTY'S COUNSEL

E-Mail address: _____

Telephone number: _____

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING.

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY.

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS

8. APPELLATE DEFENDER REQUESTED? ☐ YES ☐ NO

IF YOUR ANSWER IS YES, YOU MUST CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND ATTACH FINANCIAL AFFIDAVIT

(OCC FORM 4)

_____

_____

9. IS ANY PART OF CASE CONFIDENTIAL? ☐ YES ☐ NO

IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

_____

_____

10. IF ANY PARTY IS A CORPORATION LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.

_____

_____

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE? ☐ YES ☐ NO

IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL?

☐ YES ☐ NO

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

13. NATURE OF CASE AND RESULT (Limit two pages double-spaced; please attach.)

14. ISSUES ON APPEAL (Limit eight pages double-spaced; please attach.)

The New Hampshire Supreme Court reviews each discretionary notice of appeal and decides whether to accept the case, or some issues in the case, for appellate review. The following acceptance criteria, while neither controlling nor fully describing the court's discretion, indicate the character of the reasons that will be considered.

1. The case raises a question of first impression, a novel question of law, an issue of broad public interest, an important state or federal constitutional matter, or an issue on which there are conflicting decisions in New Hampshire courts.

2. The decision below conflicts with a statute or with prior decisions of this court.

3. The decision below is erroneous, illegal, and unreasonable or was an unsustainable exercise of discretion.

Separately number each issue you are appealing and for each issue: (a) state the issue; (b) explain why the acceptance criteria listed above support acceptance of that issue; and (c) if a ground for appeal is legal sufficiency of evidence include a succinct statement of why the evidence is alleged to be insufficient as a matter of law.

15. ATTACHMENTS

Attach to this notice of appeal the following documents in order: (1) a copy of the trial court decision or order from which you are appealing; (2) the clerk's notice of the decision below; (3) any court order deciding a timely post-trial motion; and (4) the clerk's notice of any order deciding a timely post-trial motion.

Do not attach any other documents to this notice of appeal. Any other documents you wish to submit must be included in a separately bound Appendix, which must have a table of contents on the cover and consecutively numbered pages.

16. CERTIFICATIONS

I hereby certify that every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

_____

Appealing Party or Counsel

I hereby certify that on or before the date below, copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

Date	Appealing Party or Counsel

TRANSCRIPT ORDER FORM

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Supreme Court Rule 15(3)), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
4. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. The court also will be provided with a paper copy of the transcript. The parties will be provided with an electronic copy of the transcript in PDF-A format.

PROCEEDINGS TO BE TRANSCRIBED					
PROCEEDING DATE (List each day separately, e.g. 5/1/11; 5/2/11; 6/30/11)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	LENGTH OF PROCEEDING (in .5 hour segments, e.g.,1.5 hours, 8 hours)	RATE (standard rate unless ordered by Supreme Court)	DEPOSIT
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				TOTAL DEPOSIT	**$**

PROCEEDINGS PREVIOUSLY TRANSCRIBED					
PROCEEDING DATE (List date of each	TYPE OF PROCEEDING (Motion hearing, opening statement,	NAME OF JUDGE	NAME OF TRANSCRIBER	DO ALL PARTIES HAVE COPY	DEPOSIT FOR ADDITIONAL

transcript volume)	trial day 2, etc.)			(YES OR NO)	COPIES
				☐ Yes ☐ No	TBD
				☐ Yes ☐ No	TBD
				☐ Yes ☐ No	TBD

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you will be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

APPENDIX L

Adopt on a permanent basis the Supreme Court Rule 7 Notice of Mandatory Appeal form, which was amended on a temporary basis by Supreme Court Order dated April 27, 2012 (no changes are being proposed to the temporary form now in effect):

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

RULE 7 NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court or circuit court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving a collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A other than an appeal from a final divorce decree or from a decree of legal separation. (An appeal from a final divorce decree or from a decree of legal separation should be filed on a Rule 7 Notice of Mandatory Appeal form.)

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

_____

_____

_____

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

_____

_____

3A. NAME AND MAILING ADDRESS OF APPEALING PARTY. IF REPRESENTING SELF, PROVIDE E-MAIL ADDRESS AND TELEPHONE NUMBER

_____

_____

_____

_____

_____

E-Mail address: _____

Telephone number: _____

3B. NAME, FIRM NAME, MAILING ADDRESS,
E-MAIL ADDRESS AND TELEPHONE NUMBER OF APPEALING PARTY'S COUNSEL

_____

_____

_____

_____

_____

E-Mail address: _____

Telephone number: _____

4A. NAME AND MAILING ADDRESS OF OPPOSING PARTY. IF OPPOSING PARTY IS REPRESENTING SELF, PROVIDE E-MAIL ADDRESS AND TELEPHONE NUMBER

E-Mail address: _____

Telephone number: _____

4B. NAME, FIRM NAME, MAILING ADDRESS,
E-MAIL ADDRESS AND TELEPHONE NUMBER OF OPPOSING PARTY'S COUNSEL

E-Mail address: _____

Telephone number: _____

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING. ATTACH COPY OF NOTICE AND DECISION.

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY. ATTACH COPY OF NOTICE AND DECISION.

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS

8. APPELLATE DEFENDER REQUESTED? ☐ YES ☐ NO

IF YOUR ANSWER IS YES, YOU MUST CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND ATTACH FINANCIAL AFFIDAVIT (OCC FORM 4)

_____

9. IS ANY PART OF CASE CONFIDENTIAL? ☐ YES ☐ NO
IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

_____

_____

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.

_____

_____

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE? ☐ YES ☐ NO

IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL?
☐ YES ☐ NO

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH. SEE SUPREME COURT RULE 16(3)(b).

14. CERTIFICATIONS

I hereby certify that every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

_____

Appealing Party or Counsel

I hereby certify that on or before the date below, copies of this notice of appeal were served on

all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

Date	Appealing Party or Counsel

TRANSCRIPT ORDER FORM

INSTRUCTIONS:

5. If a transcript is necessary for your appeal, you must complete this form.
6. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Supreme Court Rule 15(3)), motion to suppress hearing, jury charge, etc., and provide information requested.
7. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
8. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. Parties will be provided with an electronic copy of the transcript in PDF-A format. A paper copy of the transcript will also be prepared for the court.

PROCEEDINGS TO BE TRANSCRIBED					
PROCEEDING DATE (List each day separately, e.g. 5/1/11; 5/2/11; 6/30/11)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	LENGTH OF PROCEEDING (in .5 hour segments, e.g.,1.5 hours, 8 hours)	RATE (standard rate unless ordered by Supreme Court)	DEPOSIT
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				TOTAL DEPOSIT	**$**

PROCEEDINGS PREVIOUSLY TRANSCRIBED					
PROCEEDING DATE (List date of each	TYPE OF PROCEEDING (Motion hearing, opening statement,	NAME OF JUDGE	NAME OF TRANSCRIBER	DO ALL PARTIES HAVE COPY	DEPOSIT FOR ADDITIONAL

transcript volume)	trial day 2, etc.)			(YES OR NO)	COPIES
				☐ Yes ☐ No	TBD
				☐ Yes ☐ No	TBD
				☐ Yes ☐ No	TBD

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you will be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

Adopt on a permanent basis Supreme Court Rule 46, Canon 2, which was amended on a temporary basis by Supreme Court order dated July 17, 2012, as follows (no changes are being proposed to the temporary rule now in effect):

Canon 2. A law clerk should avoid impropriety and the appearance of impropriety in all his activities

A. A law clerk should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A law clerk should not allow his family, social, or other relationships to influence his judicially related conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him.

C. Law clerks must avoid talking with attorneys about cases before the court. A law clerk must never communicate to the attorneys on a pending case the law clerk's opinion or attitude toward the issues pending before the judge. Moreover, once the decision is announced or opinion issued, the law clerk must avoid comment on it or disclosure of the extent of his involvement with it. However, this rule does not prevent a law clerk from providing as a writing sample to prospective employers copies of an opinion or order issued by the court in which the law clerk serves or had served, providing the law clerk performed substantial drafting and researching work in connection with the opinion or order, and provided further that the authoring judge gives his or her permission for such use. This rule also does not prevent a law clerk from providing as a writing sample to prospective employers memoranda of law addressing legal issues prepared for the judge for whom the law clerk is employed, provided the judge gives his or her permission for such use. If engaged in conversation by an attorney about a pending matter, the law clerk should strive to terminate the conversation as quickly as politely possible. The law clerk should avoid even informal contact with attorneys with respect to a matter pending before the Court.

A law clerk must not give advice to attorneys on matter of substantive or procedural law, and must not do minor research tasks for attorneys.

Law clerks should be particularly careful to see that all attorneys are treated equally and not be tempted to provide a special favor for a law school colleague or an old friend.

APPENDIX N

Amend the Juror Questionnaire form, NHJB-2103-S, as recommended by the subcommittee on juror questionnaires, as follows:

JUROR QUESTIONNAIRE

1. Name: _____ Sex: _____ Age: _____ ~~Date of Birth:~~ _____

2. Home Address: _____
   Street City/Town of Residence Zip Code County

3. How long have you lived at your current address? _____ Years _____ Months ☐ Rent ☐ Own

4. Where did you live prior to this address?

   _____
   Street City/Town County State

   Length of time there: _____ Years _____ Months

5. Place of Birth: _____ 6. U.S. Citizen: ☐ Yes ☐ No

7. Are you able to read, speak and understand the English language? ☐ Yes ☐ No

8. Do you have a physical or mental disability, which might affect your ability to render satisfactory jury service? ☐ Yes
   Are you asking to be excused from jury service because of this disability? ☐ Yes ☐ No
   If not, what accommodations would you need to render satisfactory jury service?

   _____

9. What is your maiden name *(if applicable)* _____

10. Marital Status *(please check):* ☐ Single ☐ Married ☐ Divorced ☐ Spouse deceased

11. Your Education: Highest Level completed: _____ Where: _____
    Are you presently ☐ Employed? ☐ Unemployed? ☐ Retired? ☐ Other? _____

12. Your current occupation: *(List past if not now working)* _____
    Present Employer: _____ Address: _____
    Type of Business: _____ Years with Employer: _____ from _____ to _____
    Briefly describe your job:

    _____

    _____

    What professional or occupational organizations or societies do you belong to?

    _____ _____

    _____ _____

13. Spouse:
    Name: _____ ~~Date of Birth:~~ _____
    ~~Place of Birth:~~ _____ Length of Residence in this County: _____
    Current Occupation: *(List past if not now working)* _____
    Employer: _____ ~~Address:~~ _____
    Type of Business: _____ Years with Employer: _____ from _____ to _____
    Briefly describe your spouse's job: _____
    Spouse's Education: _____

14. Children: *(Please list)*

    _____

    _____

    _____

    _____
    ~~Name~~ Age ~~Residence~~ Occupation

15. Brothers and Sisters: *(Please list)*

~~Name~~	Age	~~Residence~~	Occupation

16. Past Jury Service ☐ Yes ☐ No When? _____ In what court(s)? _____

17. Past Legal Involvement:
Have you ever been convicted in any criminal case (which has not been annulled)? ☐ Yes ☐ No

What was the specific offense(s)? _____

Was this a felony? ☐ Yes ☐ No When? _____ In what court(s)? _____

Have you ever been involved in any other manner in any criminal ~~or civil~~ case? ☐ Yes ☐ No

[Have you ever been involved in any other manner in any civil case? ☐ Yes ☐ No]

When? _____ In what court(s)? _____

What was your involvement? _____

Were you represented by counsel? ☐ Yes ☐ No If so, whom? _____

18. Do you have a regular lawyer? ☐ Yes ☐ No If so, whom? _____

19. Are you, or is any member of your family, involved in any action pending in court? ☐ Yes ☐ No

Where? _____

20. Have you ever served in the military? ☐ Yes ☐ No Dates of service: _____

Branch: _____ Type of discharge: _____ Rank at discharge: _____

21. Have you or a close friend or relative ever been a member of a law enforcement agency *(police department, police commission, FBI, military police, etc.)* in this state or any other state?

☐ Yes ☐ No What agency? _____ Dates of Service: _____

Name and relationship of person: _____

Nature of Duties: _____

22. Have you or has any member of your family been the victim of any crime? ☐ Yes ☐ No

When? _____ What was the crime? _____

Who was the victim? _____

The above responses are true to the best of my knowledge. I understand that a willful misrepresentation of a material fact may be punishable as a misdemeanor under state law.

_____ _____

Date Signature

Amend Proposed Superior Court Rule 33 (set forth in the Advisory Committee on Rules August 31, 2010 Annual Report), as recommended by the subcommittee on juror questionnaires, as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

Rule 33. Jurors

(a) *Juror Questionnaires*.

(1) The clerk of the superior court for each county shall maintain a list of jurors presently serving, together with copies of their completed Questionnaire forms, which shall be available for inspection by attorneys~~, non-attorney representatives and *pro se* parties.~~ **[and parties representing themselves.]**

(2) The clerk's office shall permit attorneys~~, non-attorney representatives and *pro se* parties~~ who have jury cases scheduled for trial ~~during the term~~ to have a photocopy of the questionnaires which have been completed by the jurors presently serving. ~~No~~ **[An]** attorney shall **[not]** exhibit such questionnaire~~s~~ to anyone other than ~~the parties and their representatives.~~ **[the attorney's client and other lawyers and staff employed by the attorney's firm.]**

(3) Violation of this rule may be treated as contempt of Court.

(b) *Voir Dire.* Voir dire of the jury at the start of trial is governed by RSA 500-A:12-a.

(c) *Juror Notetaking.* It is within the court's discretion to permit jurors to take notes on evidence. If notetaking is allowed, after the opening statements the court will supply each juror with a pen and notebook to be kept in the juror's possession in the court and jury rooms, and to be collected and held by the bailiff during any recess in which the jurors may leave the courthouse and during arguments and charge. After verdict, the court will immediately destroy or order the destruction of all notes.

(d) *Juror Questioning of Witnesses at Trial.* In any civil case, it is within the discretion of the trial court to permit jurors to ask written questions. If the trial court decides to permit jurors to ask written questions at trial, the following procedure shall be utilized:

1. At the start of the trial, the judge will announce to the jury and counsel the decision to allow jurors to ask written questions of witnesses. At this time the judge will instruct the jurors on taking notes and, as to the scope of questioning, the procedure to be followed.

2. Trial will proceed in the normal fashion until questioning of the first witness has been completed by both counsel.

3. When questioning of the first witness is completed, the court will allow jurors to formulate any questions they may have, in writing. Jurors will be asked to put their seat number on the back of the question. The judge is the only person who will see the number.

4. The bailiff will collect the anonymous questions and deliver them to the judge.

5. At the bench, the judge and counsel will read the proposed questions. Counsel will be given the opportunity to make objections on the record to any proposed question after which the judge will decide if they are appropriate, based on the rules of evidence, and whether, under the circumstances of the case, the judge will exercise discretion to permit the questions.

6. Questions may be rephrased by the judge, or the judge may ask the question in a way mutually agreeable to the parties. The question should, however, attempt to obtain the information sought by the juror's original question.

7. After all the chosen questions are answered, each counsel will have an opportunity to re-examine the witness. The party who called the witness will proceed first. The judge should allow only questions which directly pertain to questions posed by the jurors. The judge may also impose a time limit. If the judge does plan to impose a time limit, counsel should be notified and given an opportunity to object to the length outside the hearing of the jury.

8. The judge shall instruct the jury substantially as follows at the beginning of trial:

Ladies and gentlemen of the jury, I have decided to allow you to take a more active role in your mission as finders of fact. I will permit you to submit written questions to witnesses under the following arrangements.

After each witness has been examined by counsel, you will be allowed to formulate any questions you may have of the witness. Please remember that you are under no obligation to ask questions, and questions are to be directed only to the witness. The purpose of these questions is to clarify the evidence, not to explore your own legal theories or curiosities.

If you do have any questions, please write them down on a pad of paper. Do not put your name on the question, and do not discuss your questions with fellow jurors. The bailiff will collect the questions, and I will then consider whether they are permitted under our rules of evidence and are relevant to the subject matter of the witness' testimony. If I determine that the question or questions may be properly asked of the witness pursuant to the law, I will ask the question of the witness myself.

It is extremely important that you understand that the rejection of a question because it is not within the rules of evidence, or because it is not relevant to the witness' testimony, is no reflection upon you. Also, if a particular question cannot be asked, you must not speculate about what the answer might have been.

9. If the court decides to ask questions during trial, the following instruction will be given before the jury retires to deliberate:

Ladies and gentlemen of the jury, I remind you of my earlier remarks regarding juror questions. Some questions cannot be asked in a court of law because of certain legal principles. For this reason there is the possibility that a question you have submitted has been deemed inappropriate by me and will not be asked. I alone have made this determination, and you should not be offended, or in any way prejudiced by my determination.

(e) *Communication with Jurors.*

(1) Before and during trial no attorney, non-attorney representative, party or witness shall knowingly communicate directly or indirectly, with any member of the venire from which the jury will be selected, or with any juror.

(2) For 30 days after discharge of the jury venire on which a juror has served, no attorney, non-attorney representative or party shall himself or through anyone acting for him directly or indirectly interview, examine or question any juror or member of a juror's family with respect to the trial, verdict or deliberations. At no time shall an attorney, non-attorney representative or party, or any person acting for any of them directly or indirectly ask questions of or make comments to a juror that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service. Upon application of any person the court may issue appropriate protective orders or impose sanctions as justice may require.

(f) *Juror Questions During Deliberations.* After a case has been submitted to a jury, and the jury has retired for deliberations, counsel, non-attorney representatives and pro se parties shall not leave the courthouse without permission of the court. If counsel or non-attorney representatives are absent from the courthouse, with or without permission, when a jury requests additional instructions, such absence shall constitute a waiver of the right to be present during instructions given in response to the request.

(g) *Loss of a juror.* If any juror or jurors become disabled, or otherwise unavailable, during the course of a trial, the trial will continue with the jurors who remain, unless prior to the selection of the jury, a party notifies the court that he objects to such procedure.

Source

(a) Superior Court Rule 61-A
(b) RSA 500-A:12-a

(c) Superior Court Rule 64-A
(d) Superior Court Rule 64-B
(e) Superior Court Rule 77-B(b)
(f) Superior Court Rule 114
(g) Superior Court Rule 9

Adopt Criminal Rule of Procedure Rule 22, without change, as set forth in the Advisory Committee on Rules August 31, 2010 Annual Report as follows:

Rule 22. Selection of Jury

(a) *Juror Questionnaires*. The clerk of the superior court for each county shall maintain a list of jurors presently serving, together with copies of their completed questionnaire forms, which shall be available for inspection by attorneys and parties representing themselves. The clerk's office shall permit attorneys who have jury cases scheduled for trial to have a photocopy of the questionnaires which have been completed by the jurors presently serving. An attorney shall not exhibit such questionnaire to anyone other than the attorney's client and other lawyers and staff employed by the attorney's firm. Violation of this rule may be treated as contempt of court.

(b) *Examination.* In all cases, the court shall have the responsibility to ensure that each empanelled juror is qualified, fair, and impartial. In capital cases or first degree murder cases, the court shall allow counsel to conduct individual *voir dire*. In other cases, *voir dire* may be conducted by counsel in the discretion of the court. When the court conducts the examination, it shall permit the defendant or the defense attorney and the attorney for the state to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions formulated by the parties or their attorneys as it deems proper. All proceedings relating to the examination of prospective jurors shall be recorded and should be conducted in the presence of counsel.

(c) *Peremptory Challenges*. For offenses punishable by death, the defendant shall be accorded, in addition to challenges for cause, no fewer than twenty peremptory challenges; and, the state shall be afforded, in addition to challenges for cause, no fewer than ten peremptory challenges. In first degree murder cases, both the state and the defendant shall be afforded, in addition to challenges for cause, fifteen peremptory challenges. In all other criminal cases the defendant and the state shall, in addition to challenges for cause, be entitled to no fewer than three peremptory challenges. In trials involving multiple charges, the number of peremptory challenges shall be the number of challenges allowed for the most serious offense charged.

(d) *Alternate Jurors.* Upon request by either the state or the defendant, or *sua sponte*, the court may direct that alternate jurors be chosen. The number of peremptory challenges allotted to both the state and the defendant for selection of the alternate panel shall be in accordance with the following schedule:

1-3 alternates -- 1 peremptory challenge
4-6 alternates -- 2 peremptory challenges

Comments

Paragraph (a) of the rule, relating to the collection and release of juror questionnaires, is derived from Superior Court Rule 61-A.

The court must allow counsel to ask questions on *voir dire* in capital or first degree murder cases. *See State v. Fernandez*, 152 N.H. 233, 239 (2005); *State v. Saucier*, 128 N.H. 291, 295 (1986); *State v. Colby*, 116 N.H. 790, 793 (1976). Superior court judges may allow counsel to conduct *voir dire* in other cases. In all cases, the court has an obligation to ensure the fairness and impartiality of the selected jurors.

In all cases, RSA 500-A:12 requires the court to ask a number of questions of the panel. The court may supplement those statutory questions as the court believes necessary. *State v. Cere*, 125 N.H. 421 (1984); *State v. Wright*, 126 N.H. 643 (1985); *State v. Colbath*, 133 N.H. 708 (1990). A court has great discretion in determining what questions should be asked on *voir dire*. *State v. Vandebogart*, 136 N.H. 365 (1992).

The rule requires that all communication with the panelists be recorded, and further provides that all communications should be conducted in the presence of counsel. *State v. Bailey*, 127 N.H. 416 (1985); *State v. Brodowski*, 135 N.H. 197, 201 (1991). The rule does not absolutely foreclose the possibility that the court could communicate with potential jurors outside the presence of counsel, in recognition of the fact that, in relatively rare instances, the interest in full disclosure by jurors of sensitive, but relevant, matters may be advanced by allowing the court to inquire into those matters in private with the juror. Those communications, though, like all other communications with jurors, must be recorded.

Paragraph (b) indicates that voir dire may be conducted by counsel in the discretion of the court as found in *State v. Wamala*, 158 N.H.583 (2009).

Paragraph (c) governs the exercise of peremptory challenges. A party may exercise its peremptory challenges as the party sees fit, subject of course to the state and federal constitutional requirements of equal protection of the laws. *See generally Johnson v. California*, 545 U.S. 162 (2005); *Miller-El v. Dretke*, 545 U.S. 231 (2005); *J.E.B. v. Alabama*, 511 U.S. 127 (1994); *Georgia v. McCollum*, 505 U.S. 42 (1992); *Powers v. Ohio*, 499 U.S. 400 (1991); *Batson v. Kentucky*, 476 U.S. 79 (1986).

Rule 22 reflects current practice in New Hampshire as set forth in RSA 606:3, 4 with respect to the number of peremptory challenges available to each party. Paragraph (c) also provides that in trials adjudicating multiple charges, the number of peremptory challenges available to the parties depends on the most serious charge. Paragraph (c) does not provide for cases of multiple defendants, thus leaving intact the traditional practice in New Hampshire of allowing each defendant the full number of challenges provided by the law. *State v. Doolittle*, 58 N.H. 92 (1877). Paragraph (c) allows the trial court discretion with regard to control of the manner, order and timing of the parties' peremptory challenges. *State v. Farrell*, 118 N. H. 296, 307 (1978); *State v. Prevost*, 105 N.H. 90 (1963).

Paragraph (d), regarding alternate jurors, derives from current practice and RSA 500-A:13.

APPENDIX Q

Amend Paragraph 6 of Supreme Court Administrative Order 2009-03 (Management and Retention of Superior Court Files), as recommended by the subcommittee on juror questionnaires, as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

(6) **JUROR QUESTIONNAIRES & PAYROLL RECORDS: [Juror questionnaires for jurors not impaneled or not selected for any trial shall be destroyed as soon as practicable.]** Juror questionnaires **[for jurors who serve on a jury]** ~~may~~ **[shall]** be destroyed three years after service of the juror has been completed. Such time frame coincides with the exemption each individual has from being called again for jury duty. Juror payroll records may be destroyed after six years from juror service.