

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

O R D E R

R-2023-0002 In re Suggested Amendments to Rules 1 and 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing, and Suggested Amendments to Supreme Court Rule 48-B

Advisory Committee on Rules Chair, Justice Patrick E. Donovan, recently received suggestions to amend Rules 1 and 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing. In light of the judicial branch's objective to expand electronic filing, the technical nature of the suggested amendments, and the circuit court's goal to implement electronic filing in nonemergency involuntary admission cases under RSA chapter 135-C in the summer of 2023, Justice Donovan referred the suggestions directly to the supreme court pursuant to Supreme Court Rule 51(c)(3) and Rule 51(f) ("Special Cases").

Justice Donovan also recently received suggestions to amend Supreme Court Rule 48-B. Justice Donovan determined that the suggestions call for a technical change, and he therefore referred the suggestions directly to the supreme court pursuant to Supreme Court Rule 51(c)(3) and Rule 51(f).

On or before **March 20, 2023**, members of the bench, bar, legislature, executive branch or public may file with the clerk of the supreme court comments addressing the suggestions.

In accordance with Rules 3 and 4 of the Supplemental Rules of the Supreme Court of New Hampshire for Electronic Filing, comments should be submitted through the supreme court’s electronic filing (e-filing) system into case no. **R-2023-0002**, using “Rules Docket Entries” as the Filing Type and “Comment on Rule” as the Filing Subtype. The address of the supreme court’s e-filing system is: <https://ctefile.nhecourt.us/login>. The e-filing system is also accessible through the Electronic Services page of the New Hampshire judicial branch website: <https://www.courts.nh.gov/resources/electronic-services/supreme-court/attorneys-self-represented-parties-and-other-non>. Prior to registering with the e-filing system, attorneys should review the Quick Guide – Registering as an Attorney E-Filer; nonlawyers should review the Quick Guide – Registering as a Nonlawyer E-Filer. The Quick Guides are available on the Electronic Services page.

Persons who are unable to submit their comments electronically may mail or deliver them to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The language of the suggested amendments to Rules 1 and 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing is set forth in Appendix A and Appendix B. The language of the suggested amendments to Supreme Court Rule 48-B is set forth in Appendix C. A copy of the suggested amendments is also available upon request to the clerk of the supreme court at the address listed above. The current rules of the New

Hampshire state courts are available on the Internet at:

<https://www.courts.nh.gov/resources/court-rules>.

The supreme court is requesting comments on the suggestions to amend the following rules:

I. Rule 1 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing – Scope and Effective Date of Rules

This suggested amendment, the language of which is set forth in Appendix A, would add the person over whom nonemergency involuntary admission is sought or ordered to the category of persons who are exempt from electronic filing, unless the person chooses to register as an electronic filer.

II. Rule 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing – Filing a Document Which is Entirely Confidential

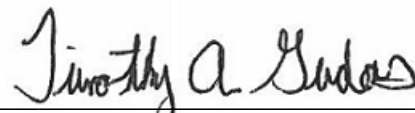
This suggested amendment, the language of which is set forth in Appendix B, would add to the list of “confidential documents” those filed with or issued by the court in nonemergency involuntary admission cases under RSA 135-C.

II. Supreme Court Rule 48-B – Family Mediator Fees

This suggested amendment, the language of which is set forth in Appendix C, would (1) increase the mediation fee for divorce/parenting mediation from \$300 to \$450 for four hours of mediation service and one hour of administrative work, and modify the sliding scale to determine the fee for mediation beyond four hours, and (2) clarify that an indigent party’s requirement to repay the mediation fee for cases involving dependent children is governed by RSA 461-A:7.

Date: February 16, 2023

ATTEST:



Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

APPENDIX A

Amend Rule 1 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing as follows (new material is in **[bold and brackets]**):

Rule 1. Scope and Effective Date of Rules

(a) *Effective Date and Applicability of Rules.* These rules shall govern the electronic filing of all documents in cases commenced on and after the date specified in orders issued by the administrative judge of the circuit court implementing e-filing in the circuit court in a particular location and in a particular case type. These rules shall also govern the filing of all documents in cases in the circuit court converted to electronic filing in accordance with paragraph (c). As good cause appears and as justice may require, the court may waive the application of any rule.

(b) *Electronic Filing Mandatory.* Unless otherwise required or authorized by these rules or an order of the court, all filings in cases commenced on or after these rules become effective in cases in a particular circuit court location in a particular case type shall be filed using the court's electronic filing system. However, a party may be excused from electronic filing in the circumstances set forth below.

(1) The court may fully excuse a party from electronic filing if the court finds that: (A) a party is protected by law from disclosing certain identifying or contact information; or (B) extraordinary circumstances would render electronic filing such a hardship that the party would be denied access to the court. A party seeking to be fully excused from the mandate of electronic filing shall file a request with the court setting forth the reasons therefor. A party who is fully excused from the mandate of electronic filing shall file documents conventionally and shall deliver and receive copies of filed documents to and from other parties through conventional non-electronic means.

(2) Individuals over whom guardianship **[or nonemergency involuntary admission]** is sought or ordered are presumptively fully excused from electronic filing and need not file a written request to be excused. However, if a person over whom a guardianship **[or a nonemergency involuntary admission]** is sought or ordered registers to use the court's electronic system, parties on the case and the court may rely upon the e-service contact information provided and send electronic copies as they would to any other registered user on the case.

(3) Any incarcerated party entitled to notice pursuant to statute who notifies the court of his or her incarceration shall be exempt from the mandate of electronic filing until such time as that party is no longer incarcerated.

(4) For good cause, the court may permit a limited exception to the mandate of electronic filing by allowing a party to initiate a case conventionally or by allowing a party or other person to file a document in an existing case conventionally.

(c) *Cases Pending Prior to Effective Date.* Unless otherwise notified by Order of the Administrative Judge, cases pending prior to the effective date of these rules in a particular court location or prior to the initiation of electronic filing in a court or case type shall not be subject to the requirements of these rules and shall not be accepted for electronic filing. Filings in such non-electronic cases shall continue to be made conventionally. However, a party may file a written motion with the court to request to convert a non-electronic case to an electronic case. If the court grants the motion, the case will thereafter be governed by these rules. Following an order for conversion of the non-electronic case to an electronic case, it shall be the responsibility of the parties to ensure that filings after the conversion date comply with all provisions of these rules. If the court notifies the parties in a case which had been pending prior to the effective date of these rules that a case is being converted to an electronic case under these rules and by Order of the Administrative Judge, the parties will be given sufficient time to comply with registration and other requirements set forth under these rules. Thereafter, these rules will govern all future activity in converted cases.

(d) *Citation.* These rules shall be cited as “Cir. Ct. Supp. R __.”

APPENDIX B

Amend Rule 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing as follows (new material is in **[bold and brackets]**):

Rule 11. Filing a Document Which is Entirely Confidential

(a) The following provisions govern a filing party's obligations when filing a "confidential document" as defined in this rule. These provisions apply to both electronic filings and conventional filings by parties.

(b) A confidential document shall not be included in a filing 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 document in the manner prescribed by this rule.

(c) "Confidential documents" means documents that are not to be accessible to the public pursuant to state law, administrative or court rule, court order or case law including, but not limited to, the following:

(1) Certain documents relating specifically to small claims cases, such as, but not limited to:

- (A) Confidential Information Sheets;
- (B) Statements of Assets and Liabilities.

(2) All documents filed with or issued by the court in guardianship cases under RSA 463 or RSA 464 *except*:

- (A) A Certificate of Appointment of Guardian;
- (B) An Order on Appointment of Guardian;
- (C) A Motion/License to sell Real Estate or Personal property in Guardianship or Conservatorship;
- (D) A Motion/License to Mortgage Real Estate;
- (E) A Return/Notice of Sale;
- (F) An Appointment of Resident Agent.

(3) Certain documents relating to case types other than small claims cases or guardianship cases, such as, but not limited to:

- (A) records pertaining to juvenile delinquency, children in need of services proceedings, or abuse/neglect proceedings;
- (B) financial affidavits in family law proceedings;
- (C) guardian ad litem reports in family law proceedings;
- (D) Qualified Domestic Relations Orders in family law proceedings;
- (E) Plaintiff and Defendant Information Sheets in domestic violence and stalking proceedings;
- (F) Vital Statistics forms;
- (G) personal data sheets;
- (H) records pertaining to termination of parental rights proceedings;

- (I) records pertaining to adoption proceedings;
- (J) records pertaining to mental health proceedings;
- (K) information related to competency determinations;
- (L) death certificates.

[(4) All documents filed with or issued by the court in nonemergency involuntary admission cases under RSA 135-C.]

(d) Confidential documents set forth in this rule shall be filed electronically as follows:

(1) for confidential documents relating specifically to small claims cases, including the Confidential Information Sheet and Statement of Assets and Liabilities, filers shall select the appropriate name of the document in the filing system;

(2) for documents relating specifically to guardianship [**or nonemergency involuntary admission cases**] cases, filers shall select the appropriate name of the document in the filing system;

(3) for confidential documents from other case types or for other confidential documents set forth above, the filer shall select “Other (Confidential)” in the filing system.

(e) Confidential documents set forth in this rule that are being filed conventionally by a party excused from the mandate of electronic filing pursuant to Rule 1(b)(1), (2), (3) or (4) shall be clearly identified as “confidential,” but need not be identified as relating specifically to particular case types.

(f) When filing a document that the party believes to be confidential but that is not included on the list in section (c) of this rule, the filing party shall file a motion to seal with the document in accordance with Rule 13.

(g) When filing a document that is included on the list in section (c) of this rule but that is being filed as an exhibit or an attachment in a proceeding other than the proceeding that makes the document confidential under section (c) of this rule, the filing party shall file a motion to seal the document in accordance with Rule 13.

Comment

These provisions are intended to ensure that confidential 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); *see also* District Division Rule 1.26; Family Division Rule 1.30; Probate Division Rule 169-A; Superior Court Rule 13B(e); New Hampshire Rule of Criminal Procedure 50(e).

APPENDIX C

Amend Supreme Court Rule 48-B as follows (new material is in **[bold and brackets]**; deleted material is in ~~strike through~~ format):

Rule 48. 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 ~~[\$450]300~~, which includes the first four hours of mediation services and up to one hour of administrative work related to the mediation, and **[the sliding scale fee schedule for any additional mediation that exceeds the total five hours]** ~~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 ~~[\$450]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). **[Any requirement to repay the fee to the Office of Cost Containment is governed by RSA 461-A:7.]** ~~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 **[using the sliding scale below]**. 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 [25] hour
\$ 10,001 - \$ 15,000	\$ 20 [30] hour
\$ 15,001 - \$ 20,000	\$ 25 [40] hour
\$ 20,001 - \$ 30,000	\$ 35 [55] hour
\$ 30,001 - \$ 35,000	\$ 45 [70] hour
\$ 35,001 - \$ 40,000	\$ 55 [85] hour
\$ 40,001 - \$ 50,000	\$ 65 [100] hour
\$ 50,001 - \$100,000	\$ 75 [120] hour
\$ 100,001 and above	\$ 100 [150] 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 \$~~[180]~~120. If neither party appears, each party shall pay the mediator a failure-to-appear fee of \$~~[90]~~60. The mediator has discretion to waive 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.