

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2019-0476

Richard Horton *et al.*

v.

David Clemens *et al.*

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE
MERRIMACK COUNTY SUPERIOR COURT

BRIEF OF *AMICUS CURIAE*
NEW HAMPSHIRE LEGAL ASSISTANCE

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Presenting oral argument

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QUESTIONS PRESENTED TO *AMICI*

1. Did the trial court err when it held that all eviction notice forms must include the additional advisory language contained in the District Court's latest Eviction Notice form?
2. Does the court have authority to determine the necessary content for a Demand for Rent and an Eviction Notice?

INTEREST OF *AMICI CURIAE*

New Hampshire Legal Assistance (“NHLA”) is a non-profit law firm that provides civil legal services to low income clients to address legal problems affecting their daily survival and basic needs. NHLA has a history of providing both individual representation and systemic advocacy to New Hampshire’s poor and disadvantaged residents. New Hampshire regularly represents low-income tenants facing eviction and counsels tenants who represent themselves about their rights and obligations as tenants. In this latter capacity NHLA and its sister organization, the Legal Advice and Referral Center, regularly encounter tenants who have little or no understanding of what happens after their eviction notice expires. Such tenants, particularly the elderly, are often surprised and relieved to find out that they have the right to challenge their eviction in court – even if all they wish to do is to ask the court for a discretionary stay pursuant to RSA 540:13-c. The eviction process provided by RSA Chapter 540 is essential in affording tenants with the most fundamental aspect of due process – the right to be heard prior to deprivation of their property. When that property is a person’s home, that loss often leads to homelessness. Under these

circumstances, NHLA appears as *Amicus Curiae* to support the court system's well considered efforts to provide essential information to parties in eviction cases and to provide greater access to the courts.

STATEMENT OF FACTS AND SUMMARY OF THE CASE

Plaintiffs Richard and Janice Horton, ("the Hortons") are landlords who rent a unit in a residential duplex at 17 River Road in Piermont, New Hampshire to Defendants David Clemens and April Hanks. Appendix to Appellant's Brief ("App.") at 12.

On June 4, 2019, Mr. Clemens and Ms. Hanks were served with a demand for rent and an eviction notice by the Hortons for nonpayment of rent. *Id.* at 15-17. The Hortons did not serve Mr. Clemens and Ms. Hanks with the demand for rent form or eviction notice form provided by the district courts, or a demand for rent and eviction notice which utilized the same language as the forms provided by the district courts.

When Mr. Clemens' and Ms. Hanks' eviction notice expired, the Hortons commenced an eviction action against them in the Haverhill District Court based upon nonpayment of rent. *Id.* at 12.

At the June 27, 2019 hearing on the merits, Defendants Clemens and Hanks filed a written motion to dismiss. App. at 10. Mr. Clemens' and Ms. Hanks' motion to dismiss argued that as the Hortons had failed to include the additional language of the 2018 revision of the court-issued eviction notice form, the Hortons had failed to strictly comply with RSA 540:5, II.'s requirement that "a valid demand for rent or eviction notice shall include the same information as is requested and provided on such

forms.” App. at 10; RSA 540:5, II (emphasis added). The Hortons filed a lengthy objection to the motion to dismiss on July 2, 2019. App. at 5.

The trial court issued an order on July 24, 2019 granting Mr. Clemens’ and Ms. Hanks’ motion to dismiss. Id. at 1. In its order, the trial court stated that the revised 2018 eviction notice form included “important procedural information for the tenant,” and that “[b]y omitting the information [the Hortons’ eviction notice] did not include the “same information requested and provided” on the court form and therefore was in violation of the plain meaning of RSA 540:5, II.” Id.

SUMMARY OF ARGUMENT

This Court has repeatedly ruled that because RSA Chapter 540 confers rights and benefits on landlords which they did not enjoy at common law, for the plaintiff to prevail in a possessory action, strict compliance with the provisions of RSA chapter 540 is required. South Willow Properties , LLC v. Burlington Coat Factory of NH, 159 N.H. 494, 498 (2009); Havington v. Glover, 143 N.H. 291, 294 (1990); Lavoie v. Szumiez, 115 N.H. 266, 267 (1975). Although this Court has never been called upon to apply these rulings in the context of RSA 540:5, there is nothing about this statute that calls for this Court to deviate from its well established “strict compliance” standard. On several occasions this Court has affirmed lower court orders dismissing possessory actions based on the landlord’s failure to strictly comply with the statutory requirements. *See* Great Traditions Home Builders, Inc. v. O’Connor, 157 NH 387 (2008); AIMCO Props., LLC v. Dziewisz, 152 NH 587 (2005); Havington v.

Glover, 143 N.H. 291 (1998); Whiting v. Ladd, No. 2007-0767, 2008 WL 11258742, at *1 (N.H. June 30, 2008). Dismissal is the only effective remedy for noncompliance with the requirements of RSA Chapter 540, without which the *quid pro quo* that provides the rationale for the creation of the summary eviction process would be extinguished.

Plaintiffs' reliance on Darbouze v. Champney, 160 N.H. 695 (2010) to assert that strict compliance with the eviction notice requirements of RSA 540:5, II. is not required is misplaced. As this Court specifically acknowledged in Darbouze, it did not consider RSA 540:5. Darbouze, 160 N.H. at 697. Rather it focused on RSA 540:3 and ruled that the linguistic difference between a "Notice to Quit" and an "Eviction Notice" is not a basis for dismissing a possessory action. In the instant case the Plaintiffs' failed to inform the Defendants that they were not required to vacate the premises when their eviction notice expired. This important information appears in the eviction notice form created by the court system in response to the legislative directive in RSA 540:5, II. RSA 540:5, II. requires landlords to include it in their own eviction notices. Omission of this important information is an entirely different—and far more consequential defect—than labeling an "Eviction Notice" a "Notice to Quit".

The Court's authority to require that certain information be included in a lawful eviction notice does not rest solely on the express directive of the legislature set forth in RSA 540:5, II. This Court has broad authority to establish the language of its forms through its inherent constitutional authority to expand access to, oversee, and administer justice.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR WHEN IT DISMISSED PLAINTIFFS' LANDLORD/TENANT WRITS FOR FAILURE TO COMPLY WITH RSA 540:5, II.

A. RSA 540:5, II. Requires Landlords to Serve Eviction Notices Which Include the Same Information Provided by the Court's Eviction Notice Forms.

The statutory scheme promulgated by the legislature in RSA Chapter 540 provides clear requirements for lawful eviction notices served by landlords as a prerequisite for initiating a possessory action. RSA 540:5, II. reads:

The district court shall provide forms for a demand for rent and eviction notice in the district court clerks' offices and on the New Hampshire judicial branch website. Although a landlord shall not be required to use the forms, a valid demand for rent or eviction notice shall include the same information as is requested and provided on such forms.

RSA 540:5, II. When interpreting a statute, the Court “first examine[s] the language of the statute, and, where possible, [...] ascribe[s] the plain and ordinary meanings to the words used.” Lally v. Flieder, 159 N.H. 350, 351-352 (2009). “When the language of a statute is clear on its face, its meaning is not subject to modification.” Id. at 352. The plain language of RSA 540:5, II. states that while a landlord seeking to evict a tenant under RSA Chapter 540 is not required to use the exact same form as provided by the district court, “a valid demand for rent or eviction notice shall include” both the same information requested by the court-provided forms and the

same information provided by the court provided forms. RSA 540:5, II. (emphasis added).

The Plaintiffs served the Defendants with an eviction notice which does not “include the same information as is requested and provided on [the court-issued eviction form]”. App. at 16, 44. As such, by the plain language of RSA 540:5, II., Plaintiffs failed to serve “a valid... eviction notice” upon the Defendants.

B. Strict Compliance with RSA Chapter 540 is Required for an Eviction to Proceed.

Beginning with its decision in Lavoie v. Szumiez, 115 N.H. 266 (1975), this Court has, on numerous occasions, explained that “[s]ince [RSA Chapter 540] establish[es] rights and benefits which a landlord did not enjoy at common law, strict compliance with their terms is required.” Lavoie, 115 N.H. at 267; Buatti v. Prentice, 162 N.H. 228, 231 (2011); S. Willow Properties, LLC v. Burlington Coat Factory of New Hampshire, LLC, 159 N.H. 494, 498 (2009); Matte v. Shippee Auto, Inc., 152 N.H. 216, 218 (2005); Havington v. Glover, 143 N.H. 291 (1998); Living Life Investments v. Wood, No. 2017-0029, 2017 WL 5951598, at *2 (N.H. Oct. 13, 2017). Choosing to ignore this Court’s consistent application of its reasoning in Lavoie, Plaintiffs contend that the trial court’s quotation of Lavoie is taken out of the context of that case, and only pertained to the limited issue of “the authority of the lower court to award a remedy that was not authorized by statute.” Appellant’s Brief at 19. Any doubt as to whether the strict compliance standard articulated by this Court in Lavoie had broader application was removed by this Court’s ruling in Havington v.

Glover, 143 N.H. 291 (1998), in which this Court reversed the trial court's judgment against the defendant tenant because the notice to quit failed to provide 30 days' notice as required by 540:3, II . Id. at 294. This Court, citing to Lavoie, held that "[f]or the plaintiff to prevail in the underlying possessory action, strict compliance with the provisions of RSA chapter 540 was required." Id.

By failing to serve a valid eviction notice – including the same information provided as the court-issued form – as required by RSA 540:5, II., Plaintiffs failed to strictly comply with the requirements of RSA Chapter 540. As such, Plaintiffs cannot prevail in the underlying possessory action. Id.

C. Dismissal is the Appropriate Remedy.

Giving meaning to its strict scrutiny standard, this Court has repeatedly found that dismissal is the proper remedy for failure of plaintiffs to strictly comply with the requirements of RSA Chapter 540. *See* Buatti v. Prentice, 162 N.H. 228, 230 (2011) (Reversing judgment where plaintiff failed to demonstrate they had demanded an amount less than or equal to the whole rent in arrears as required by RSA 540:8); Great Traditions Home Builders, Inc. v. O'Connor, 157 NH 387 (2008) (Affirming dismissal in possessory action based on other good cause for failure to notify defendant in writing that such future action or inaction would constitute grounds for eviction as required by RSA 540:2, III.); AIMCO Props., LLC v. Dziewisz, 152 NH 587 (2005) (Reversing judgment for plaintiff who failed to state good cause to terminate restricted property tenancy as required by RSA 540:2, II.);

Havington v. Glover, 143 N.H. 291 (1998) (Holding that landlord's failure to provide a 30-day notice to quit, as required by RSA 540:3, II., precluded judgment); Whiting v. Ladd, No. 2007-0767, 2008 WL 11258742 (N.H. June 30, 2008) (Reversing judgment for plaintiff for failure of eviction notice to advise defendant of right to cure nonpayment as required by RSA 540:3, IV.). In the twenty-two years since this Court in Havington sustained dismissal of a possessory action due to technical noncompliance with the statute, the legislature has taken no action to establish a different remedy.

Plaintiffs argue that if the legislature had intended dismissal without prejudice to be the remedy for failure to strictly comply with the requirements of RSA Chapter 540, it would have specifically provided for dismissal in the statute. Appellant's Brief at 19. Citing RSA 540:13-c (calling for dismissal of a possessory action when the tenant successfully completes a post-judgment repayment agreement) and RSA 540:13-d (allowing for the dismissal of an action where defendant has properly withheld rent due to the landlord's failure to remedy substantial defects in the premises), Plaintiffs suggest that the court has no authority to dismiss a possessory action on any other ground. Such an interpretation would deprive the courts of this state of the power to dismiss a case in any action based on statute if the statute in question does not specifically authorize dismissal. This would be a profound diminution of the judiciary's broad remedial powers. RSA 540:13-c and RSA 540:13-d simply embody the legislature's intent to add to the existing grounds on which an eviction case may be dismissed.

If the trial court cannot rightfully dismiss a possessory action under RSA Chapter 540 due to a landlord's failure to strictly comply with the statutory requirements, the court would be unable to dismiss a case – even when the noncompliance is most egregious (*e.g.* where no eviction notice was served, or one where the eviction notice fails to state any reason for termination of the tenancy). Dismissal is the sole meaningful remedy to ensure that landlords comply with the procedures that the legislature has carefully designed as a quid pro quo for a summary eviction process.

D. Darbouze v. Champney is Not on Point.

Plaintiffs cite Darbouze v. Champney as support for the assertion that only the three enumerated requirements of RSA 540:3 are required for an eviction notice to be sufficient. Appellant's Brief at 15. In Darbouze, this Court considered the issue of whether describing the document in question as a "notice to quit" rather than an "eviction notice" rendered the notice defective under RSA 540:3 and held that it did not. 160 N.H. at 698. The trial court's rulings in this matter are not in conflict with this Court's holding in Darbouze. The issue in Darbouze was the labeling of the eviction notice, not the substance. In the instant case the Plaintiffs failed to provide Defendants with important substantive information—their rights to remain in their home and to challenge the eviction in court. Moreover, in Darbouze, the Court considered the question of whether the plaintiff landlord had met the requirements of RSA 540:3, and specifically noted that the requirements of RSA 540:5 were not at issue in the case. *Id.* at 697. Thus questions arising under RSA 540:5, such as whether an eviction notice was effective when the landlord failed to meet the proof of service

requirement, or when they failed to include the same information on their eviction notice as is contained in the court eviction forms, were left for another day.

E. Commercial Landlords May Properly Serve an Eviction Notice Utilizing the Court-Provided Eviction Notice Form.

Plaintiffs argue that requiring strict compliance with RSA 540:5, II. by use of eviction notices with the “same information as is requested and provided” as the current court provided eviction notice forms would result in all commercial eviction notices being defective. Appellant’s Brief at 14. It is entirely possible for a commercial landlord to serve a proper eviction notice using only the current form provided by the district courts. RSA 540:5, I. reads in part:

Any notice of a demand for rent or an eviction notice may be served by any person and may be served upon the tenant personally or left at his or her last and usual place of abode. In the case of commercial rental property, service of process may be made at such property provided that a copy of the demand for rent or eviction notice shall be sent by certified mail to the commercial tenant at his or her last known legal address or, for non-residents, by certified mail to the tenant's registered agent if there is a registered agent for the tenant duly registered with the New Hampshire secretary of state or, if there is no such registered agent, by certified mail to the tenant's last known legal address. Proof of service must be shown by a true and attested copy of the notice accompanied by an affidavit of service, but the affidavit need not be sworn under oath.

RSA 540:5, I.

As the first sentence of RSA 540:5, I. makes clear, “Any... eviction notice may be served... upon the tenant personally or left at his or her last and usual place of abode.” *Id.* (emphasis added). Any eviction notice includes commercial eviction notices. Just as is the case in residential tenancies, a landlord renting commercial property may comply with the requirements of RSA 540:5, I. by serving the commercial tenant with a copy of the court-provided eviction notice form in hand or by service at the abode of the tenant. In fact, prior to RSA 540:5 being amended, in hand or abode service were the only means of service available to a landlord renting commercial property. *See* 2011 New Hampshire Laws Ch. 208 (H.B. 173).

In 2011, the legislature amended RSA 540:5, I. to provide commercial landlords an alternative to in-hand or abode service, adding that “[i]n the case of commercial rental property, service of process may be made at such property” – meaning the rental property. *Id.* (emphasis added). Service at the rental property, as opposed to service in hand or at the tenant’s regular abode, may occur “provided that a copy of the ... eviction notice shall be sent by certified mail to the commercial tenant at his or her last known legal address or, for non-residents, by certified mail to the tenant's registered agent ... or, if there is no such registered agent, by certified mail to the tenant's last known legal address.” *Id.*

Plaintiffs claim that commercial landlords could not possibly certify to proper service of an eviction notice where a landlord serves the tenant at the rental property and through certified mail because the current court forms do not include a means of confirming such certification. Appellant’s Brief at 14. Plaintiffs’ claim relies on the faulty assumption that a

requirement that eviction notices “shall include the same information as is requested and provided on such forms” limits such notices to containing only that requested and provided information, allowing no other information. Nothing in RSA Chapter 540 prevents landlords from utilizing eviction notices which provide more information than is required by RSA 540:5, II. A commercial landlord may include additional information attesting to service at the rental property and to the tenant or their agent by certified mail. As written, every landlord serving an eviction notice may leave either the check box for “gave in hand to” or the check box for “left at the last and usual place of abode” blank and serve a proper eviction notice with an effective certification of service. There is no reason a commercial landlord seeking to serve an eviction notice by service at the rental property and by certified mail could not include that additional option into the certification of service in their eviction notice, either by writing it into the existing court provided form or utilizing their own compliant eviction notice.

II. THE COURT HAS THE CONSTITUTIONAL AUTHORITY TO ESTABLISH THE WORDING OF ITS EVICTION NOTICE AND DEMAND FOR RENT FORMS.

A. Part 1, Article 14 of the New Hampshire Constitution Mandates that the Court Act to Ensure Access to Justice for All New Hampshire Residents.

Part 1, Article 14 of the New Hampshire Constitution provides that:

Every subject of this State is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice

freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

“Consistent with Part 1, Article 14,” this Court established the New Hampshire Access to Justice Commission “to expand access to and enhance the quality of justice in civil legal matters for New Hampshire residents.”

Order Establishing New Hampshire Access to Justice Commission

(Addendum to Amicus Brief (“Add.”) at 24). In its Order establishing the Access to Justice Commission, this Court identified numerous existing barriers to achieving the promised rights of Part 1, Article 14, and assigned the Commission specific duties, including “community education,” “developing assisted *pro se* programs,” working “to reduce barriers to the justice system by addressing existing and proposed court rules, policies, and procedures that negatively affect access to justice in New Hampshire,” and “develop[ing] and implement[ing] initiatives designed to expand civil access to justice.” Add. at 28-29.

As part of its efforts to achieve its identified duties, a sub-committee of the Access to Justice Commission “reviewed and revised two forms in connection with Landlord Tenant matters in an effort to make these forms easier to understand (using common English rather than legal terminology) and to provide parties with more complete information about their rights and responsibilities under RSA 540.” Circuit Court Memorandum, “Revision to Demand for Rent and Eviction Notice,” July 24, 2018. Add. at 31. This Court has specifically identified “expand[ing] access to and enhanc[ing] the quality of justice in civil legal matters” as consistent with the authority, duties, and power vested with the Court by Part 1, Article 14

of the New Hampshire Constitution, and the duties of the Access to Justice Commission as the Court's means of expanding access and enhancing the quality of justice in civil matters. The July 2018 revisions of the demand for rent and eviction notice forms, which explain the rights and obligations of both plaintiffs and defendants in possessory actions, fall clearly within the scope of the duties of the Access to Justice Commission. The revisions improve community education and reduce barriers to *pro se* litigants who may not comprehend the archaic legal language which was commonly used in a traditional "notice to quit". The 2018 form revisions expand access to, and enhance the quality of, justice in possessory actions.

B. The Court has Authority to Promulgate The 2018 Eviction Notice and Demand for Rent Forms Through its Powers to Protect, Preserve, and Oversee the Courts to Administer Justice.

This Court has "consistently reiterated" that it "has the responsibility to protect and preserve the judicial system. [The Court has] the inherent authority to take whatever action is necessary to effectuate this responsibility." Opinion of the Justices, 140 N.H. 297, 300 (1995). It is the Court's responsibility "to oversee the operations of the judicial branch for the purposes of maintaining public confidence in the administration of justice." Id. at 299. "An integral part of any court's duty to administer justice and fairly adjudicate disputes is to ensure that all parties have the opportunity to advance their cause in an atmosphere of safety, decorum, and fairness." Petition of Mone, 143 N.H. 128, 135 (1998).

The "inherent" power of the courts "to prescribe rules of practice and rules to regulate their proceedings 'as justice may require' has an

ancient lineage supported by consistent custom, recognized by statute and enforced by numerous judicial precedents.” Garabedian v. Donald William, Inc., 106 N.H. 156, 157 (1965). Part 2, Article 73-a of the New Hampshire Constitution grants the Supreme Court the power to “make rules governing the administration of all courts in the state and the practice and procedure to be followed in all such courts” and states that such rule “shall have the force and effect of law.” The Court’s rulemaking authority is “an inherent judicial power existing independently of legislative authority.” State v. LaFrance, 124 N.H. 171, 180 (1983). The language and structure of the Eviction Notice and Demand for Rent forms has been determined by the courts since paragraph II was added to RSA 540:5 in 2006 to require the District Court to promulgate such forms. 2006 New Hampshire Laws Ch. 192 (H.B. 1116). In adding paragraph II to RSA 540:5 (2006 New Hampshire Laws Ch. 192:2) the Legislature simply directed the Court to utilize its well-established power to determine the appropriate content of an eviction notice.

The development and promulgation of the eviction notice form falls within both the Court’s duty to administer justice and the Court’s rulemaking authority. The requirement that an eviction notice contain language making clear that it is not a court order to vacate effectively informs tenants of their right to contest the eviction in court, information which lies at the core of due process. The required notice that tenants may exercise their right under RSA 540:9-a to cure a nonpayment of rent eviction by paying the arrearage plus \$15.00 by the expiration of the eviction notice maximizes the chance that tenants can remain in their

homes, that landlords will get paid, and that the courts will not be burdened by eviction cases which could have easily been resolved without the involvement of the judiciary. Requiring such information to be included in an eviction notice is well within the judiciary's powers to ensure justice is accessible to all parties and promote judicial economy.

CONCLUSION

Time and again, this Court has ruled that because RSA Chapter 540 establishes rights and benefits which a landlord did not have at common law, strict compliance with all the requirements of the statute is required. The trial court correctly dismissed the two possessory actions at issue in this case. This Court should affirm the rulings of the trial court and dismiss Plaintiffs' appeals.

ORAL ARGUMENT

Amicus request oral argument on the issues addressed by *Amicus* in this brief. If this Court schedules oral argument, Attorney Stephen Tower will argue on behalf of *Amicus* New Hampshire Legal Assistance.

Respectfully submitted,

NEW HAMPSHIRE LEGAL ASSISTANCE

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CERTIFICATE OF COMPLIANCE

I, Stephen Tower, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 4207 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

July 15, 2020

/s/ Stephen Tower
Stephen Tower

CERTIFICATE OF SERVICE

I, Stephen Tower, hereby certify that this Amicus Brief shall be sent via the Court's e-filing system to counsel for Plaintiffs/Appellants, Gabriel Nizetic, Esq., and by U.S. mail, postage prepaid to David Clemens and April Hanks.

July 15, 2020

/s/ Stephen Tower
Stephen Tower

ADDENDUM

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Order Establishing the New Hampshire

Access to Justice Commission

Part I, Article 14 of the New Hampshire Constitution provides:

Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

Consistent with Part I, Article 14, the Court hereby creates the New Hampshire Access to Justice Commission to expand access to and enhance the quality of justice in civil legal matters for New Hampshire residents. The Commission will develop and implement policy initiatives and will operate to coordinate participants in developing strategic alliances to effectively move ideas to action.

Notwithstanding the guarantees of Part I, Article 14, the Court notes that:

1. Gaps exist in developing a comprehensive, integrated statewide civil legal-services delivery system in New Hampshire;
2. As a result of these gaps, many people, including those who are currently eligible for free legal services as well as those who do not qualify for such programs but are in fact unable to afford the cost of legal services, are forced to represent themselves;

3. Many people in New Hampshire are underrepresented, in that they receive limited advice from a legal-services provider when they would in fact be better served by full representation on a civil legal matter;
4. Achieving a committed and active justice community in New Hampshire is essential to the effective delivery of civil legal-services;
5. National and state studies have shown that, at best, legal services programs meet between 15% to 25% of the need for legal services for low-income people.
6. Federal funding for the Legal Services Corporation (LSC) has plunged dramatically since its peak in 1980. As a result, even though both our general population and the poverty population have increased significantly in the past two decades, New Hampshire's legal services programs are significantly smaller than they were in 1980, with fewer staff attorneys, fewer offices, and more narrowly-focused and restricted funding.
7. Although participation in New Hampshire Bar Association's Pro Bono Program is considerably higher than that in comparable programs in most other states, the Pro Bono program does not presently meet the need for civil legal services for low-income people.

8. New Hampshire's population is growing and the nature of our communities is changing. New residents including a wide variety of new immigrants face many legal issues, plus additional barriers because of their language difficulties and cultural differences.

9. Leadership that is supported and encouraged by the New Hampshire Supreme Court and our partners in the state and federal judiciary in our state, which is committed to achieving full access and empowered to take action, is essential to realizing equal justice for all in New Hampshire.

10. On June 1, 2006, the New Hampshire Citizens Commission on State Courts issued a report containing thirty recommendations including four concerning access to justice:

A. Recognizing the importance of protecting the rights of civil litigants in certain legal disputes, the Commission recommends that New Hampshire examine the expansion of legal representation to civil litigants unable to afford counsel and study the implementation of a "civil Gideon." In the landmark criminal case of Gideon v. Wainwright, the United States Supreme Court found that people cannot adequately navigate the legal system on their own and that going to jail is too high a price to pay for one's inability to afford legal counsel. The concept of a civil Gideon extends the premise

of right to counsel to certain limited and specific non-criminal cases in which essential rights are at stake.

B. The State of New Hampshire should fully fund legal services staffing for traditional civil legal services.

C. The judicial branch should invest in the further education of pro se litigants.

D. All courts in the State of New Hampshire must meet or exceed the requirements for compliance with federal and state laws pertaining to accessibility (for people with physical and linguistic barriers). Currently one courthouse is not accessible for people with physical disabilities and a majority of court buildings in the state have some areas that are not accessible.

The Commission's Specific Duties

The New Hampshire Access to Justice Commission will:

1. Foster the development of a statewide integrated civil legal-services delivery system;
2. Identify and assess current and future needs for access to justice in civil matters;
3. Consider the legal needs and access to the civil justice system of persons whose income and means are such that they do not qualify under existing assistance programs and whose access to civil justice is limited either by the actual or perceived cost of legal services; develop and implement initiatives designed to meet these needs, such as limited representation and limited appearances by attorneys and identification of types of services that could be provided by nonlawyers;
4. Work to increase resources and funding for access to justice in civil matters and to ensure that the resources and funding are applied to the areas of greatest need;
5. Develop and implement initiatives designed to expand civil access to justice;
6. Work to reduce barriers to the justice system by addressing existing and proposed court rules, procedures, and policies that negatively affect access to justice in New Hampshire;

7. Monitor the effectiveness of the statewide system and services provided and periodically evaluate the progress made by the Commission in fulfilling the civil legal needs of low-income New Hampshire residents;
8. Provide long-range, integrated planning among the numerous legal assistance providers and other interested agencies and entities in New Hampshire;
9. Coordinate civil access to justice, foster the development of a statewide, integrated civil legal services delivery system, and design and implement new programs to expand access to justice opportunities;
10. Work toward securing funding for civil access to justice;
11. Have the authority to apply for, obtain and administer grant funds and to hire, set the compensation of, and direct such persons as may be necessary to assist the Commission in its work;
12. Develop and implement other initiatives designed to expand civil access to justice, such as increasing community education, enhancing technology, developing assisted pro se programs, and encouraging greater voluntary participation of the private bar in providing pro bono legal assistance to low-income people in New Hampshire.

The Access to Justice Commission shall have the following members:

1. Co-chairs, Chief Judge of the Federal District Court for the District of New Hampshire, Steven McAuliffe and Associate Justice of the New Hampshire Supreme Court, James E. Duggan;
2. Chief Justice of the New Hampshire Supreme Court;
3. Executive Director of New Hampshire Legal Assistance;
4. Executive Director of Legal Advice & Referral Center;
5. Executive Director of Pro Bono
6. Executive of Director of New Hampshire Bar Foundation
7. Such additional members as designated by New Hampshire Supreme Court;

Members of the Commission shall serve three year terms beginning on January 1, 2007.

The State of New Hampshire Circuit Court



Edwin W. Kelly
Administrative Judge

David D. King
Deputy Administrative Judge

Senior Administrator
Gina Belmont, Esq.

Administrators
Kate E. Geraci, Esq.
Paula Hurley, Esq.
Patrick W. Ryan, Esq.
Brigette Siff Holmes, Esq.

MEMORANDUM

To: **ALL CIRCUIT COURT JUDGES AND CLERKS**

From: Edwin W. Kelly, Administrative Judge

Dated: July 24, 2018

Re: ***Revision to Demand for Rent and Eviction Notice***

A cross disciplinary sub-committee of the Access to Justice Commission of the New Hampshire Supreme Court reviewed and revised two forms in connection with Landlord Tenant matters in an effort to make these forms easier to understand (using common English rather than legal terminology) and to provide parties with more complete information about their rights and responsibilities under RSA 540. The proposed revisions were reviewed and further modified by a group of Circuit Court Judges and Court Clerks. The revised forms are:

- Demand for Rent (nhjb-3040-d) and
- Eviction notice (nhjb-3041)

These two forms replace the prior sample forms on our court website that did not carry judicial branch form numbers. The forms are posted on the court website as required by RSA 540:5 which states:

The district court shall provide forms for a demand for rent and eviction notice in the district court clerks' offices and on the New Hampshire Judicial Branch website. Although a landlord shall not be required to use the forms, a valid demand for rent or eviction notice shall include the same information as is requested and provided on such forms.

Eviction actions generally start with service of one or both of these forms. Service of these forms generally takes place before a party comes to the court to purchase a Landlord Tenant Writ of Summons. For this reason property owners will have no advance notice of the change in forms. Courts should, therefore, grant a grace period up to January 1, 2019 to comply with this new language. To facilitate notice of the change in forms to property owners Clerks must post the attached notice in all court locations and send the notice along with copies of the new forms to any parties who regularly file Landlord Tenant matters in your court. All property owners should also be provided with this notice when filing any new eviction action.

Please contact this office should you have any questions.

EWK:lc

Attachment

c: Circuit Court Administrators