

THE STATE OF NEW HAMPSHIRE
ADMINISTRATIVE OFFICE OF THE COURTS

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April 24, 2023

Honorable Patrick E. Donovan, Chair
Advisory Committee on Rules
New Hampshire Supreme Court
1 Charles Doe Drive
Concord, New Hampshire 03301

Re: Proposed Amendment to Circuit Court-District Division Rule 3.37

Dear Justice Donovan:

Enclosed is a copy of Circuit Court-District Division Rule 3.37, showing a proposed change to the rule that is intended to improve the efficiency of the courts and enhance the administration of justice in the State of New Hampshire. New Hampshire state court records that are self-authenticating and comply with N.H. R. Ev. 902 that are otherwise admissible and competent, should be introduced without calling a keeper of the records absent good cause. At present, court clerks are issued subpoenas to testify in person solely for the purpose of introducing records that are otherwise admissible without the need for a live witness. In most instances, after the subpoena has been issued, the parties agree that a keeper of the records is not needed a day or two before trial and an affidavit will suffice but there is a fair amount of administrative work getting to that result including being prepared to have coverage for a clerk who may have to testify. If the parties do not reach agreement, or if the case is not resolved, the clerk is required to spend at least a half-day at the hearing or trial, resulting in a loss of essential staff in the clerk's office. The proposed changes would still allow parties to object and request the presence of a live witness for good cause.

To effectuate this change, this proposal includes the following change to District Division Rule 3.37:

1. Create a new paragraph (j) that would provide: "If, after a civil or criminal action has been entered, a party provides opposing parties or their counsel with copies of certified New Hampshire state court records, and no objection for good cause has been made within 30 days of the hearing or trial at which the records are to be introduced, the certified records may be introduced without formal proof."

As provided in Supreme Court Rule 51, the proposed added text is set forth in **[bold and brackets]**.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dianne Martin".

Dianne Martin, Esq.
Director

Enclosure

Cc: Loretta S. Platt, Secretary

ADDITIONS SHOWN IN **[BOLD]**
DELETIONS IN ~~STRIKETHROUGH~~

Rule 3.37. Standing Trial Orders – Proof

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

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

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

(d) Examination of Witnesses.

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

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

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

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

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

(b) Criminal Record.

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

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

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

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

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

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

(g) Motor Vehicles.

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

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

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

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

[(j) Certified Court Records. If, after a civil or criminal action has been entered, a party provides opposing parties or their counsel with copies of certified New Hampshire state court records, and no objection for good cause has been made within 30 days of the hearing or trial at which the records are to be introduced, the certified records may be introduced without a witness.]