

NEW HAMPSHIRE SUPREME COURT ADVISORY COMMITTEE ON RULES

PUBLIC HEARING NOTICE

The New Hampshire Supreme Court Advisory Committee on Rules will hold a PUBLIC HEARING at 12:30 p.m. on Friday, June 16, 2017, at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar on court rules changes which the Committee is considering for possible recommendation to the Supreme Court.

Comments on any of the court rules proposals which the Committee is considering for possible recommendation to the Supreme Court may be submitted in writing to the secretary of the Committee at any time on or before June 15, 2017 or may be submitted at the hearing on June 16, 2017.

Comments may be e-mailed to the Committee on or before June 15, 2017 at:

rulescomment@courts.state.nh.us

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

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

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

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

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

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

The changes being considered concern the following rules:

I. Superior Court (Civ) Rules. Defects in Filings.

(These proposed amendments to Superior Court Rules 1 and 4 would: (1) require clerks to notify a party in writing why a filing is not being accepted; and (2) allow a party, for the purposes of complying with the statute of limitations or other analogous time limit, to file a motion to waive the filing fee in lieu of filing the fee.)

1. Amend Superior Court (Civ.) Rule 1, as set forth in Appendix A.
2. Amend Superior Court (Civ.) Rule 4, as set forth in Appendix B.

II. Superior Court (Civ) Rule 8. Relation-Back.

(The Committee is requesting comment on two different proposed amendments to Superior Court Rule 8. Both proposals would amend the rule to address the effect of amendments to complaints in terms of relation back to the original filing. The proposal set forth in Appendix C is based upon Federal Rule of Civil Procedure 15(c). The proposal set forth in Appendix D would allow the judge greater discretion to determine when an amendment “relates back” to the date of the original filing than does Federal Rule of Civil Procedure 15(c).)

1. Amend Superior Court (Civ.) Rule 8, as set forth in Appendix C.
2. Amend Superior Court (Civ.) Rule 8, as set forth in Appendix D.

III. Superior Court (Civ.) Rule 10. Permissive Counterclaims.

(This proposal would amend Superior Court Rule 10 to address when it is appropriate for a party to file permissive counterclaims.)

1. Amend Superior Court (Civ.) Rule 10, as set forth in Appendix E.

IV. Superior Court (Civ.) Rule 12(g). Motions for Summary Judgment.

(This proposal would amend Superior Court Rule 12(g) to require both sides in the context of a motion for summary judgment to submit a single document identifying the undisputed facts and any disputed facts.)

1. Amend Superior Court (Civ.) Rule 12(g), as set forth in Appendix F.

V. Superior Court (Civ.) Rule 17. Appearances.

(This proposal would amend Superior Court Rule 17 to make clear that the filing of a complaint, answer or other responsive pleading will be adequate to constitute appearance by an attorney.)

1. Amend Superior Court (Civ.) Rule 17, as set forth in Appendix G.

VI. Superior Court (Civ.) Rule 28. Requests for Admissions.

(This proposal would amend Superior Court Rule 28 to delete the requirement that requests for admissions and responses to requests for admissions be filed with the court.)

1. Amend Superior Court (Civ.) Rule 28, as set forth in Appendix H.

VII. Superior Court (Civ.) Rule 37. Life Expectancy Tables.

(This proposal would amend Superior Court Rule 37 to state that the life expectancy tables published by the United States Center for Disease Control and Prevention, National Center for Health Statistics are admissible as evidence to prove life expectancy.)

1. Amend Superior Court (Civ.) Rule 37, as set forth in Appendix I.

New Hampshire Supreme Court
Advisory Committee on Rules

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

April 17, 2017

APPENDIX A

Amend Superior Court (Civ.) Rule 1 as follows (new material is in **and brackets**):

Rule 1. Scope, Purpose, Enforcement, Waiver and Substantial Rights.

(a) These rules govern the procedure in New Hampshire superior court in all suits of a civil nature whether considered cases at law or in equity with the exception of those actions subject to specific procedures established by statute. In all cases that involve a statutory reference to a “return day,” the Answer and Appearance deadline shall be considered the “return day.”

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

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

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

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

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

APPENDIX B

Amend Superior Court (Civ.) Rule 4 as follows (new material is in **bold and brackets**):

Rule 4. Preliminary Process

(a) There shall be one form of action to be known as a “civil action.”

(b) To initiate a civil action, including an action authorized by law to be initiated by writ or petition, the plaintiff files with the court: (i) the Complaint; (ii) an Appearance (indicating the plaintiff’s representative by name, address, email address, telephone number, and New Hampshire Bar Association identification number); and (iii) **[either]** the filing fee **[or a motion to waive the filing fee]**. See Rule 201. For purposes of complying with the statute of limitations **[or analogous time limit]**, an action shall be deemed commenced on the date the Complaint is filed.

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

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

(e) Appearances and Answers are due within 30 days of the date the defendant is served with the Summons and Complaint.

APPENDIX C

Amend Superior Court (Civ.) Rule 8 as follows (new material is in **brackets**]; deleted material is in ~~strike through~~ format):

Rule 8. Complaint

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

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

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

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

(3) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 8(b)(2) is satisfied and if, within the period provided for serving the summons and complaint, the party to be brought in by amendment:

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

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

~~(b)~~ **[(c)]** A plaintiff entitled to a trial by jury and desiring a trial by jury shall so indicate upon the first page of the Complaint at the time of filing, or, if there is a counterclaim, at the time plaintiff files an Answer to such counterclaim.

Failure to request a jury trial in accordance with this rule shall constitute a waiver by the plaintiff thereof.

APPENDIX D

Amend Superior Court (Civ.) Rule 8 as follows (new material is in **brackets**; deleted material is in ~~strikethrough~~ format):

Rule 8. Complaint

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

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

(1) *Claims and Defenses.* When a claim or defense that arose out of the conduct, transaction or occurrence in the original Complaint and Answer is amended, unless relating the amendment back to the date of the original filing will serve to significantly prejudice any party, or

(2) *New Parties.* When a new party is added to the case, unless relating the claims against a new party back to the date of the original filing will serve to significantly prejudice any party, considering the following: (A) when the new party received notice of the claim; (B) whether the new party knew or should have known that the action would have been brought against it but for a mistake concerning the proper party's identity; and (C) what impact a ruling on the relation back issue will have on resolution of the merits of the case.]

~~(b)~~**[(c)]** A plaintiff entitled to a trial by jury and desiring a trial by jury shall so indicate upon the first page of the Complaint at the time of filing, or, if there is a counterclaim, at the time plaintiff files an Answer to such counterclaim. Failure to request a jury trial in accordance with this rule shall constitute a waiver by the plaintiff thereof.

APPENDIX E

Amend Superior Court (Civ.) Rule 10 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strike through~~ format):

Rule 10. Counterclaims, Cross-claims and Third-Party Claims

(a) **[Compulsory Counterclaims.]** A pleading shall state as a counterclaim any claim which at the time of serving the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

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

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

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

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

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

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

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

APPENDIX F

Amend Superior Court (Civ.) Rule 12(g) as follows (new material is in **bold and brackets**]; deleted material is in ~~striketrough~~ format):

(g) *Motions for Summary Judgment.*

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

[(2) Every motion for summary judgment shall be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue to be tried, set forth in consecutively numbered paragraphs, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Failure to include the foregoing statement shall constitute grounds for denial of the motion. The statement of material facts shall be contemporaneously sent in electronic form by email to all parties against whom summary judgment is sought in order to facilitate the requirements of the following paragraph. The statement of material facts in electronic form shall be sent as an attachment to an email and shall be in a Word document (or a document convertible to Word) unless the parties agree to use another word processing format. The requirement to email the statement of material facts to the opposing party does not alter the date or method of service. The requirement for transmission by email of the statement of material facts in electronic form shall be excused if (A) the moving or any opposing party is appearing pro se, (B) the attorney for the moving party certifies in an affidavit that he or she does not have access to email, or (C) the attorney for the moving party certifies in an affidavit that an opposing party's attorney has no email address or has not disclosed his or her email address.]

~~(2)~~ **[3]** The non-moving party shall have 30 days to respond to a motion for summary judgment, unless another deadline is established by agreement of the parties or order of the court. **[An opposition to a motion for summary judgment shall include a response to the moving party's statement of facts as to which the moving party claims there is no genuine issue to be tried. To permit the court to have in hand a single document containing the parties' positions as to material facts in easily comprehensible form, the opposing party shall save the moving party's statement of material facts as a new document and shall set forth a response to each directly below the appropriate numbered paragraph, including, if the response relies on opposing evidence, page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Where the obligation to send the statement of material facts in electronic form has been excused, the response to the statement of material facts may be in a separate document. For purposes of summary judgment, the moving party's statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.**

(4) Neither the statement of material facts as to which there is no genuine issue to be tried nor the response thereto shall be subject to the 20-page limitation in paragraph (g)(1) of this rule.

(5) An opposing party, with the response to the moving party's statement of facts, may assert an additional statement of material facts with respect to the claims on which the moving party seeks summary judgment, each to be supported with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. Such an additional statement shall be a continuation of the opposing party's response described in Paragraph (g)(3), with an appropriate heading, and shall not be a separate document. Where the party opposing summary judgment includes such an additional statement in its response, the response, including the additional statement, also shall be sent in electronic form by email to the moving party, unless excused as provided in Paragraph (g)(2). The moving party shall respond to the opposing party's additional statement of material facts within 20 days and in the manner required by Paragraph (g)(3), resulting in a single document for the court's consideration, unless the obligation to send the additional statement of material facts in electronic form has been excused. For purposes of summary judgment, the opposing party's additional statement of a material fact shall be deemed to have been admitted unless controverted as set forth in this paragraph.

(6) Cross-motions for summary judgment and oppositions thereto shall comply with the requirements of Paragraph (g)(3), with the result that

there shall be a single consolidated document for both motions for summary judgment (multiple documents may only be filed with advance leave of court) containing the respective statements of material facts and responses thereto, unless excused as provided in Paragraph (g)(2).]

~~(3)~~**[(7)]** Where a plaintiff successfully moves for summary judgment on the issue of liability or a defendant concedes liability and the case proceeds to trial by jury, the parties must provide the trial judge with a statement of agreed facts sufficient to explain the case to the jury and place it in a proper context so that the jurors might more readily understand what they will be hearing in the remaining portion of the trial. The court shall present the jury with the agreed statement of facts. Absent such an agreement on facts, the court shall provide such a statement.

[(8) *Sanctions for Noncompliance.* The court need not consider any motion or opposition that fails to comply with the requirements of this rule.

APPENDIX G

Amend Superior Court (Civ.) Rule 17 as follows (new material is in **brackets**; deleted material is in ~~strikethrough~~ format):

Rule 17. Appearance and Withdrawal

(a) An Appearance in an action shall be made by filing a typed or handwritten Appearance form containing the name, street address, mailing address, email address, New Hampshire Bar Association member identification number, and telephone number of the person entering the Appearance, and the complete name, street address, and telephone number of the party on whose behalf the Appearance is filed. **[If counsel includes all of the foregoing information in a complaint, answer or motion to dismiss, that pleading will be considered his or her appearance, and a separate appearance need not be filed.]**

~~[(b)]~~ **[(b)]** A party who chooses to represent himself or herself ~~shall so state in the Appearance~~ **[must file an Appearance and shall state in the Appearance that the party is choosing to represent himself or herself. The failure of a self-represented party to file an Appearance in conformity with this rule shall result in a conditional default or other order as justice requires]**. The clerk shall be notified of any changes of address of any of the parties.

~~[(c)]~~ **[(c)]** A separate Appearance is to be filed by counsel, non-attorney representative, or self-represented party with respect to each case in which said counsel, non-attorney representative or self-represented party appears, whether or not such cases are consolidated for trial or other purposes.

~~[(b)]~~~~[(d)]~~ **[(d)]** The Appearance and Withdrawal of counsel, non-attorney representative, or self-represented party shall be signed by that person. Names, street addresses, mailing addresses, New Hampshire Bar Association member identification numbers, and telephone numbers shall be typed or stamped beneath all signatures or papers to be filed or served. No attorney, non-attorney representative, or self-represented party will be heard until his or her Appearance is so entered.

~~[(e)]~~~~[(e)]~~ **[(e)]** *Limited Appearance of Attorneys.* To the extent permitted by Rule 1.2 of the New Hampshire Rules of Professional Conduct, an attorney providing limited representation to an otherwise unrepresented litigant may file a Limited Appearance in a non-criminal case on behalf of such unrepresented party. The Limited Appearance shall state precisely the scope of the limited representation, and the attorney's involvement in the matter shall be limited only to what is specifically stated. The requirements of Rule 7(c) and (d) of

these Rules shall apply to every pleading and motion signed by the limited representation attorney. An attorney who has filed a Limited Appearance, and who later signs a motion or other filing outside the scope of the limited representation, shall be deemed to have amended the Limited Appearance to extend to such filing. An attorney who signs a pleading (see Rule 6) or any amendment thereto that is filed with the court will be considered to have filed a General Appearance and, for the remainder of that attorney's involvement in the case, shall not be considered as a limited representation attorney under these rules; provided, however, if such attorney properly withdraws from the case and the withdrawal is allowed by the court, the attorney could later file a Limited Appearance in the same matter.

~~(d)~~**(f)** An attorney or non-attorney representative may withdraw from an action by serving a Notice of Withdrawal on the client and all other parties and by filing the notice, provided that: (1) there are no motions pending before the court; (2) a Trial Management Conference has not been held; and (3) no trial date has been set. Unless these conditions are met, an attorney or non-attorney representative may withdraw from an action only by leave of court. Whenever an attorney or non-attorney representative withdraws from an action, and no other Appearance is entered, the court shall notify the party by mail of such withdrawal. If the party fails to appear by himself, herself, attorney or non-attorney representative by a date fixed by the court, the court may take such action as justice may require.

~~(e)~~**(g)** Other than limited representation by attorneys as allowed by Rule 17(c) and Professional Conduct Rule 1.2(f), no attorney or non-attorney representative shall be permitted to withdraw his or her Appearance in a case after the case has been assigned for trial or hearing, except upon motion to permit such withdrawal granted by the court for good cause shown, and on such terms as the court may order. Any motion to withdraw filed by counsel or non-attorney representative shall set forth the reason therefore but shall be effective only upon approval by the court. A factor which may be considered by the court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the attorney's services.

~~(f)~~**(h)** *Automatic Termination of Limited Representation.* Any Limited Representation Appearance filed by an attorney, as authorized under Rule 17(c) and Professional Conduct Rule 1.2(f), shall automatically terminate upon completion of the agreed representation, without the necessity of leave of court, provided that the attorney shall provide the court a "withdrawal of limited appearance" form giving notice to the court and all parties of the completion of the limited representation and termination of the limited appearance. Any attorney having filed a Limited Appearance who seeks to withdraw prior to the completion of the limited representation stated in the Limited Appearance, however, must comply with Rule 17(d).

~~(g)~~**(i)** *Filing Prepared for Unrepresented Party.* When an attorney provides limited representation to an otherwise unrepresented party, by drafting a document to be filed by such party with the court in a proceeding in which (1) the attorney is not entering any appearance, or (2) the attorney has entered a Limited Appearance which does not include representation regarding such document, the attorney is not required to disclose the attorney's name on such filing to be used by that party; any filing drafted by such limited representation attorney, however, must conspicuously contain the statement "This filing was prepared with the assistance of a New Hampshire attorney." The unrepresented party must comply with this required disclosure. Notwithstanding that the identity of the drafting attorney need not be required to be disclosed under this rule, by drafting a filing to be used in court by an otherwise unrepresented party, the limited representation attorney shall be deemed to have made those same certifications as set forth in Rule 7(d) despite the fact the filing need not be signed by the attorney.

APPENDIX H

Amend Superior Court (Civ.) Rule 28 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strike through~~ format):

Rule 28. Requests for Admissions

(a)(i) Any party, desiring to obtain admission of the signature on or the genuineness of any relevant document or of any relevant facts which he or she believes not to be in dispute, may, after 30 days after the date the defendant is served with the Summons and Complaint, without leave of court, ~~file an original request therefor with the court, accompanied by any documents involved, and deliver a copy of such request and documents~~ **[deliver an original request therefor, accompanied by any documents involved,]** to the adverse party or his or her representative. Each of the matters of which an admission is requested shall be deemed admitted unless within 30 days after such delivery the party requested ~~files with the court and~~ delivers a copy thereof by mail or in hand to the party requesting such admission, or his or her attorney or non-attorney representative, either a sworn denial thereof or a written objection on the ground of privilege or that it is otherwise improper.

(ii) Notwithstanding (i) above, signatures and endorsements of all written instruments declared on will be considered as admitted unless the party disputing the signature or endorsement shall ~~file a notice~~ **[serve notice on the opposing party]** that they are disputed within 30 days after the date the defendant files an Answer. See Rule 37(c)

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

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

APPENDIX I

Amend Superior Court (Civ.) Rule 37 as follows (new material is in **[bold and brackets]**; deleted material is in ~~strike through~~ format):

Rule 37. Standing Trial Orders - Proof

(a) *Bills*. If, after an action has been entered for 3 months, a party submits copies of bills incurred to opposing counsel, 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 file 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 counsel to bring their original records and notes to court with them.

(e) *Life Expectancy*. The life expectancy tables ~~in textbooks such as C.J.S. and Am. Jur. (2d)~~ **[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.