

THE STATE OF NEW HAMPSHIRE JUDICIAL BRANCH

<http://www.courts.state.nh.us>

INSTRUCTIONS FOR FILING A RULE 7 NOTICE OF DISCRETIONARY APPEAL (APPEAL BY PERMISSION)

Who Should Use the Notice of Discretionary Appeal Form

Use the notice of discretionary appeal form if you are appealing a final decision from a state trial court (superior or circuit court) in: (1) a post-conviction review proceeding; (2) a proceeding involving a collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action filed under RSA chapter 540 or a possessory action filed under RSA chapter 540; (8) the denial of a motion to intervene in a case; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A, except for an appeal from the first final order. (An appeal from the first final order issued in a domestic relations matter under RSA chapters 457 to 461-A should be filed on the notice of mandatory appeal form.)

Do not use this form to appeal any other decision from a state trial court.

Do not use this form to file an interlocutory appeal.

Do not use this form to appeal a decision of an administrative agency, such as the workers' compensation appeals board, or a decision of a court committee, such as the Committee on Professional Conduct.

Do not use this form to file a petition for original jurisdiction.

Why the Appeal is Called Discretionary

The Supreme Court is not required to accept a Rule 7 Discretionary Appeal even if it is filed on time and all of the filing requirements have been met. The court may decline the appeal or it may summarily dispose of the case without briefing or oral argument. For this reason, it is important that you prepare the notice of appeal carefully. The notice of appeal form is designed to give you the opportunity to explain why the court should accept your appeal. The court will review the completed notice of appeal form (including attachments and any appendix) and will decide whether it believes the case or a part of the case should be accepted for further review.

Determine the Deadline for Filing the Notice of Discretionary Appeal Form

It is important to file your notice of appeal on time. Motions to extend the deadline for filing an appeal and motions for late entry of an untimely appeal will be granted only in exceptional circumstances.

The deadline for filing a notice of discretionary appeal is 30 days from the date on the trial court clerk's written notice of a "decision on the merits." Review Supreme Court Rule 7(1)(B) and (C) carefully so that you understand how the deadline is determined. A timely filed post-decision motion, such as a motion for reconsideration of the trial court's decision, stays the running of the appeal period. An untimely filed post-decision motion does not stay the running of the appeal period unless the trial court expressly waives the untimeliness within the appeal period. Successive post-decision motions filed by a party that is not a newly-losing party do not stay the running of the appeal period.

You must file your notice of appeal electronically through the Supreme Court's electronic filing (e-filing) system, unless an exemption applies or unless you are requesting to be excused from the e-filing requirement. Review Supplemental Rules 4, 5, and 6 carefully. In order to be considered timely, a notice of appeal that is e-filed must be submitted through the e-filing system at or before 11:59:59 p.m. on the date that it is due.

If the notice of appeal is not submitted through the e-filing system because an e-filing exemption applies or because you are requesting to be excused from the e-filing requirement, you may mail or deliver your appeal to the clerk of court, but an appeal will be considered timely only if the clerk receives it by the appeal deadline or if it is postmarked at least 2 days prior to the deadline. See Supreme Court Rule 26(1).

Completing the Notice of Discretionary Appeal Form

Complete all sections of the form. Do not use small type. (Letters cannot be smaller than size 12 font.) If a section is not applicable to your appeal, write “not applicable.”

The following are instructions for completing certain sections of the form:

Section 2 asks for the name of the judge or judges who issued the decision. List only the judges who issued an order or orders that you are appealing. It is not necessary to list every judge who may have ruled on a motion in your case unless you are appealing the judge’s ruling on the motion.

Section 3A asks for your name and contact information. **Section 3B** asks for the name and contact information of your attorney, if applicable.

Section 4A asks for the name and contact information of the party opposing you. **Section 4B** asks for the name and contact information of the opposing party’s attorney, if applicable.

Section 5 asks for the names of all other parties in the trial court, as well as their attorneys. According to Supreme Court Rule 7(4), all parties to the proceeding in the trial court from whose decision on the merits the appeal is being taken are deemed parties in this court, unless you notify the clerk of this court in writing of your belief that one or more of the parties in the trial court has no interest in the outcome of the appeal. You must deliver to each party in the trial court proceeding a copy of any such written notice.

Section 6 requests the date of the clerk’s notice of decision or sentencing and the date of the clerk’s notice of decision on a post-trial motion, if any. You are also required to attach to the form or include a copy of the trial court decision that you are appealing and a copy of the clerk’s notice of this decision. If a motion for reconsideration was filed, attach or include a copy of the trial court’s ruling on the motion and the trial court clerk’s notice of the ruling.

Section 9 relates to requests for confidentiality. Complete this section if you believe that the notice of appeal or any other documents should be kept confidential. You should review Supreme Court Rule 12, as well as Supplemental Rule 16, to determine if you are also required to file a motion to seal documents that you believe should be confidential.

Section 11 requests information about the possible disqualification of a justice. If you believe that a Supreme Court justice is disqualified from your case, you must file a motion for recusal. Review Supreme Court Rule 21A.

Section 12 requests information about any transcript that is necessary for your appeal. Review Supreme Court Rule 15. Before you complete this section, you must decide whether a transcript of the trial court proceedings is necessary. In making this decision, keep in mind that you are responsible for presenting the Supreme Court with a sufficient record to decide the issues on appeal. If you intend to argue in the Supreme Court that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, you must include in the record a transcript of all evidence relevant to such finding or conclusion. If you fail to provide a sufficient record, your appeal may be dismissed or the court may not review an issue that you have raised. If a transcript is necessary for the appeal, you must complete the transcript order form in the notice of appeal so that a transcript is prepared before your brief is filed; after your brief is filed, it is generally too late for you to request a transcript. If you believe that a transcript of the proceedings is not necessary, however, you are not required to order one. You may order portions of a proceeding if you believe that a transcript of the entire proceeding is not necessary.

You may not divide the testimony of a witness, however. If you request any part of a witness's testimony, you will be required to have the entire testimony of the witness transcribed. Finally, if you and the other parties agree, you may submit an agreed statement of facts to eliminate the need for a transcript altogether.

Section 13 requires that you prepare a description of the case on a separate page(s) and attach it to or include it with the notice of appeal form. In the separate page(s), describe the nature of the case and indicate what the result was in the trial court. Your description of the case is limited to two (2) double-spaced pages. (For this section and section 14, you may choose to use the five-page, single-spaced Additional Information Pages form. The five-page Additional Information Pages form is available on the judicial branch website: <https://www.courts.state.nh.us/supreme/forms/index.htm>. Be sure to sign the form on page 5.)

Section 14 requires that you prepare another description on a separate page(s) concerning the issues that you intend to raise on appeal. This section, which you must attach to or include with the notice of appeal form, gives you an opportunity to explain why the court should accept your appeal. Before you begin, review section 14 of the notice of appeal form, which describes the criteria that the Supreme Court uses to decide whether to accept a case. Then prepare a list of the issues that you intend to raise. List each issue in a separately numbered paragraph, and for each issue: (a) state the issue; (b) explain why, considering the acceptance criteria listed on the form, the court should accept the issue; and (c) if you intend to argue that the evidence was insufficient to support the judge's or jury's decision, explain why the evidence was insufficient as a matter of law. Your response to this section is limited to eight (8) double-spaced pages. (You may choose to use the same five-page, single-spaced Additional Information Pages form identified in section 13.)

Section 15 requires you to attach or append to your notice of appeal the following documents in order: (1) a copy of the trial court decision or order that you are appealing; (2) a copy of the trial court clerk's notice of the decision; (3) if a timely post-trial or post-decision motion, such as a motion for reconsideration, was filed in the trial court, a copy of the trial court's order on the motion; and (4) a copy of the clerk's notice of the order on the post-trial or post-decision motion. Do not attach or append any other documents to the notice of appeal. You may submit other documents to the court if you believe that they would assist the court in understanding your case, but any documents other than those listed above must be included in a separate appendix. The separate appendix should have a cover and must include a table of contents; the pages of the appendix must be sequentially numbered. Review Supreme Court Rule 26(5).

Section 16 requires you to certify that the issues listed in Section 14 were presented in the trial court and were properly preserved for appellate review, unless you have specifically identified an issue as plain error in section 14. It also requires you to certify that you have sent copies of the notice of appeal form and attachments to the other parties and the clerk of the trial court.

Transcript Order Form (page 4 of the Notice of Appeal)

Review Supreme Court Rule 15. If you are requesting a transcript, you must list the dates of the hearings or trial that you wish to have transcribed and calculate the deposit required. The first step is to list the date or dates of each proceeding that you wish to have transcribed. You must list each date separately even if the proceeding to be transcribed occurred on consecutive dates. For example, if a trial began on May 1, 2011 and continued through May 3, 2011, you must list May 1, 2011, May 2, 2011, and May 3, 2011. Second, estimate the length (in ½ hour segments) of the proceedings on each date listed. Third, calculate the deposit for each date listed. The deposit is an estimate of the cost of preparing the transcript and is based on the length of the proceedings to be transcribed. For each date that you list, multiply the length of the proceedings in hours by \$137.50 (the average cost of transcribing one hour). For example, if the proceeding on May 1, 2011 lasted for 5 ½ hours, the estimated deposit for that date would be \$756.25 (5.5 x \$137.50).

Finally, calculate the total deposit by adding together the required deposits for each of the dates that you are requesting. **DO NOT SEND THE DEPOSIT WITH YOUR NOTICE OF APPEAL.** If your appeal is accepted, you will receive an order from the Supreme Court advising you how to make your payment and of the deadline for payment of the deposit.

Pre-filing Checklist

After completing the notice of discretionary appeal form, review this checklist before filing:

- Attach or append to the notice of appeal form the following documents in order:
 - Section 13 description of the case and result;
 - Section 14 list of issues to be raised on appeal and an explanation of why the court should accept the appeal;
 - a copy of the trial court decision that you are appealing;
 - a copy of the trial court clerk's notice of the decision;
 - a copy of the trial court's order on any post-trial or post-decision motion;
 - a copy of the trial court clerk's notice of the order on any post-trial or post-decision motion.

DO NOT ATTACH OR APPEND OTHER DOCUMENTS. Any other documents must be included in a separate appendix. See instructions below.

- After attaching or appending the required documents, number the pages of the document sequentially. Review Supreme Court Rule 26(5).
- Determine the number of copies of the notice of appeal (the form and attachments) that you need. You must file the original with the Clerk of the Supreme Court, but no other copies are required. See Supplemental Rule 12. You must send one copy to the clerk of the trial court and one copy to each party or the party's counsel. Be sure to keep a copy of the notice of appeal for your records.
- Prepare a separate appendix of any other documents that you wish to submit to the court for review. The appendix should have a cover and should include a table of contents. The pages of the appendix must be sequentially numbered.
- If you are not e-filing your notice of appeal because an e-filing exemption applies or because you are requesting to be excused from the e-filing requirement, submit the notice of appeal on good quality, 8 ½" by 11" paper, using only the front side of each page. Staple or clip the notice of appeal together in the top left corner, and do the same for any appendix. Do not bind either document in booklet form. See Supplemental Rule 11(g).

Filing the Notice of Discretionary Appeal Package

File the notice of discretionary appeal (the form with the attachments), along with a separate appendix, if any, through the court's e-filing system by the appeal deadline. If you are not e-filing your notice of appeal because an e-filing exemption applies or because you are requesting to be excused from the e-filing requirement, you may mail the package or deliver it to the court.

Payment must be made with your notice of appeal, unless you intend to pay the fee non-electronically or you request waiver of the fee. The filing fee in criminal appeals is \$225.00. In civil appeals, the filing fee is \$225.00 for the following types of cases: (A) Actions relating to children under RSA 169-B, RSA 169-C, and RSA 169-D; (B) Domestic violence actions under RSA 173-B; (C) Small claims actions under RSA 503; (D) Landlord/tenant actions under RSA 540, RSA 540-A, RSA 540-B, and RSA 540-C; and (E) Stalking actions under RSA 633:3-a. In all other civil appeals, the fee is \$250.00. Checks should be made payable to the "**State of New Hampshire**". If you are unable to pay the filing fee for financial reasons, you must file a motion for waiver of the filing fee and an affidavit of assets and liabilities. The court will review the motion and will determine whether to waive the fee.

Send or deliver a copy of the notice of appeal and appendix to the other parties to the case, or their counsel, and also send or deliver a copy to the trial court.

Requesting the Appointment of An Attorney

If you are indigent and you wish to request that counsel be appointed to represent you on appeal, you or your counsel should file a completed Request for a Lawyer form (financial statement) with the notice of appeal. The Request for a Lawyer must be filled out completely.

Whom To Contact If You Have A Question

If you have a question about how to complete the notice of discretionary appeal form, contact the clerk's office:

Clerk of Court
New Hampshire Supreme Court
One Charles Doe Drive
Concord, New Hampshire 03301
Telephone: (603) 271-2646