

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

ORDER

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following temporary amendments to court rules:

I. Electronic Filing Pilot Rules

(These temporary amendments adopt electronic filing rules that will become applicable on a pilot basis in small claims actions in the circuit court – district division as of the date set forth in a circuit court administrative order implementing the electronic filing pilot program in a particular district division location.)

1. Adopt New Hampshire Circuit Court – District Division Small Claims Electronic Filing Pilot Rules, applicable on a pilot basis in small claims actions in the circuit court – district division, on a temporary basis, as set forth in Appendix A.

II. Circuit Court - District Division Small Claims Actions Pilot Rules

(These temporary amendments, designed to accompany the electronic filing pilot rules, adopt new small claims rules that will become applicable on a pilot basis in small claims actions in the circuit court – district division as of the date set forth in a circuit court administrative order implementing the electronic filing pilot program in a particular district division location.)

1. Adopt new Small Claims Actions Pilot Rules to Accompany the Electronic Filing Pilot Rules, applicable on a pilot basis, in small claims actions in the circuit court – district division, on a temporary basis, as set forth in Appendix B.

III. Circuit Court – District Division General Rules

(These temporary amendments are designed to facilitate the implementation of the electronic filing rules applicable on a pilot basis, in small claims actions in the circuit court - district division. The amendments will become effective as of the date set forth in a circuit court administrative order

implementing the electronic filing pilot program in a particular district division location.)

1. Amend Circuit Court – District Division Rule 1.8, on a temporary basis, as set forth in Appendix C.
2. Amend Circuit Court – District Division Rule 1.8-A, on a temporary basis, as set forth in Appendix D.
3. Amend Circuit Court – District Division Rule 1.3(D), on a temporary basis, as set forth in Appendix E.

Effective Date

These temporary rules shall take effect as of the date set forth in an administrative order by the administrative judge of the circuit court implementing small claims e-filing in the circuit court – district division in a particular district court location, and shall be referred to the Advisory Committee on Rules for its recommendation as to whether they should be adopted on a permanent basis. For a list of the locations in which electronic filing will be, or has been, implemented and a link to the relevant orders, see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>.

Date: June 2, 2014

ATTEST:



Eileen Fox, Clerk of Court
Supreme Court of New Hampshire

APPENDIX A

Adopt New Hampshire Circuit Court – District Division Small Claims Electronic Filing Pilot Rules on a temporary basis, applicable in small claims actions in the circuit court – district division as follows:

NEW HAMPSHIRE CIRCUIT COURT – DISTRICT DIVISION SMALL CLAIMS ELECTRONIC FILING PILOT RULES

PREAMBLE

Pursuant to the authority conferred by Part II, Article 73-a of the New Hampshire Constitution, the Supreme Court of New Hampshire hereby adopts on a temporary basis the attached New Hampshire Circuit Court – District Division Small Claims Electronic Filing Pilot Rules. These rules shall take effect in a particular district division location as of the date set forth in an administrative order by the administrative judge of the circuit court implementing small claims e-filing in the circuit court – district division in a particular location, and shall apply on a pilot basis to small claims actions in the circuit court – district division in those locations. For a list of the locations in which electronic filing will be, or has been, implemented and a link to the relevant orders see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>.

NOTE: The rules as published herein are subject to revisions promulgated from time to time by the New Hampshire Supreme Court and published in the New Hampshire Bar News. See Supreme Court Rules 1 and 51.

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I. General Provisions

Rule 1. Scope and Effective Date of Rules

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

(b) *Electronic Filing Mandatory.* Unless otherwise required or authorized by these rules or an order of the court, all filings in cases commenced on or after these rules become effective in small claims cases in a particular circuit court – district division location shall be filed using the court’s electronic filing system, except:

- (1) Upon a showing of extraordinary circumstances, the court may

fully excuse a party from electronic filing. Such requests shall not ordinarily be granted. The court must find extraordinary circumstances that render electronic filing such a hardship that the party would be denied access to the court. A party seeking to be excused from the mandate of electronic filing shall file a request with the court setting forth the reasons therefor. A party who is fully excused from the mandate of electronic filing shall file documents conventionally and shall deliver and receive copies of filed documents to and from other parties through conventional non-electronic means.

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

(c) *Cases Pending Prior to Effective Date.* Cases pending prior to the effective date of these rules in a particular court location or prior to the initiation of electronic filing in a court or case type shall not be subject to the requirements of these rules and shall not be accepted for electronic filing. Filings in such non-electronic cases shall continue to be made conventionally. However, a party may file a written motion with the court to request to convert a non-electronic case to an electronic case. If the court grants the motion, the case will thereafter be governed by these rules. Following an order for conversion of the non-electronic case to an electronic case, it shall be the responsibility of the parties to ensure that filings after the conversion date comply with all provisions of these rules.

Rule 2. Definitions

(a) “Conventionally,” with respect to the filing of documents, means the filing of documents with the court in paper. With respect to providing copies of court documents and filed documents to a party, “conventionally” means the provision of copies through the mail or through other non-electronic means.

(b) “Document” means any written matter filed by or with the court, whether filed conventionally or electronically, including, but not limited to, motions, pleadings, applications, petitions, notices, declarations, affidavits, exhibits, briefs, memoranda of law, orders and deposition transcripts.

(c) “Filer” or “Registered Filer” means a person registered with the electronic filing system who submits a document for filing with the court.

(d) “Electronic Filing” means the process whereby a filer electronically submits to a court a document in electronic form to initiate an action or to file a document in an existing case.

(e) “Electronic service address” of a party means the electronic mail

(“email”) address at or through which the party shall receive electronic service.

(f) “Electronic service” means the electronic transmission of a notification by the electronic filing system to the electronic mail (“email”) address of a party who has consented to electronic service by registering as a filer. The electronic filing system’s electronic notification will be used for the transmission of court notices, court orders, and filings by parties, and will contain a hyperlink or other means to access a document that was filed or issued electronically for the purpose of accomplishing service. Documents that require personal service or other formal service of process to confer jurisdiction over a party as a matter of law may not be served electronically.

(g) “Electronic Signature” is a signature, other than an inked signature, as authorized by these rules.

(h) “Non-electronic signature” is an inked signature.

(i) “Original,” as used in these rules to refer to original documents, shall have the same meaning as provided in Rule 1001 of the New Hampshire Rules of Evidence.

Rule 3. Official Court Record

(a) The official court record for a case filed or maintained in accordance with these rules shall be the electronic case file maintained by the court, as well as any paper filings and other conventional filings maintained by the court in accordance with these rules.

(b) If a court digitizes, records, scans or otherwise reproduces a document that is filed in paper into an electronic record, document or image for entry in the court’s case file, the court’s electronic record, document or image is the official court record of the filed document. Unless otherwise provided in these rules or by court order, the conventionally filed paper document will not be maintained or retained by the court after the court digitizes, records, scans or otherwise reproduces the document into an electronic record, document or image.

Rule 4. Relationship to Other Rules

Insofar as these rules conflict with any other existing rules of the circuit court - district division which pertain to small claims, these rules shall supersede such existing rules. All other existing rules of the circuit court - district division shall remain in full force and effect.

Rule 5. Registration Requirements

(a) *Registration.* To initiate cases and to file documents in the court’s electronic filing system, a person must first become a registered filer by completing an online registration, providing a username and password to access the electronic filing system, and accepting the conditions of electronic filing, including those set forth in the “Responsibilities of Registered Filer” section of this rule.

(b) Responsibilities of Registered Filer

(1) A registered filer is responsible for all documents that are filed via the registered filer’s username and password. A registered filer shall not knowingly cause or permit the registered filer’s login information to be used by another person.

(2) Any electronic filing, downloading or viewing of an electronic file made by use of a username and password shall be deemed to be made with the authorization of the person registered to use the login information.

(3) If login information is misappropriated, misused or compromised in any way, the person registered to use that login information must promptly notify the court.

(4) For good cause, the court may issue an order prohibiting a filer from filing electronically in a particular case.

(5) A registered filer must maintain an email address during the pendency of the case at which the registered filer consents to receive and agrees to accept notices and orders from the court and copies of documents from other registered filers through the electronic filing system. Whenever notice or provision of copies to a party is required, notice or provision of copies to the last email address on file shall be deemed to satisfy the requirement, and shall be binding on the party.

(6) All registered filers shall maintain accurate contact information during the pendency of the case.

II. Filing Documents

Rule 6. Filing: Time of Filing and Effect of Technical Problems

(a) Manner of Filing – General

(1) A case, other than a case filed *ex parte* or a case in which a party pays

the filing fee at the court, shall be considered initiated and filed with the court when:

- (A) the case-initiating document has been electronically submitted to the court's electronic filing system;
- (B) the filing fee, if applicable, has been paid electronically, or a properly supported motion to waive the filing fee has been submitted; and
- (C) the submission has been acknowledged as received by the court's electronic filing system.

(2) A document, other than a document filed *ex parte* or a document for which the filing party pays the filing fee at the court, shall be considered filed when:

- (A) it has been electronically submitted to the court's electronic filing system;
- (B) the filing fee, if applicable, has been paid electronically or a properly supported motion to waive the filing fee has been submitted; and
- (C) the submission has been acknowledged as received by the court's electronic filing system.

(3) Emailing or faxing documents shall not constitute "filing" with the court.

(b) *Manner of Filing – Special Cases*

(1) *Cases or documents filed ex parte.* When case-initiation or other documents are filed *ex parte*, the filer shall file the documents electronically, and must also physically appear at the court where the matter will be heard to complete the filing process. No *ex parte* submission shall be considered complete until the filer physically appears at the court. Failure to appear at the court within five (5) business days of the electronic filing may cause the *ex parte* submission to be purged from the electronic filing system.

(2) *Cases or documents for which the filing party will mail the filing fee or pay the filing fee at court.* When fees for case initiation or other documents are not paid online and instead are paid through U.S. mail or at court, the filer shall pay in person at the court where the matter will be heard or mail the filing fee to the address specified by the court, to complete the filing process.

No submission shall be considered complete until the fee is paid. Failure to pay the filing fee within five (5) business days of the electronic filing may cause the submission to be purged from the electronic filing system. Filers may pay at the court with cash, check or credit card or through the U.S. mail by check.

(c) Time of Filing and Effect of Technical Problems

(1) An electronic filing may be made any day of the week, including weekends and holidays, and at any time of day that the electronic filing system is available. The expansive availability of the electronic filing system shall not affect the provisions for computation and extension of time set forth by statute or court rule.

(2) A document is timely filed if it is filed before midnight on the date the filing is due. If a filer encounters technical problems when attempting to make an electronic submission, the following rules apply.

(A) If a technical problem with the court's electronic filing system prevents the court from receiving an electronic submission on a particular court day, and the electronic filer: (a) demonstrates that he or she attempted to electronically file the document on that day; and (b) electronically submits the document on the first court business day that the technical problem no longer exists, the court will deem the document as having been received on the day that the technical problem prevented the filer's submission.

(B) Technical problems on the filer's end, including but not limited to phone line problems, problems with the filer's internet service, or problems with the filer's hardware or software, will not constitute a technical failure under these rules and will not excuse an untimely filing, unless the court orders otherwise.

(3) A party who files a document within 48 hours prior to a court proceeding must comply with Rule 15, regarding service of the document, and must also bring paper copies of the document for delivery to other parties during the court proceeding.

(4) A party who files a document during a court proceeding must bring paper copies of the document for delivery to other parties during the court proceeding.

(5) If the clerk discovers an error or defect in a filer's electronic submission of a document, the clerk may notify the filer of the error or defect, identify corrective actions to be taken by the filer, and establish a date by which the filer must correct the error or defect. The failure of a filer to correct the error or defect by that date may result in action adverse to the filer.

Rule 7. Document and Other Item Submission

(a) *Methods of Submitting Documents for Electronic Filing.* A filer may select one of the following methods to submit a document for filing through the electronic filing system, unless the type of document requires that it be submitted in only one of the following ways:

(1) *System-generated document.* The filer completes a guided interview, questionnaire or prompts through the electronic filing system, and the system then generates a document for filing based on the responses and information provided by the filer.

(2) *Court-created form.* The filer completes a court-created form and uploads the completed document to the electronic filing system.

(3) *Party-created document.* The filer creates a document for filing and uploads the completed document to the electronic filing system.

(4) *Exhibits and attachments to a system-generated document, or to a completed court-created form, or to a party-created document.* If the exhibit or attachment is a document newly prepared for filing, the filer prepares and submits the document using methods (1), (2), or (3), as applicable. If the exhibit or attachment is a preexisting document not newly prepared for filing, the filer scans and uploads the document to the electronic filing system.

(b) Format of Documents Filed Electronically

(1) All documents must be in Portable Document (PDF) non-editable format;

(2) Hyperlinks and other electronic navigational aids may be included in an electronically filed document as an aid to the court. Each hyperlink must contain a text reference to the target of the link. Although hyperlinks may be included in a document as an aid to the court, the material referred to by the hyperlinks is not considered part of the official record or filing unless already part of the record in the case. Hyperlinks may be used to provide an electronic link to other portions of the same document or other portions of the court file. Hyperlinks to cited authority may not replace standard citation format for constitutional citations, statutes, cases, rules or other similarly cited materials.

(c) *Format of Documents Filed Conventionally.* If a paper document is conventionally submitted to the court for filing, scanning and entry into the court's electronic case file, the document must be printed on one side, must be logically organized, and must be delivered to the court with no tabs, staples or permanent clips.

(d) Original Documents and Other Paper Documents That Were Not Prepared for Electronic Filing

(1) When a statute, court rule, or other law requires the filing of an original, as opposed to a duplicate copy, of a will, a negotiable instrument or other document (*see, e.g.*, Rule 1001 et seq. of the New Hampshire Rules of Evidence), the filer shall scan the original document and file the scanned document through the electronic filing system. The filer's submission of the scanned document shall be deemed a certification by the filer that the document scanned and filed is the original. The filer shall retain the original document for a period of no less than two years or until the conclusion of the case (including any applicable appeal period), whichever is later. Upon the order of the court, the filer shall immediately deliver the original document to the court or any other party for inspection.

(2) For any other preexisting paper document, including a document containing a non-electronic signature (*e.g.*, an affidavit from a prior proceeding, an offer letter, or a written cost estimate), the filer must scan the document before it is filed electronically. The filer's submission of the scanned document shall be deemed a certification by the filer that the document scanned is the original or a duplicate copy.

(e) Attachments to Filings and Exhibits

(1) An attachment or exhibit that exceeds the technical standards for the electronic filing system or is unable to be electronically filed must be filed with the court on CD or DVD only. When an attachment or exhibit is filed on approved media, a notice of exhibit attachment shall be filed through the electronic filing system.

(2) Attachments and exhibits that cannot reasonably be filed in an electronically converted or scanned PDF format, such as bulky attachments, physical exhibits, and demonstrative evidence, shall be conventionally filed.

(3) Attachments and exhibits that are in electronic format must meet the requirements specified in the Electronic Filing User Guide.

(4) Proposed trial exhibits may be, but are not required to be, submitted electronically in small claims cases. However, if directed by the court to do so, and by the deadline set by the court, parties shall submit proposed exhibits electronically prior to the trial or hearing in which the party intends to offer the exhibits for admission. To the extent that any proposed exhibit is confidential as defined in Rule 11(c), the filing party shall follow the procedures set forth in Rule 11. To the extent that any proposed exhibit

contains confidential information, as defined in Rule 12(c), the filing party shall follow the procedures set forth in Rule 12(f).

(5) Proposed trial exhibits shall be available only to the parties to the case and their counsel; however, once offered into evidence, exhibits are subject to public inspection, unless otherwise excluded from public inspection by statute, court rule or court order. Exhibits offered at trials or hearings that can be maintained in an electronic format shall be maintained electronically for purposes of the official court record.

(f) *Documents Submitted for In Camera Review.* All documents submitted for *in camera* review shall be conventionally filed.

Rule 8. Signatures on Filings

(a) *Original Document Deemed Signed.* The electronic submission of a document by a registered filer shall be considered a signed original if:

(1) The document is electronically signed by the registered filer in either one of the following ways:

(A) the typed symbol /s/ followed by the typed name of the registered filer submitting the document (example: /s/ John Smith); or

(B) a graphic representation of the filer's actual signature; and

(2) The document including the electronic signature also includes the following information:

(A) name (in addition to name typed as part of electronic signature in section (1));

(B) address;

(C) telephone number (if available);

(D) e-mail address;

(E) law firm (for attorneys only); and

(F) NH Bar Association Identification Number (for attorneys only).

(b) *When Multiple Signatures Are Required.*

(1) When multiple signatures are required on a document, each person named as a signer of the document shall either:

(A) sign in one of the ways a filer signs documents described in (a)(1) above; or

(B) authorize the filer to sign the document on his or her behalf. The filer shall represent having obtained approval to sign for another signer named in the document as follows:

Typed symbol /s/ followed by the typed name of the other signer, followed by, "Signed by [filer's name] with permission of [other signer's name.]"

Example: /s/ Jennifer Jones

Signed by John Smith with permission of Jennifer Jones.

(2) The electronic signature of each named signer shall be accompanied by the same information required to accompany the filer's electronic signature described above in (a)(2). However, when a document is signed with permission of another named signer, the filer's information shall accompany only the filer's own signature.

(c) An electronic signature meeting the requirements described above in (a)(1) and (2) shall be considered the functional equivalent to a handwritten signature produced on paper.

(d) Any party to a case may challenge the authenticity of the signature on an electronically filed document by filing an objection within ten (10) days after discovery that the signature is not authentic.

Rule 9. Signatures on Court-Issued Electronic Documents

(a) A document requiring a judge's signature shall be deemed signed if it bears one of the following:

(1) the typed symbol /s/ followed by the typed name of the judge (example: /s/ John Smith); or

(2) a graphic representation of the judge's signature.

(b) A document requiring a clerk's signature shall be deemed signed if it bears one of the following:

(1) the typed symbol /s/ followed by the typed name of the clerk (example /s/ John Smith); or

(2) a graphic representation of the clerk's signature.

Rule 10. Notarized Signatures on Filings (Notarial Acts)

(a) A notarial act associated with an electronically filed document must conform to the requirements of notarial acts and signatures provided in RSA 456-B and RSA 294-E.

(b) The signature of a person who executed an electronically filed document and the signature of a person who performed a notarial act related to such a document must be presented by:

- (1) The typed symbol /s/ followed by the typed name of the signer(s) (example: /s/ John Smith); or
- (2) The graphic representation of each signer's actual signature.

(c) Any party to a case may challenge the authenticity of the signature of a person who performed a notarial act on a document filed electronically in that case by filing an objection within ten (10) days after discovery that the signature is not authentic.

Comment

For requirements of notarial acts and signatures on electronic documents, *see, especially*, RSA 456-B:7 and RSA 294-E:2, VIII, RSA 294-E:9, and RSA 294-E:11.

Rule 11. Filing a Document Which is Entirely Confidential

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

(b) A confidential document shall not be included in a filing if it is neither required for filing nor material to the proceeding. If the confidential document is required or is material to the proceeding, the party must file the document in the manner prescribed by this rule.

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

- (1) Documents relating specifically to small claims cases, such as:
 - (A) Confidential Information Sheets in district division civil proceedings;

(B) Statements of Assets and Liabilities in district division civil proceedings.

(2) Documents relating to case types other than small claims cases, such as:

(A) records pertaining to juvenile delinquency, children in need of services proceedings, or abuse/neglect proceedings;

(B) financial affidavits in family law proceedings;

(C) guardian ad litem reports in family law proceedings;

(D) Qualified Domestic Relations Orders in family law proceedings;

(E) Plaintiff and Defendant Information Sheets in domestic violence and stalking proceedings;

(F) Vital Statistics forms;

(G) personal data sheets;

(H) records pertaining to termination of parental rights proceedings;

(I) records pertaining to adoption proceedings;

(J) records pertaining to mental health proceedings;

(K) records of guardianship cases filed under RSA chapter 463, but only to the extent that such records relate to the personal history or circumstances of the minor and the minor's family, *see* RSA 463:9; and

(L) information related to competency determinations.

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

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

(2) for confidential documents from other case types or for other

confidential documents set forth above, the filer shall select “Other (Confidential)” in the filing system.

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

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

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

Comment

These provisions are intended to ensure that confidential documents are accessible, upon filing, only to the court and its staff, to the parties and their attorneys or the parties’ authorized representatives, and to others authorized to perform service of process. Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. *See, e.g., Associated Press v. State of N.H.*, 153 N.H. 120 (2005); *Petition of Keene Sentinel*, 136 N.H. 121 (1992); *see also* District Division Rule 1.26; Family Division Rule 1.30; Probate Division Rule 169-A; Superior Court Rule (Civil) 203; Superior Court Rule (Criminal) 169-A.

Rule 12. Filing a Document Which Contains Confidential Information

(a) The following provisions govern a filing party’s obligations when filing a document containing “confidential information” as defined in this rule. These provisions apply to both electronic filings and conventional filings by parties. If a document is confidential in its entirety, as defined in Rule 11, the filing party must follow the procedures for filing a confidential document set forth in Rule 11.

(b) Confidential information shall not be included in a filing if it is neither required for filing nor material to the proceeding. If the confidential information is required or is material to the proceeding, the party must file the information in the manner prescribed by this rule.

(c) It is the responsibility of the filing party to ensure that confidential

information is omitted or redacted from documents before the documents are filed, except when the filing party is completing certain required fields in a system-generated form. See Rule 12(d)(1). It is not the responsibility of the clerk or court staff to review narratives contained within system-generated documents or uploaded documents filed by a party to determine whether appropriate omissions or redactions have been made. Confidential Information” means:

(1) Information that is not to be accessible to the public pursuant to state law, administrative or court rule, court order, or case law including, but not limited to, the following:

(A) information that would compromise the confidentiality of juvenile delinquency proceedings, children in need of services proceedings, or abuse/neglect proceedings;

(B) information that would compromise the confidentiality of termination of parental rights proceedings;

(C) information that would compromise the confidentiality of adoption proceedings;

(D) information that would compromise the confidentiality of mental health proceedings.

(2) information sealed by the court;

(3) financial information that provides identifying account numbers on specific assets, liabilities, accounts, credit card numbers or Personal Identification Numbers (PINs) of individuals including parties and non-parties;

(4) the following personal identifying information of a party: social security number, date of birth (except a defendant’s date of birth in a criminal case), mother’s maiden name, a driver’s license number, a fingerprint number, the number of other government-issued identification documents or a health insurance identification number;

(5) the following personal identifying information of a non-party: social security number, date of birth, mother’s maiden name, a driver’s license number, a fingerprint number, the number of other government-issued identification documents or a health insurance identification number, street address or telephone number;

(6) personal identification information included on a warrant;

(7) information that is not to be accessible to the public pursuant to

federal law.

(d) *Filing system-generated forms containing confidential information through the electronic filing system.*

(1) If the filing party is completing a guided interview or questionnaire or is responding to system-generated questions or prompts (other than those calling for a narrative) through the electronic filing system, the filing party may complete the field and is not responsible for redacting information in that field to ensure its confidentiality. The system-generated forms are designed to comply with these confidentiality rules, and information contained within fields (other than those calling for a narrative) that require the filer to provide confidential information will not be accessible to the public upon filing and instead will, as necessary, automatically populate on a Confidential Information Sheet.

(2) When completing a field calling for a narrative in a system-generated document, a party shall omit confidential information from the field when the information is not required to be included for filing and is not material to the proceeding.

(3) If confidential information is required for filing and/or is material to the proceeding and therefore must be included in the narrative, the filer shall, in the circumstances described below, take the following precautions:

(A) if the information is identified as confidential in Rule 12(c) of these rules, the filer shall:

- (i) complete the narrative in the appropriate text box, omitting the confidential information; and, as prompted by the system,
- (ii) provide the narrative including the 12(c) confidential information in a separate text box which will automatically populate on a Confidential Information Sheet.

(B) if the information is information the filer requests that the court deem confidential, but which is not identified as confidential in Rule 12(c), the filer shall:

- (i) complete the narrative in the appropriate text box; and
- (ii) file a motion to seal the narrative. See Rule 13 (“Motions to Seal”).

(C) if the filing contains both Rule 12(c) confidential information and information the filer believes to be confidential but which is not identified as confidential in Rule 12(c), the filer shall:

- (i) complete the narrative in the appropriate text box, omitting the Rule 12(c) confidential information;

- (ii) provide the narrative including the Rule 12(c) confidential information in a separate text box which will automatically populate on a Confidential Information Sheet; and
- (iii) file a motion to seal the narrative omitting the Rule 12(c) confidential information but containing the information the filer believes to be confidential. See Rule 13 (“Motions to Seal”).

(e) *Filing Court-Created Forms Containing Confidential Information*

(1) If the filing party is completing a court-created form which will be uploaded and filed electronically or conventionally filed, the filer shall leave blank those sections of the form requesting confidential information set forth in Rule 12(c), and shall file the form with a Confidential Information Sheet containing the confidential information that was left blank on the form.

(2) When completing a section calling for a narrative in a court-created form, a filing party shall omit confidential information from the section when the information is not required to be included for filing and is not material to the proceeding.

(3) When confidential information is required for filing and/or is material to the proceeding, and therefore must be included in the narrative in a court-created form, the filer shall, in the circumstances described below, take the following precautions:

- (A) If the information is identified as confidential in Rule 12(c) of these rules, the filer shall:
 - (i) complete the narrative in the appropriate section of the form, omitting the confidential information; and
 - (ii) provide the narrative including the 12(c) confidential information in the appropriate place on the Confidential Information Sheet.
- (B) If the information is information the filer requests that the court deem confidential, but is not identified as confidential in Rule 12(c), the filer shall:
 - (i) complete the narrative in the appropriate section of the form, and
 - (ii) file a motion to seal the narrative. See Rule 13 (“Motions to Seal”).
- (C) If the filing contains both Rule 12(c) confidential information and information the filer believes to be confidential but which is not identified as confidential in Rule 12(c), the filer shall:

- (i) complete the narrative in the appropriate section of the form, omitting Rule 12(c) confidential information but including the non-Rule 12(c) information the filer believes to be confidential;
- (ii) provide the narrative including the Rule 12(c) confidential information in the appropriate place on the Confidential Information Sheet; and
- (iii) file a motion to seal the narrative omitting the Rule 12(c) confidential information but containing the information the filer believes to be confidential. See Rule 13 (“Motions to Seal”).

(f) *Filing Uploaded Party-Created Documents or Exhibits or Attachments Containing Confidential Information.*

(1) When a party has created a document for filing, or is filing an exhibit or attachment which will be uploaded and filed electronically or conventionally filed, the filing party shall omit or redact confidential information from the filing when the information is not required to be included for filing and is not material to the proceeding. If none of the confidential information is required or material to the proceeding, the party should file *only* the version of the document from which the omissions or redactions have been made.

(2) If confidential information is required for filing and/or is material to the proceeding, and therefore must be included in the document, the filer shall, in the circumstances described below, take the following precautions:

- (A) If the information is identified as confidential in Rule 12(c) of these rules, the filer shall:
 - (i) omit or redact the confidential information; and
 - (ii) provide the text from the document which includes the Rule 12(c) confidential information in the appropriate place on the Confidential Information Sheet.
- (B) If the information is information the filer requests that the court deem confidential, but which is not identified as confidential in Rule 12(c), the filer shall file:
 - (i) an unredacted version of the document; and
 - (ii) a motion to seal the document. See Rule 13 (“Motions to Seal”).
- (C) If the filing contains both Rule 12(c) confidential information and information the filer believes to be confidential but which is not identified as confidential in Rule 12(c), the filer shall:
 - (i) omit or redact the Rule 12(c) confidential information from the document but include the information the filer believes to be confidential;

- (ii) provide the text from the document which includes the Rule 12(d) confidential information in the appropriate place on the Confidential Information Sheet; and
- (iii) file a motion to seal the document omitting the Rule 12(c) confidential information but containing the information the filer believes to be confidential. See Rule 13 (“Motions to Seal”).

(g) *Sanctions.* If a party knowingly files documents that contain or disclose confidential information in violation of these rules, the court may, upon its own motion or that of any other party or affected person, impose sanctions against the filing party.

Comment

These provisions are intended to ensure that confidential information contained within documents is accessible, upon filing, only to the court and its staff, to the parties and their attorneys or the parties’ authorized representatives, and to others authorized to perform service of process. Any person or entity not otherwise entitled to access may file a motion or petition to gain access to any sealed or confidential court record. See, e.g., *Associated Press v. State of N.H.*, 153 N.H. 120 (2005); *Petition of Keene Sentinel*, 136 N.H. 121 (1992); see also District Division Rule 1.26; Family Division Rule 1.30; Probate Division Rule 169-A; Superior Court Rule (Civil) 203; Superior Court Rule (Criminal) 169-A.

Rule 13. Motions to Seal

(a) A motion to seal a confidential document or an unredacted version of a document containing confidential information shall state the authority for confidentiality, *i.e.*, the statute, administrative order or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. Upon filing of the motion to seal with the unredacted version of the document, the unredacted version of the document shall be kept confidential pending a ruling on the motion. The court shall review the motion to seal and any objection to the motion to seal that may have been filed and determine whether the unredacted version of the document shall be confidential. An order will be issued setting forth the court’s ruling on the motion to seal.

(b) A party or person with standing may move to seal or redact confidential documents or confidential information that is contained or disclosed in the filing of any other party and may request an immediate order to seal the document pending the court’s ruling on the motion.

III. Service of Documents

Rule 14. Formal Service of Process

(a) *Proof of Formal Service of Process.* Documents that require personal service or other formal service of process to confer jurisdiction over a party as a matter of law shall not be served electronically. Whenever a party is required by statute, court rule or court order to file proof of formal service of process, the proof of service document shall be scanned and filed electronically in accordance with the provisions of Rule 7(d) concerning “Original Documents and Other Paper Documents That Were Not Prepared for Electronic Filing.”

(b) *Attestation/Certification of Documents.* A document shall be considered properly attested or certified for purposes of service of process or other purpose when:

(1) The document, with statutory attestation language and bearing an electronic certification stamp approved by the Supreme Court as meeting the requirements for attestation, is electronically transmitted directly from the clerk/deputy clerk to the process server; or

(2) In limited circumstances as directed by the court, the original paper document is issued by the clerk/deputy clerk bearing the statutory attestation.

Rule 15. Electronic Service of Documents

(a) “Electronic service” satisfies the requirement that a party provide to all other counsel, or to the opposing party if self-represented, copies of all pleadings filed and communications addressed to the court. *See Circuit Court - District Division Rule 1.3-A.*

(b) *Acceptance of Electronic Service by Registered Filers; Non-Electronic Service Required to Other Parties.*

(1) Registration as a filer shall constitute consent to acceptance of electronic service of court documents and documents filed by other registered filers in the case. Except as otherwise authorized by these rules, no other form of delivery to a registered filer shall be permitted. When a filer submits a document to the court through the electronic filing system, and one or more other parties to the case or their representatives have registered as filers, the filing party shall cause electronic service through the filing system to be made on each other registered filer by so designating at the time of the filing party’s submission.

(2) A party who has been granted an exception from the mandate

of electronic filing shall be provided with paper copies of all court documents and documents filed by other parties in the case. A party who has been granted an exception from the mandate of electronic filing shall provide paper copies of all of his or her filings to the other parties in the case. It shall be the responsibility of the party filing a document to provide a paper copy of the filing to all other parties in accordance with this provision. Provision of paper copies shall continue until the party is no longer excepted from the mandate of electronic filing.

(3) A party who has not yet registered as a filer shall be provided with paper copies of all court documents and documents filed by other parties in the case. A party who has not yet registered as a filer, and who has requested an exception from the mandate of electronic filing, shall provide paper copies of all of his or her filings to the other parties in the case. It shall be the responsibility of the party filing a document to provide a paper copy of the filing to all other parties in accordance with this provision. Provision of paper copies shall continue until the non-registered party registers.

(c) *Closed Cases.* When a case has been closed, all service shall be accomplished as in all other actions at law or as dictated by statute or rule, until the case has been reopened in the electronic filing system. See Rule 14.

(d) *Certificate of Service.* A filing party shall state in every document, whether filed electronically or conventionally, that a copy of the document is being timely provided to all other parties in the case. The document shall identify the name of each party receiving a copy of the document through the electronic filing system and the name of each party receiving a paper copy of the document.

(e) *Court-Issued Documents.* The electronic filing system will electronically serve any court-issued document to all registered filers entitled to electronic service. Electronic service by the court, through a notification to a registered filer, constitutes service or notice of the document. The clerk shall mail or otherwise conventionally deliver paper copies of court-issued documents to each party who has been granted an exception from the mandate of electronic filing or who has not yet registered as a filer.

(f) *No Contact Orders.* Absent a court order to the contrary, a party subject to a no contact order may use electronic service to provide copies of all pleadings filed and communications addressed to the court to the opposing party.

APPENDIX B

Adopt the following Small Claims Actions Pilot Rules to Accompany the Electronic Filing Pilot Rules, applicable on a temporary basis in small claims actions in the circuit court – district division:

SMALL CLAIMS ACTIONS PILOT RULES TO ACCOMPANY THE ELECTRONIC FILING PILOT RULES

PREAMBLE

Pursuant to the authority conferred by Part II, Article 73-a of the New Hampshire Constitution, the Supreme Court of New Hampshire hereby adopts on a temporary basis the attached Small Claims Actions Pilot Rules to Accompany the Electronic Filing Pilot Rules. These rules shall take effect in a particular court location as of the date set forth in an administrative order by the administrative judge of the circuit court implementing small claims e-filing in the circuit court – district division in a particular location, and shall apply on a pilot basis to small claims actions in the circuit court – district division in those locations. For a list of the locations in which electronic filing will be, or has been implemented, and a link to the relevant orders, see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>.

Rule 4.1. Filing Small Claim Complaint

(a) The Claim

(1) Small claim cases shall be filed electronically as required under the New Hampshire Circuit Court – District Division Small Claims Electronic Filing Pilot Rules unless an exemption to electronic filing as allowed under the Rules is requested and granted.

(2) A small claim shall be set forth on a court generated Small Claim Complaint form. It shall not be considered filed until the fee has been paid or a properly supported motion to waive filing fee has been submitted. (See District Division Rule 3.3 for filing fees.)

(3) The small claims filing fee shall not be waived except upon presentation of facts which demonstrate extraordinary circumstances.

(4) The claim must include:

- (A) The business or other relationship between the plaintiff and defendant and a description setting forth with specificity the reason(s) the plaintiff believes that the defendant owes money to the plaintiff;
- (B) The amount that the plaintiff claims that the defendant owes.
NOTE: If the plaintiff claims to be owed more than \$7,500.00, the filing of the small claim complaint will waive any amount due beyond the small claims limit of \$7,500.00. If the plaintiff does not want to waive the amount over \$7,500.00, a civil writ must be filed instead of a small claim;
- (C) If the basis for recovery asserted in the small claim complaint is the extension of consumer credit, the plaintiff shall file a Statement of Consumer Debt which provides the following:
 - (i) If the plaintiff is a person or entity *other than* the original creditor, a statement that the plaintiff has a right to assert the claim and a listing of all prior owners of the claim commencing with the original creditor;
 - (ii) The account number/account identifier, if any, assigned to the obligation. The account number/account identifier shall be redacted to show only the last four digits;
 - (iii) The date of the last payment made, if any;
 - (iv) A designation of principal, interest, charges and fees calculated either in accordance with the laws applicable to the obligation or in accordance with the practice in credit card cases of treating the charge off balance as principal and itemizing any additional interest or fees after that date.

(b) *The Parties*

- (1) The following information shall be included in the small claim filing:

- (A) Name, address (residence and mailing) and date of birth of the plaintiff(s). The date of birth shall be submitted on the Small Claim Confidential Information Sheet and shall be confidential as to non-parties to comply with the New Hampshire Circuit Court - District Division Small Claims Electronic Filing Pilot Rules. Access to these documents shall be pursuant to District Division Rule 1.26;

- (B) Name, address (residence and mailing) of the defendant(s);

- (C) If the plaintiff is a business entity, the nature of the business entity;

- (D) If the defendant is a business entity:

- (i) The nature of the business entity; and
- (ii) The individual who is to be served with the small claim and the capacity in which that individual is to be served (e.g. agent for service, corporate officer, member, manager, owner) and that individual's address (physical and mailing) if different from that of the business entity.

(2) A person who files or responds to a small claim on behalf of another individual or entity must file the statement required by District Division Rule 1.3(D). In addition, one of the following authorizations must be filed with the court:

(A) For an individual acting on behalf of another, a power of attorney or other valid authorizing document authorizing the filing of legal actions; or

(B) For an individual acting on behalf of an entity:

- (i) For a corporation, a resolution adopted by the board of directors;
- (ii) For a partnership, an authorization signed by a general partner;
- (iii) For a trust, an authorization signed by a trustee;
- (iv) For a limited liability company, an authorization signed by a member with management authority. (*See also* RSA 503:11.)

(C) The requirements of this paragraph (2) do not apply to attorneys who are licensed to practice law in the State of New Hampshire

Rule 4.2. Notice

(a) Unless the plaintiff is seeking a pre-judgment attachment (*See* Rule 4.13) upon the filing of a small claim, the court shall send written notice of the claim to the defendant via first class mail. The notice shall be sent to the defendant's mailing address as provided by the plaintiff. If there are multiple defendants, written notice of the small claim shall be sent to each defendant.

(b) If the notice is returned to the court as undeliverable by the United States Postal Service, the court shall provide notice to the plaintiff that a new or alternate address is required for the defendant. If the plaintiff provides an alternate mailing address for the defendant, the court shall forward the new notice to the defendant via first class mail. If the plaintiff does not provide an alternate mailing address, the plaintiff may request that the claim be served as in all other actions at law (*see* RSA 510:2, et seq.), and the court shall deliver the new notice to the plaintiff. It shall be the responsibility of the plaintiff to ensure that proper service is made upon the defendant and that proof of service is filed with the court thereafter. In all notices, the court shall set a date by which the defendant must respond.

(c) If the notice is returned as undeliverable and the plaintiff does not provide a new mailing address or request alternative service pursuant to RSA 510 within sixty (60) days of the court's notification, the action shall be dismissed.

(d) If the plaintiff is requesting a pre-judgment attachment of the defendant's property, the notice and the attachment request and any order shall be served according to Rule 4.13 below.

Rule 4.3. Responding to Small Claim Complaint or Counterclaim

(a) Response

(1) The defendant shall file a court generated Response to Small Claim form electronically, as required under the New Hampshire Circuit Court - District Division Small Claims Electronic Filing Pilot Rules. When the defendant is served by first class mail, the response shall be filed by the date indicated on the notice which shall be thirty (30) days from the date the court mails the notice, or if the defendant is served as in all other actions at law the response shall be filed by the return date selected by the court which shall be not less than 45 days from the date the court forwards the notice to the plaintiff for service.

(2) The response shall include the name, address (residence and mailing) and date of birth of the defendant(s). The date of birth shall be submitted on the Small Claim Confidential Information Sheet and shall be confidential as to non-parties to comply with the New Hampshire Circuit Court - District Division Small Claims Electronic Filing Pilot Rules. Access to these documents shall be pursuant to District Division Rule 1.26. If the response includes a request for a hearing, the defendant shall indicate the amount of the claim which is not in dispute and provide a brief explanation of the basis for the amount in dispute.

(3) If the defendant is filing a response on behalf of another individual or entity, the defendant must comply with Rule 4.1(b)(2).

(b) Demand for Jury Trial. When the debt or damages claimed exceed \$1,500.00, the defendant may claim trial by jury pursuant to RSA 503:1 III within the time allowed by statute or at the same time as the filing of a timely response. The small claims transfer fee shall be paid by the defendant at the time the request is made.

(c) Failure to Respond. If the defendant fails to file a timely response, upon the filing by the plaintiff of a Military Statement and any other documents required by the court, a default judgment may be issued for the plaintiff.

(d) *Counterclaim*

(1) Any claim that the defendant wishes to file against the plaintiff that is related to the plaintiff's claim is known as a counterclaim and may be filed with the defendant's response, but shall be filed no later than the return date indicated on the original notice. If the defendant fails to file a counterclaim with the response or before the return date selected by the court, the defendant may file a request with the court to allow a late counterclaim, which may be granted only upon good cause shown.

(2) A counterclaim shall not be considered filed until the filing fee has been paid or a properly supported motion to waive filing fee has been submitted. (*See District Division Rule 3.3 for filing fees.*)

(e) *Response to Counterclaim.* The plaintiff is not required to respond to a counterclaim. When the debt or damages claimed in the counterclaim exceeds \$1500.00, the plaintiff may claim trial by jury pursuant to RSA 503:1, III within the time allowed by statute but in no event later than 14 days from the date that the counterclaim is filed with the court. For good cause shown, the court may permit a request for transfer to Superior Court to be filed after the 14 day limitation. The small claim transfer fee shall be paid by the plaintiff at the time the request is made.

Rule 4.4. Pre-trial hearing

(a) In every small claim case in which the defendant has filed a timely response requesting a hearing, the court may schedule a pre-trial hearing.

(b) Attendance at the pre-trial hearing shall be mandatory. Anyone appearing on behalf of another, including an attorney, will be expected to have settlement authority or telephonic access to the represented party. Failure by either party to attend the pre-trial hearing shall result in a judgment in favor of the other party. If neither party appears at the pre-trial hearing, the case shall be dismissed. A default judgment shall not be stricken except upon a finding of good cause by the court.

(c) The court will provide the opportunity for parties to mediate on the day of the pre-trial hearing. The court may require parties in cases subject to mandatory mediation to mediate on the day of the pre-trial hearing or on a later date. If the parties reach an agreement, the agreement shall contain an acknowledgement that they understand that exempt income and assets may not be used in the enforcement of any judgment or agreement, and that failure to comply with the terms of the agreement may result in the matter being returned to the court's docket for a hearing as may be necessary.

(d) If a pre-judgment attachment has been requested or if an attachment

has been granted on an *ex parte* basis and the defendant has filed an objection, the court may schedule a hearing on the attachment at the time of the pre-trial hearing. If the court schedules the attachment hearing to be held on the same date as the pre-trial hearing, the parties will be notified by the court.

(e) As a result of the pre-trial hearing, the court will make pre-trial orders on all issues deemed appropriate and schedule the trial.

(f) Parties are not required to bring witnesses or evidence to the pre-trial hearing. Parties may bring evidence which would be helpful during any discussion between the parties, including mediation.

Rule 4.5. Discovery and Rules of Evidence

Formal discovery, such as interrogatories, depositions, requests to produce documents, requests for admissions and other forms of discovery are not permitted in small claims cases unless ordered at the pre-trial hearing. The Rules of Evidence shall not apply in small claims cases.

Rule 4.6. Trial

(a) The trial in small claims cases shall be informal. All parties shall be required to take an oath or affirmation but may be permitted to testify informally. The court may hear the case by offers from each of the parties as to what their evidence would prove if the court were to hear all witnesses and documents submitted. However, either party has the right to object to this procedure.

(b) Parties shall bring to the trial all witnesses, documents or other evidence upon which they intend to rely to prove or defend their case. The court will not make contact with persons not in attendance or accept evidence not presented during the trial.

(c) If the plaintiff fails to appear, the judgment shall be issued in favor of the defendant. If the defendant fails to appear, a judgment shall be issued in favor of the plaintiff. If neither party appears, the case shall be dismissed.

Rule 4.7. Judgment

(a) At the conclusion of the trial, the court may render its decision immediately. In no event shall the court issue a written decision more than thirty (30) days from the date of the trial.

(b) If the court issues judgment for the plaintiff immediately after the presentation of the case during a trial at which both parties are present, the court shall inquire into the defendant's ability to pay the judgment from non-

exempt assets and may require the defendant to complete a Statement of Assets and Liabilities from which the defendant's ability to pay the judgment from non-exempt assets in full or in installment payments may be determined. The court may then issue an order regarding the defendant's ability to pay the judgment, including any payment over time. The Statement of Assets and Liabilities shall be confidential as to non-parties. Access to these documents shall be pursuant to District Division Rule 1.26. The court may, in its discretion upon request of the defendant, continue the hearing to a future date to allow the defendant additional time to complete the Statement of Assets and Liabilities. In this circumstance, the plaintiff shall not be required to file a Motion for Periodic Payments.

(c) If the court does not issue its decision immediately and address payment issues as set forth immediately above, and the judgment is for the plaintiff, the plaintiff will be required to file a Motion for Periodic Payments (Rule 4.10) if the plaintiff wishes to have a hearing to determine the defendant's ability to pay the judgment.

(d) If the defendant confesses judgment at any time, the court shall immediately schedule a payment hearing or the plaintiff may file a Motion for Periodic Payments (Rule 4.10) upon receipt of written notice of the confession of judgment. If the defendant fails to appear at the hearing after notice is given, the court may proceed, and orders may be made in the defendant's absence or an order for arrest may be issued. In all other respects the process outlined in Rule 4.10 below shall be followed.

(e) The plaintiff may be required to file a separate statement referred to as a Statement of Damages/Taxation of Costs.

Rule 4.8. Motion for Reconsideration

(a) A motion for reconsideration or other post-decision relief shall be filed within ten (10) days of the date on the clerk's written notice of the order or decision. The motion shall state the particular points of law or fact that the court has overlooked or misapprehended and shall contain the arguments in support of the motion as the filing party decides to present. A hearing on the motion shall not be permitted except by order of the court.

(b) No response to a motion for reconsideration or other post-decision relief shall be required unless ordered by the court, but any answer or objection must be filed within ten (10) days of the filing of the motion.

(c) If a motion for reconsideration or other post-decision relief is granted, the court may revise its order or take other appropriate action without re-hearing or may schedule a further hearing.

(d) The filing of a motion for reconsideration or other post-decision relief shall not stay any order of the court unless, upon specific written request, the court has ordered such a stay.

Rule 4.9. Appeal

The party against whom a judgment has been issued may appeal the decision to the New Hampshire Supreme Court according to its Rules. The appeal must be filed with the Supreme Court within thirty (30) days of the rendition of judgment or of the clerk's notice of the judgment, whichever is later.

Rule 4.10. Periodic Payments

(a) A Motion for Periodic Payments may be made at the time judgment is issued or electronically thereafter. This motion may be made orally in the courtroom if the defendant is present when the verdict or judgment is awarded, in which case the court shall conduct a payment hearing. If the Motion for Periodic Payments is filed electronically, the court shall issue orders of notice, subject to paragraph B below, requiring the defendant to appear for a court hearing. The court may require the plaintiff to file a Statement of Damages/Taxation of Costs prior to the issuance of orders of notice or prior to a hearing on the motion.

(b) Upon receipt of the notice of filing from the court or upon receipt of the copy forwarded by the plaintiff, the defendant may waive formal service of process of any notices related to the Motion for Periodic Payments.

(c) If the defendant does not elect to waive formal service, the court shall forward the orders of notice to the plaintiff. The plaintiff shall cause the orders of notice to be served upon the defendant either in-hand or by certified mail, restricted delivery, return receipt requested. If the plaintiff elects to serve the orders of notice by certified mail, restricted delivery, return receipt requested, and if the return receipt is not signed by the defendant, then in-hand service shall be required.

(d) At the hearing on the Motion for Periodic Payments, it shall be the burden of the plaintiff to establish that the defendant has the ability to pay the judgment from non-exempt assets either in full or in installments. The defendant may be required to submit a Statement of Assets and Liabilities which shall be confidential as to non-parties. The defendant may be questioned under oath as to his/her property and ability to pay the judgment. Either party may introduce oral and written evidence as the court deems relevant. If the parties reach an agreement for payment, the agreement shall include an acknowledgement that the parties understand that exempt income and assets may not be used in the enforcement of any judgment or agreement,

and that failure to comply with the terms of the agreement may result in the matter being returned to the court's docket for a hearing as may be necessary.

(e) If the defendant fails to appear at the hearing and proof of service has been provided by the plaintiff, the court may proceed, and orders may be made in the defendant's absence or an order for arrest may be issued.

(f) If a Motion for Periodic Payments is denied, the plaintiff shall not file another motion against the same defendant upon the same judgment within three (3) months unless the court otherwise allows for good cause.

(g) Reasonable costs and fees incurred by the plaintiff in carrying out the provisions of this rule, in addition to statutory interest, shall be paid by the defendant.

Rule 4.11. Contempt (Following Payment Order)

(a) Contempt proceedings for failure to comply with a payment order may be initiated by the plaintiff by Motion for Contempt for Non-Compliance with Payment Order and will result in the issuance of an order of notice to the defendant to appear before the court to show cause why the defendant should not be held in contempt of court. The court may require the plaintiff to file a Statement of Damages/Taxation of Costs prior to the issuance of orders of notice or prior to a hearing on the motion.

(b) Upon receipt of the notice of filing from the court or upon receipt of the copy forwarded by the plaintiff, the defendant may waive formal service of process of any notices related to the contempt proceeding.

(c) If the defendant does not elect to waive formal service, the court shall forward the orders of notice to the plaintiff. The plaintiff shall cause the orders of notice to be served upon the defendant either in-hand or by certified mail, restricted delivery, return receipt requested. If the plaintiff elects to serve the notice of hearing by certified mail, restricted delivery, return receipt requested, and if the return receipt is not signed by the defendant, then in-hand service shall be required.

(d) At the contempt hearing, it shall be the burden of the plaintiff to establish that the defendant has failed to comply with the court's order. The defendant will then be required to show cause why the defendant should not be held in contempt for failure to comply with the court's order.

(e) If the defendant fails to appear at the hearing and proof of service has been provided by the plaintiff, the court may proceed, and orders may be made in the defendant's absence or an order for arrest may be issued.

(f) As a result of the hearing, the court may find the defendant in contempt and may make such orders as are appropriate, including a commitment to the house of corrections until the contempt is discharged. A contempt finding shall not end the proceedings nor satisfy any order for periodic payments. Future violations of the court's order for payments may also be dealt with as contempt.

(g) Reasonable costs and fees incurred by the plaintiff in carrying out the provisions of this rule, in addition to statutory interest, shall be paid by the defendant.

Rule 4.12. Mediation and Agreements

(a) Mediation is voluntary in small claims cases if the claim is \$5,000.00 or less. Mediation in these cases will be scheduled and may be held on the day of the pre-trial hearing and with the agreement of all parties to a case.

(b) Mediation is mandatory in small claims cases if the claim is more than \$5,000.00. Mediation in these cases will be scheduled and may be held on the day of the pre-trial hearing. If the case is scheduled for mandatory mediation in accordance with RSA 503:1, whether at the pre-trial hearing or on another date, and a party fails to appear, judgment may be rendered in favor of the other party. If neither party appears for a mandatory mediation session, the case shall be dismissed.

(c) Agreements reached through mediation or otherwise must include a judgment amount. The parties to any agreement, whether mediated or by agreement of the parties without mediation, shall submit an acknowledgement that they understand that exempt income and assets may not be used in the enforcement of any judgment or agreement, and that failure to comply with the terms of the agreement may result in the matter being returned to the court's docket for a hearing as may be necessary.

(d) Any communication made during the mediation which relates to the controversy mediated, whether made to the mediator or a party, or to any other person present at the mediation is confidential. Information, evidence or the admission of any party shall not be disclosed or used in any subsequent proceeding.

(e) The Administrative Judge of the Circuit Court, in consultation with the ADR Coordinator, shall determine the mediation needs for each Circuit Court location. Assignment of mediators shall be based on the mediation needs of each court.

Rule 4.13. Securing Judgment

(a) Prejudgment

(1) Petitions for pre-judgment attachment, with or without notice, shall be submitted electronically.

(2) If the plaintiff is requesting a Petition to Attach without Notice to the Defendant (*ex parte*), the plaintiff, after submitting the Petition electronically, must physically appear at the court where the small claim would be heard as required in the New Hampshire Circuit Court – District Division Small Claims Electronic Filing Pilot Rules. The Petition to Attach without Notice shall not be considered filed until the plaintiff physically appears as directed above and the additional filing fee is paid.

(3) If the plaintiff seeks a pre-judgment attachment, the process and procedure set forth in RSA 511-A and District Division Rule 3.4 shall be followed, except as otherwise specified in this rule. The words “Writ” and “Writ of Summons” in District Division Rule 3.4 and RSA 511-A shall refer to the Small Claim Complaint.

(4) Service upon the defendant in cases with pre-judgment attachments shall not be made by first class mail and shall be completed as in all other actions at law, generally by a sheriff, and at the expense of the plaintiff pursuant to RSA 510.

(5) If the defendant files an objection to a pre-judgment attachment request or *ex parte* attachment, the court shall schedule a hearing on the attachment to take place within fourteen (14) days of the court’s receipt of the defendant’s objection.

(b) Post-Judgment

(1) A party who has received a judgment may file a motion to request a writ of attachment to secure payment of a final judgment for money damages by filing a motion with the court. Attachments made pursuant to this rule shall remain in effect until the judgment is satisfied or until the attachment expires by law. Attachments may only be made using the Writ of Attachment form to be obtained from the Clerk’s office upon the granting of an attachment.

(2) A small claims judgment may also be secured by real estate by recording or re-recording, at any time during the duration of the judgment, a certified copy of the judgment with the registry of deeds of the county in which the real estate is located.

(c) *Discharge of Attachments*

(1) When a small claims judgment secured by real estate is satisfied, the plaintiff shall deliver a discharge directly to the defendant within thirty (30) days. It shall be the responsibility of the defendant to record the discharge.

(2) If the plaintiff fails to deliver a discharge within the thirty (30) days, or if exigent circumstances require an immediate discharge, the defendant may petition the court in which the judgment was issued for a court ordered discharge. The burden shall be on the defendant to establish that the judgment has been satisfied pursuant to RSA 503:12.

(3) This rule shall apply to cases in which the court has granted an attachment and to cases in which the plaintiff has recorded a certified copy of a judgment in accordance with RSA 503:12.

Amend Circuit Court – District Division Rule 1.8 (new material is in **and in brackets**]; deleted material is in ~~strikethrough~~ format), as follows:

Rule 1.8. Motions

A. Any request for action by the Court shall be by motion. All motions, other than those made during trial or hearing, shall be made in writing unless otherwise provided by these rules. They shall state with particularity the grounds upon which they are made and shall set forth the relief or order sought.

B. **[In any case, other than small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>]** ¶[t]he Court will not hear any motion grounded upon facts unless they are verified by affidavit, or are apparent from the record or from the papers on file in the case, or are agreed to and stated in writing signed by the parties or their attorneys; and the same rule will be applied as to all facts relied on in opposing any motion.

[In small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>,] the Court will not hear any motion grounded upon facts, unless the moving party indicates in writing an understanding that making a false statement in the pleading may subject that party to criminal penalties, or the facts are apparent from the record or from the papers on file in the case, or are agreed to and stated in writing signed by the parties or their attorneys; and the same rule will be applied as to all facts relied on in opposing any motion.]

C. Any party filing a motion shall certify to the Court that a good faith attempt to obtain concurrence in the relief sought has been made, except in the case of dispositive motions, motions for contempt or sanctions, or comparable motions where it can be reasonably assumed that the party or counsel will be unable to obtain concurrence.

D. **[In any case, other than small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>,]** ¶[u]nless the opposing party requests a hearing upon any motion and sets forth the

grounds of the objection by a pleading and, if required, an affidavit within ten days after the filing of the motion, that party shall be deemed to have waived a hearing and the court may act thereon.

[In small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>, unless the opposing party requests a hearing upon any motion and sets forth the grounds of the objection by a pleading and, if required, a written statement indicating an understanding that making a false statement in the pleading may subject that party to criminal penalties, within ten days after the filing of the motion, that party shall be deemed to have waived a hearing and the court may act thereon.]

E. Any motion which is capable of determination without the trial of the general issue shall be raised before trial, but may, in the discretion of the Court, be heard during trial.

F. The Court may assess reasonable costs, including reasonable counsel fees, against any party whose frivolous or unreasonable conduct makes necessary the filing of or hearing on any motion.

G. Motions to dismiss will not be heard prior to the trial on the merits, unless counsel shall request a prior hearing, stating the grounds therefor; all counsel shall be prepared, at any such hearing, to present all necessary evidence.

Amend Circuit Court – District Division Rule 1.8-A (new material is in

[bold and in brackets]), as follows:

Rule 1.8-A. Continuances and postponements

A. All motions for continuance shall be in writing, signed by the moving party stating the reasons therefor and stating that the opposing party does not desire a hearing on the motion, if such is the case.

B. No motion for continuance shall be granted without a hearing unless approval of the opposing party is obtained. The moving party shall have the burden of obtaining such approval.

C. Agreement of the parties shall constitute a waiver of hearing on a motion to continue; but notwithstanding agreement of the parties, the Court shall exercise its sound discretion in granting such continuances.

D. All motions for continuance or postponement in a civil action shall be signed and dated by counsel. Other counsel wishing to join in any motion shall do so in writing. Each motion shall contain a certificate by counsel that the client has been notified of the reasons for the continuance or postponement, has assented thereto either orally or in writing, and has been forwarded a copy of the motion.

E. In exceptional situations, motions to continue may be made orally in accordance with these rules and shall be effective as such, but it shall be the burden of the moving party to establish a record thereof by confirming such request in writing. Only attorneys, police prosecutors, or parties pro se, shall be permitted to continue orally.

F. In all civil cases, **[other than small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>,**] no motion for a continuance, grounded on the want of material testimony, will be granted, unless supported by an affidavit stating the name of the witness, if known, whose testimony is wanted, the particular facts expected to be proven with the grounds of such expectation, and what has been done to procure attendance or deposition, so that the Court may determine whether due diligence has been used for that purpose. No action shall be continued on such motion if the adverse party will agree that the affidavit shall be received and considered as evidence in like manner as if the witness were present and had testified to the

facts therein stated; and such agreement shall be in writing at the foot of the affidavit and signed by the party or the attorney.

[In small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>, no motion for a continuance, grounded on the want of material testimony, will be granted, unless supported by a signed statement in which the moving party indicates in writing an understanding that making a false statement in the pleading may subject that party to criminal penalties and stating the name of the witness, if known, whose testimony is wanted, the particular facts expected to be proven with the grounds of such expectation, and what has been done to procure attendance or deposition, so that the Court may determine whether due diligence has been used for that purpose. No action shall be continued on such motion if the adverse party will agree that the statement shall be received and considered as evidence in like manner as if the witness were present and had testified to the facts therein stated; and such agreement shall be in writing at the foot of the statement and signed by the party or the attorney.]

G. The same rule shall apply, with necessary changes, when the motion is grounded on the want of any material document, paper or other evidence of like nature; or in the absence of a material witness whom the party deems it necessary to have upon the stand.

H. All grounds for recusal that are known or should reasonably be known prior to trial or hearing shall be incorporated in a written motion for recusal and filed promptly with the Court. Grounds for recusal that first become apparent at the time of or during the hearing shall be immediately brought to the attention of the judge. Failure to raise a ground for recusal shall constitute a waiver as specified herein of the right to request recusal on such ground. If a record of the proceedings is not available, the trial judge shall make a record of the request, the Court's findings, and its order. The Court's ruling on the motion shall issue promptly. If the motion is denied, the Court's ruling shall be supported by findings of fact with respect to the allegations contained in the motion.

APPENDIX E

Amend Circuit Court – District Division Rule 1.3(D) (new material is in

[bold and in brackets]), as follows:

D. (1) **[In all cases other than small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>,]** N[n]o person who is not a lawyer will be permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, unless of good character and until there is on file with the Clerk: (1) a power of attorney signed by the party for whom he or she seeks to appear and witnessed and acknowledged before a Justice of the Peace or Notary Public, constituting said person his or her attorney to appear in the particular action; and (2) an affidavit under oath in which said person discloses (a) all of said person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (b) all instances in which said person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, (c) all prior proceedings in which said person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court, (d) all prior proceedings in which said person has not been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court, and (e) all prior proceedings in which said person's permission to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court has been revoked. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.

[In small claims cases filed in district division locations in which the electronic filing pilot program has been implemented, see <http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm>, no person who is not a lawyer will be permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, unless of good character and until there is on file with the Clerk: (1) a valid authorizing document constituting said person his or her attorney to appear in the particular action; and (2) a written statement in which said person discloses (a) all of said person's misdemeanor and felony convictions (other than those in which a record of the conviction has been annulled by statute), (b) all instances in which said person has been found by any court to have violated a court order or any provision of the rules of professional conduct applicable to nonlawyer representatives, (c)

all prior proceedings in which said person has been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court, (d) all prior proceedings in which said person has not been permitted to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court, and (e) all prior proceedings in which said person's permission to appear, plead, prosecute or defend any action for any party, other than himself or herself, in any court has been revoked. This statement shall be signed and shall indicate the person's understanding that making a false statement in the pleading may subject that person to criminal penalties. Any person who is not a lawyer who is permitted to represent any other person before any court of this State must comply with the Rules of Professional Conduct as set forth in Professional Conduct Rule 8.5, and shall be subject to the jurisdiction of the committee on professional conduct.]