

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 amendments to court rules.

**I. Appeals from Decisions Designated as Final By Superior Court**

*(This amendment to Superior Court (Civ.) Rule 46 adopts a rule, similar to Federal Rule of Civil Procedure 54(b), which allows a court to direct that an order or portion of an order that finally resolves the case as to one or more, but fewer than all, the claims or parties be treated as a final decision on the merits if the court expressly determines that there is no just reason for delay. A related amendment to Supreme Court Rule 3 provides that an appeal from such a decision is a mandatory appeal).*

1. Amend Supreme Court Rule 3 (“Mandatory Appeal”), as set forth in Appendix A.
2. Amend Superior Court (Civ.) Rule 46, as set forth in Appendix B.

**II. Rulemaking Procedures**

*(This amendment to Supreme Court Rule 51(d)(3) changes the dates on which the Advisory Committee on Rules is to report proposed rules or rule amendments to the Court).*

1. Amend Supreme Court Rule 51(d)(3), as set forth in Appendix C.

**III. Administrative Judges and Administrative Council**

*(This amendment to Supreme Court Rule 54(3) makes the Chief Justice of the Supreme Court, or his or her designee, a member of the administrative council).*

1. Amend Supreme Court Rule 54(3), as set forth in Appendix D.

#### **IV. Circuit Court – Family Division Rules 2.29 and 2.3**

*(These amendments clarify when decrees become effective in family division cases).*

1. Amend Circuit Court – Family Division Rule 2.29, as set forth in Appendix E.
2. Amend Circuit Court – Family Division Rule 2.3, as set forth in Appendix F.

#### **V. Fees – Circuit Court Rules**

*(These amendments change the rules relating to fees to be charged to people who request copies of court documents).*

1. Amend Circuit Court – District Division Rule 3.3(I)(C), as set forth in Appendix G.
2. Amend Circuit Court – Probate Division Rule 169(V), as set forth in Appendix H.<sup>1</sup>
3. Amend Circuit Court – Family Division Rule 1.3(N), as set forth in Appendix I.

#### **VI. Fees – Circuit Court – Probate Division**

*(These amendments: (1) delete “Petition for Involuntary Admission” and “Petition Guardian of Incompetent Veteran” from Probate Division Rule 169 so that no fee will be applicable to either filing; and (2) delete “Photocopy of Will - \$1.00/page and strike the word “other” from “all other copied materials \$.50/page from Probate Division Rule 169).*

1. Amend Circuit Court – Probate Division 169(I)(c), as set forth in Appendix J.
2. Amend Circuit Court – Probate Division Rule 169(V), as set forth in Appendix K.

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<sup>1</sup> The change to Probate Division Rule 169(V) set forth in Appendix H is effective January 1, 2017. The change to Probate Division Rule 169(V), set forth in Appendix K, is effective immediately.

**VII. Rules of Professional Conduct 5.5 Unauthorized Practice of Law**

*(These amendments clarify that a lawyer who is licensed in another jurisdiction but does not practice New Hampshire law does not need to obtain a license to practice law solely because the lawyer is present in New Hampshire).*

1. Amend Rule 5.5 of the New Hampshire Rules of Professional Conduct, as set forth in Appendix L.

**VIII. Strafford, Cheshire, Belknap and Merrimack County Rules of Criminal Procedure**

*(These amendments make changes to court rules to implement RSA ch. 592-B. The legislation, effective January 1, 2016 in Cheshire and Strafford Counties, and effective July 1, 2016 in Belknap County will become effective in Merrimack County on January 1, 2017 and in additional counties as of the dates set forth in the October 17, 2016 order issued by this Court. See October 17, 2016 felonies first implementation order at <http://www.courts.state.nh.us/supreme/orders/10-17-16-Order.pdf>. It changes the procedure for felony complaints and misdemeanors and violation-level charges directly related to those felonies for offenses alleged to have occurred on or after the effective date in the particular county.)*

1. Amend the title of the Strafford, Cheshire and Belknap County Rules of Criminal Procedure, as set forth in Appendix M.
2. Amend the preamble to the Strafford, Cheshire and Belknap County Rules of Criminal Procedure (renamed, effective January 1, 2017, the Strafford, Cheshire, Belknap and Merrimack County Rules of Criminal Procedure), as set forth in Appendix N.
3. Amend Rule 1 of the Strafford, Cheshire and Belknap County Rules of Criminal Procedure (renamed, effective January 1, 2017, Strafford, Cheshire, Belknap and County Rules of Criminal Procedure), as set forth in Appendix O.
4. Amend Rule 2 of the Strafford, Cheshire and Belknap County Rules of Criminal Procedure (renamed, effective January 1, 2017, the Strafford, Cheshire, Belknap and Merrimack County Rules of Criminal Procedure), as set forth in Appendix P.
5. Amend the table of contents of the Rules of the Superior Court of the State of New Hampshire, as set forth in Appendix Q.

6. Amend Rule 101 of the Rules of the Superior Court of the State of New Hampshire, as set forth in Appendix R.
7. Amend the Preamble to the New Hampshire Rules of Criminal Procedure, as set forth in Appendix S.
8. Amend Rule 1 of the New Hampshire Rules of Criminal Procedure, as set forth in Appendix T.
9. Amend Rule 2 of the New Hampshire Rules of Criminal Procedure, as set forth in Appendix U.
10. Amend the note which replaced, effective March 1, 2016, the Circuit Court – District Division Criminal Rules, as set forth in Appendix V.

**Effective Date**

The amendments set forth in appendices J and K shall take effect immediately. All other amendments shall take effect on January 1, 2017.

October 17, 2016

ATTEST:



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Eileen Fox, Clerk  
Supreme Court of New Hampshire

## APPENDIX A

Amend Supreme Court Rule 3 (“Mandatory Appeal”) (new material is in

**[bold and in brackets]**) as follows:

"Mandatory appeal": A mandatory appeal shall be accepted by the supreme court for review on the merits. A mandatory appeal is an appeal filed by the State pursuant to RSA 606:10, or an appeal from a final decision on the merits issued by a superior court, district court, probate court, or family division court, **[including an appeal from an order issued pursuant to superior court rule 46(c)(1) if a final decision on the merits of the entire case would be a mandatory appeal,]** that is in compliance with these rules. Provided, however, that the following appeals are NOT mandatory appeals:

(1) an appeal from a final decision on the merits issued in a post-conviction review proceeding (including petitions for writ of habeas corpus and motions for new trial);

(2) an appeal from a final decision on the merits issued in a collateral challenge to any conviction or sentence;

(3) an appeal from a final decision on the merits issued in a sentence modification or suspension proceeding;

(4) an appeal from a final decision on the merits issued in an imposition of sentence proceeding;

(5) an appeal from a final decision on the merits issued in a parole revocation proceeding;

(6) an appeal from a final decision on the merits issued in a probation revocation proceeding;

(7) an appeal from a final decision on the merits issued in a landlord/tenant action filed under RSA chapter 540 or in a possessory action filed under RSA chapter 540; and

(8) an appeal from an order denying a motion to intervene; and

(9) an appeal from a final decision on the merits, other than the first final order, issued in, or arising out of, a domestic relations matter filed under RSA Title XLIII (RSA chapters 457 to 461-A).

## APPENDIX B

Amend Rule 46 of the Rules of the Superior Court of the State of new Hampshire Applicable in Civil Actions (new material is in **[bold and in brackets]**, deleted material is in ~~strikethrough~~ format) as follows:

Rule 46. Appeals and Transfers to Supreme Court

(a) **[Interlocutory Appeals.]** Whenever any question of law is to be transferred by interlocutory appeal from a ruling or by interlocutory transfer without ruling, counsel shall seasonably prepare and file with the trial court the interlocutory appeal statement or interlocutory transfer statement pursuant to Supreme Court Rule 8 or Supreme Court Rule 9, and after the court has signed the statement, counsel shall mail the number of copies provided for by the rules of the Supreme Court to the clerk thereof.

**[(b) Denial of Motion to Dismiss Challenging Personal Jurisdiction, Process and/or Service of Process.]**

**When, pursuant to Rule 9(e), a party files a timely Motion to Dismiss challenging the court's personal jurisdiction, sufficiency of process and/or sufficiency of service of process and the motion is denied, the order denying the motion may be appealed pursuant to Supreme Court Rule 7. See Rule 9(e) (a party will be deemed to have waived a challenge to personal jurisdiction, sufficiency of process and/or sufficiency of service if the party does not seek review by the supreme court of the denial of the Motion to Dismiss within 30 days; the supreme court's declining to accept the appeal will not preclude the party from challenging the trial court's ruling on personal jurisdiction, sufficiency of process and/or sufficiency of service of process in an appeal from a final judgment of the trial court).**

**(c) Judgment on Multiple Claims or Involving Multiple Parties.**

**(1) When, in a civil action that presents more than one claim for relief – whether as a claim, counterclaim, cross-claim, or third party claim – or where multiple parties are involved, the court enters an order that finally resolves the case as to one or more, but fewer than all, claims or parties, the court may direct that its order, or a portion of its order, be treated as a final decision on the merits as to those claims or parties if the court:**

**(A) explicitly refers to this rule;**

**(B) identifies the specific order or part thereof that is to be treated as a final decision on the merits;**

**(C) articulates the reasons and factors warranting such treatment; and**

**(D) finds that there is an absence of any just reason for delay as to the party or claim that is to be severed from the remainder of the case.**

**An order bifurcating or otherwise severing a civil action shall not, by itself, result in any order being treated as an appealable final decision on the merits unless all of the requirements of Rule 46(c)(1) are met.**

**(2) Procedure on Appeal.**

**(A) Any appeal from such an order shall be considered a mandatory appeal for purposes of Supreme Court Rule 7 if a final decision on the merits of the entire case would be a mandatory appeal, and shall be filed in accordance with Supreme Court Rules.**

**(B) Prior to accepting an appeal from an order that the Superior Court directed be treated as a final decision on the merits pursuant to Rule 46(c)(1), the Supreme Court may review the trial court's reasons and factors warranting treating the order as a final decision on the merits. If the Supreme Court determines, after notice to the parties and an opportunity for the filing of brief memoranda, that the Superior Court clearly erred by directing that the order be treated as a final decision on the merits, the Supreme Court shall vacate the portion of the order directing that it be treated as a final decision on the merits, and otherwise dismiss the appeal without prejudice.]**

~~(b)~~ **[(d)] [Final Judgment.]** In all actions in which a verdict or decree is entered, or in which a motion for a nonsuit or directed verdict is granted, or in which any motion is acted upon after verdict or decree, all appeals relating to the action shall be deemed waived and final judgment shall be entered as follows, unless the court has otherwise ordered, or unless a Notice of Appeal has then been filed with the Supreme Court pursuant to its Rule 7:

(1) Where no motion, or an untimely filed motion, has been filed after verdict or decree, on the 31st day from the date on the court's written notice that the court has made the aforementioned entry, grant or dismissal; or

(2) Where a timely filed motion has been filed after verdict or decree, on the 31st day from the date on the court's written notice that the court has taken action on the motion.

~~(e)~~ **[(e)]** The court shall not grant any requests for extensions of time to file an appeal document in the Supreme Court or requests for late entry of an appeal document in the Supreme Court; such requests shall be filed with the Supreme Court. See Supreme Court Rule 21(6).

~~(d)~~ **[(f)]** In civil actions in which a mistrial is declared, appeals from the denial of motions for nonsuit or directed verdict shall not be transferred to the Supreme Court before verdict following further trial unless the court shall approve an interlocutory appeal pursuant to Supreme Court Rule 8.

~~(e)~~ **[(g)]** The procedure for preparation of a transcript for cases appealed or transferred to the Supreme Court is governed by Supreme Court Rule 15.

#### **[Comment**

**Rule 46(b), consistent with Rule 9(e) and *Mosier v. Kinley*, 142 N.H. 415, 423-24 (1997), provides that an order denying a timely-filed Motion to Dismiss challenging personal jurisdiction, sufficiency of process and/or sufficiency of service shall be appealable under Supreme Court Rule 7 without the need for the Superior Court to take the actions set forth in Rule 46(c)(1).**

**Rule 46(c)(1) alters the rule announced in *Germain v. Germain*, 137 N.H. 83, 85 (1993), that “when a trial court issues an order that does not conclude the proceedings before it, for example, by deciding some but not all issues in the proceedings or by entering judgment with respect to some but not all parties to the action, we consider any appeal from such an order to be interlocutory.” Rule 46(c)(1) authorizes the Superior Court to designate certain orders that do not conclude the proceedings before it as final decisions on the merits that can be immediately appealed to the Supreme Court. In *Germain*, the Supreme Court indicated that under some circumstances, an order bifurcating a case might suffice to convert otherwise interlocutory orders into final decisions on the merits. Rule 46(c)(1), however, explicitly provides that a bifurcation order alone will no longer suffice; rather, the Superior Court must comply with the requirements of Rule 46(c)(1)(A) through (D) if the court intends for an order that finally resolves the case as to one or more, but fewer than all, claims or parties to be treated as a final decision on the merits as to those claims or parties.**



**Rule 46(c)(2) provides that, prior to accepting the appeal, the Supreme Court may review the Superior Court's findings under Rule 46(c)(1)(C) and (D). If, after providing the parties with the opportunity to file brief memoranda, the Supreme Court concludes that the Superior Court clearly erred in its conclusion that the order should be treated as a final decision on the merits, the Supreme Court shall vacate that part of the order and otherwise dismiss the appeal. The dismissal of the appeal is without prejudice to any party's ability to file an appeal after the entire action is concluded in the Superior Court.**

## APPENDIX C

Amend Rule Supreme Court Rule 51(d)(3) (new material is in **in brackets**], deleted material is in ~~strikethrough~~ format) as follows:

(3) **February 1** ~~April 1~~ and **August 1** ~~November 1~~ Reports to the Court.

(A) On or before **February 1** ~~April 1~~ and on or before **August 1** ~~November 1~~ of each year, the Advisory Committee shall submit to the Court a report of any proposed rules or amendments by filing them with the Clerk of the Supreme Court.

(B) Each report shall include a summary of the Committee's reasons for the proposed rule and rule amendments.

(C) For each proposed rule or rule amendment, the Committee shall advise the Clerk of the Supreme Court whether it recommends a hearing before the full Court.

## APPENDIX D

Amend Supreme Court Rule 54(3) as follows (new material is in **bold and brackets**]; deleted material is in ~~strikethrough~~ format):

(3) An administrative council is established to facilitate communications among the various courts and the administrative office of the courts. Membership on the council shall consist of **[the chief justice of the supreme court or his or her designee,]** the chief justice of the superior court, the administrative judge and deputy administrative judge of the circuit court, and the director of the administrative office of the courts. ~~The chief justice of the supreme court may designate a justice to serve as liaison between the supreme court and the administrative council.~~ The administrative council shall meet regularly maintaining a flexible agenda, providing the opportunity to exchange views, measure progress, resolve conflicts, work toward uniformity of procedure among courts to the extent possible and make recommendations to the supreme court. The administrative council shall keep the supreme court apprised of matters being considered by the council and shall meet periodically with the supreme court to enhance the effective and efficient administration of the judicial branch.

**APPENDIX E**

Amend Circuit Court-Family Division Rule 2.29 (new material is in **[bold and in brackets]**, deleted material is in ~~strikethrough~~ format) as follows:

**2.29 Effective Dates:**

A. *Uncontested Matters.* Decrees in uncontested cases where the parties have filed a permanent agreement shall become ~~final~~ **[effective]** on the date signed by the judge or countersigned by a judge pursuant to RSA 490-D:9, unless otherwise specified by the Court.

B. *Contested and Defaulted Matters.* In contested cases or upon the default of either party, **the following rules apply.**

**1. The following orders are effective upon the issuance of the clerk’s notice of decision, unless the court specifies, either orally or in writing, another effective date:]** ~~where no post-decree motion has been filed, the decree will not become final until the thirty first (31st) day from the date of the Clerk’s notice of decision. If a timely appeal is filed, the decree will not become final until the expiration of the appeal period pursuant to Supreme Court Rule 7. If a timely post-decree motion is filed, and there is no appeal taken, the decree becomes final thirty (30) days from the Court’s action on the post-decree motion.~~

- a. **Temporary orders;**
  - b. **Parenting plans;**
  - c. **Uniform support orders;**
  - d. **Orders for alimony or payment of on-going expenses;**
- and
- e. **Provisions concerning the welfare of a child or the safety of a party, at the discretion of the court.**

**2. All orders other than those described in subsection 1 are effective on the 31<sup>st</sup> day from the date of the clerk’s notice of decision unless the order specifies another effective date, a party files a timely post-decision motion (see Supreme Court Rule 7(1)(c)), or a party files an appeal.**

**3. If any party files a timely post-decision motion, but no appeal is filed, all orders other than those described in subsection 1 are effective on the 31<sup>st</sup> day from the date of the clerk’s notice of decision on the motion or another date at the discretion of the court.**

**4. If any party files an appeal, all orders described in subsection 1 shall continue in effect until the supreme court mandate or the conclusion of such further proceedings as the supreme court may order, whichever is last, unless the Supreme Court orders otherwise. During this period, no orders as to marital status or parentage or as to property division shall take effect.]**

**5. Nothing in this Rule modifies Family Division Rule 1.31 or Supreme Court Rule 7 as to the time for filing an appeal.**

C. *Inactive Cases.* All domestic relations cases which have been placed on hold by request of the parties shall be dismissed after six (6) months unless there is a request by a party to reactivate the case, or a request for a further extension for good cause.

~~D. Once a decree becomes final any further request for relief must be by petition, accompanied by a filing fee and a personal data sheet, with notice given to the other party, as set forth in Family Division Rule 2.4. Prior to a decree becoming final no filing fee is required, and notice may be provided by regular US mail.~~

## APPENDIX F

Amend Circuit Court-Family Division Rule 2.3 (new material is in **and in brackets**), as follows:

### 2.3 Beginning of Legal Action:

A. *Petition*. All domestic relations actions begin with the filing of a petition. A petition may be jointly filed by both parties.

B. *Where to File Petition*. New petitions should be filed in the county in which the petitioner lives. If there are multiple family division locations within a county, the petition is properly filed in the family division location for the town in which the petitioner resides, as outlined in RSA 490-D:4. If both parties reside within the same county, the petition may be filed at the family division location for the town of residence of either the petitioner or respondent.

C. *Petition Caption*. Domestic relations actions shall be entitled “In the matter of ...and...”, stating the names of the parties. The first name shall be of the petitioner and the second shall be of the respondent.

D. *Petition Type*. The subject matter of the petition, such as petition for divorce, shall be stated in the title of the petition.

E. *Petition Contents*. Petitions filed under these rules shall contain all information required on the petition forms posted on the judicial branch website at [www.courts.state.nh.us](http://www.courts.state.nh.us) and available at any family division location.

F. *Proper Filing*. An action under this section is considered properly filed upon the court’s receipt of a completed individual or joint petition, a personal data sheet, and the correct filing fee.

G. *Personal Data Sheet*. At the time of any initial filing, the filing party shall, and the responding party may, file a completed personal data sheet. Should a party become aware of any change in addresses, telephone numbers, or employment during the pendency of a case or of any outstanding support order, that party shall notify the court of such change. Access to information contained in the personal data sheet shall be restricted to court personnel, the Office of Child Support, the court-appointed mediator, the guardian ad litem, the parties, and counsel unless a party has requested on the data sheet that it not be disclosed to the other party.

H. *Adultery/Co-Respondent.* All petitions and cross petitions for divorce or legal separation alleging adultery shall contain the name and address of the person with whom the party is accused of committing adultery, if known, and, if not, a statement to that effect.

**[I. *Re-Opening a Case.* After a decree has become final, the case may be re-opened by the filing of a Petition, in the same court and with the same caption as used in the Final Decree. The Petition shall comply with all other sections of this rule.]**

**APPENDIX G**

Amend Circuit Court – District Division Rule 3.3(I)(C) (new material is in **[bold and in brackets]**, deleted material is in ~~strikethrough~~ format) as follows:

(C) Certificates & Copies

Certificate of Judgment	\$ 10.00
Exemplification of Judgment	\$ 40.00
Certified Copies	\$ 10.00
All copied material (except transcripts)	\$ .50/page
<del>Computer Screen Printout</del>	<del>\$ .50/page</del>
<b>[Printing from court kiosks and computer screen printouts</b>	<b>\$ .25/page]</b>



**APPENDIX H**

Amend Circuit Court – Probate Division Rule 169(V)(new material is in

**[bold and in brackets]**) as follows:

(V) CERTIFICATES & COPIES:

Certificates	\$ 10.00
Certification	\$ 10.00 plus copy fee
Photocopy of Will	\$ 1.00/page
All other copied material	\$ .50/page
<b>[Printing from court kiosks and computer screen printouts</b>	<b>\$ .25/page]</b>
Original writ (form)	\$ 1.00
Authenticated Copy of Probate	\$ 40.00/each
Certificate of Judgment	\$ 10.00
Exemplification of Judgment	\$ 40.00

"Certificates & Copies" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

**APPENDIX I**

Amend Circuit Court – Family Division Rule 1.3(N) (new material is in **[bold and in brackets]**, deleted material is in ~~striketrough~~ format) as follows:

N. CERTIFICATES & COPIES:

(1) Certificates	\$10.00
(2) Certification	\$10.00 plus copy fee
<b>[(3)] All other copied material</b>	\$ .50/page
<b>[(4) Printing from court kiosks and computer screen printouts</b>	<b>\$.25/page]</b>
<del>(3)</del> <b>[(5)] Certificate of Judgment</b>	\$10.00
(4) <b>[(6)] Exemplification of Judgment</b>	\$40.00

"Certificates & Copies" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

**APPENDIX J**

Amend Circuit Court – Probate Division Rule 169(I)(c) (new material is in **[bold and in brackets]**, deleted material is in ~~strikethrough~~ format) as follows:

- (c) Petition Termination of Parental Rights;  
~~Petition Involuntary Admission;~~ Petition Guardian  
Minor Estate and Person and Estate (RSA 463); ~~Petition~~  
~~Guardian of Incompetent Veteran (RSA 465)~~ \$155.00

**APPENDIX K**

Amend Circuit Court – Probate Division Rule 169(V)(new material is in **[bold and in brackets]**, deleted material is in ~~striketrough~~ format) as follows:

(V) CERTIFICATES & COPIES:

Certificates	\$ 10.00
Certification	\$ 10.00 plus copy fee
<del>Photocopy of Will</del>	<del>\$ 1.00/page</del>
All <del>other</del> copied material	\$ .50/page
Original writ (form)	\$ 1.00
Authenticated Copy of Probate	\$ 40.00/each
Certificate of Judgment	\$ 10.00
Exemplification of Judgment	\$ 40.00

"Certificates & Copies" shall apply to individual requests for the above services, requests for additional certificates beyond those provided with the original entries and requests for additional copies beyond those provided with the original entry fees.

## APPENDIX L

Amend Rule 5.5 of the New Hampshire Rules of Professional Conduct (new material is in **[bold and in brackets]**, deleted material is in ~~strikethrough~~ format) as follows:

### **Rule 5.5: Unauthorized Practice Of Law; Multijurisdictional Practice Of Law**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of **[the] law [of this jurisdiction]**; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice **[the] law [of]** ~~in~~ this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates; are not services for which the forum requires pro hac vice admission; and, when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction-]; or

**(3) relate solely to the law of a jurisdiction in which the lawyer is admitted.]**

(e) For purposes of paragraph (d), the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or public authority.

### **Ethics Committee Comment**

1. New Hampshire has adopted ABA Model Rule 5.5.

2. Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult Supreme Court Rule 60, which governs the provision of legal services following determination of major disaster.

**[3. Prior versions of Rule 5.5 and prior interpretations of the Rule assumed that attorneys practice in fixed physical offices and only deal with legal issues related to the States in which their offices are located. The increased mobility of attorneys, and, in particular, the ability of attorneys to continue to communicate with and represent their clients from anywhere in the world, are circumstances that were**

**never contemplated by the Rule. The adoption of Rules 5.5(b) and (c) in 2008 reflected the State’s growing recognition that multi-jurisdictional practice is a modern reality that must be accommodated by the Rules.**

**The assumption that a lawyer must be licensed in New Hampshire simply because he or she happens to be present in New Hampshire no longer makes sense in all instances. Rather than focusing on where a lawyer is physically located, New Hampshire’s modifications of Rule 5.5(b)(1) and (2) and adoption of new Rule 5.5(d)(3) clarify that a lawyer who is licensed in another jurisdiction but does not practice New Hampshire law need not obtain a New Hampshire license to practice law solely because the lawyer is present in New Hampshire.**

**Notwithstanding the New Hampshire amendments to Rule 5.5(b)(1) and (2) and the adoption of new Rule 5.5(d)(3), Rule 8.5(a) still provides that a lawyer who is admitted in another jurisdiction, but not in New Hampshire, “is also subject to the disciplinary authority of ... [New Hampshire] if the lawyer provides or offers to provide any legal services in” New Hampshire. In particular, such a lawyer will be subject to the provisions of Rules 7.1 through 7.5 regarding the disclosure of the jurisdictional limitations of the lawyer’s practice. In addition, Rule 5.5(b)(2) continues to prohibit such a lawyer from holding out to the public or otherwise representing that the lawyer is admitted to practice New Hampshire law.]**

## APPENDIX M

Amend the title of the Strafford, Cheshire, and Belknap County Rules of Criminal Procedure, as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

**STRAFFORD, CHESHIRE, AND BELKNAP [AND MERRIMACK] COUNTY RULES OF  
CRIMINAL PROCEDURE**



## APPENDIX N

Amend the preamble to the Strafford, Cheshire, and Belknap County Rules of Criminal Procedure (renamed, effective January 1, 2017, the Strafford, Cheshire, Belknap and Merrimack County Rules of Criminal Procedure) as follows (new material is in **[bold and brackets]**):

### PREAMBLE

These rules are adopted by the Supreme Court of New Hampshire pursuant to the authority established in Part II, Article 73-A of the New Hampshire Constitution. They ~~take~~ **[took]** effect on January 1, 2016 and apply to criminal actions pending or filed in circuit court or superior court in Cheshire and Strafford Counties on or after that date. They ~~take~~ **[took]** effect in Belknap County on July 1, 2016 and apply to criminal actions pending or filed in circuit court or superior court in Belknap County on or after that date. **[They took effect in Merrimack County on January 1, 2017 and apply to criminal actions pending or filed in circuit court or superior court in Merrimack County on or after that date. They will take effect in additional counties as of the date set forth by Supreme Court Order pursuant to RSA 592-B:2, III. See October 17, 2016 felonies first implementation order at <http://www.courts.state.nh.us/supreme/orders/10-17-16-Order.pdf>.]** In exceptional circumstances, when the court finds that the application of these rules to cases pending as of the effective date would not be feasible or would work an injustice, the court may exempt such cases from the application of these rules or from a particular rule.

## APPENDIX O

Amend Rule 1 of the Strafford, Cheshire, and Belknap County Rules of Criminal Procedure (renamed, effective January 1, 2017, the Strafford, Cheshire, Belknap and Merrimack County Rules of Criminal Procedure), as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

### **Rule 1. Scope and Interpretation**

(a) *Scope.* These rules govern the procedure in circuit court-district division and superior courts in Strafford, Cheshire, ~~and Belknap~~ **[ and Merrimack ]** counties when a person is charged as an adult with a crime or violation.

(b) *Interpretation.* These rules shall be construed to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

#### Comment

These rules apply to all proceedings in which a person is charged as an adult with an offense, whether a crime, such as a felony or a misdemeanor, or a violation. See RSA 625:9. The rules establish a uniform system of procedure for the circuit court-district division and superior courts in ~~Strafford, Cheshire, and Belknap~~ **[those]** counties **[in which felonies first (RSA ch. 592-B) has been implemented]**, except as otherwise specifically provided. The rules do not govern juvenile proceedings or collateral proceedings such as habeas corpus or mandamus. The rules are subject to suspension by the court when the interest of justice so requires. See Rule 37. However, a court's power to suspend a rule may be limited by the state or federal constitution, state statutes or common law.

## APPENDIX P

Amend Rule 2 of the Strafford, Cheshire, and Belknap County Rules of Criminal Procedure (renamed, effective January 1, 2017, the Strafford, Cheshire, Belknap and Merrimack County Rules of Criminal Procedure), as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

### **Rule 2. Adoption and Effective Date; Applicability**

(a) *Adoption.* The Supreme Court adopts these rules pursuant to Part II, Article 73-A of the New Hampshire Constitution.

(b) *Effective Date.* These rules govern all proceedings filed or pending in the circuit court-district division and superior courts in Strafford and Cheshire counties on or after January 1, 2016. These rules govern all proceedings filed or pending in the circuit court-district division and superior courts in Belknap County on or after July 1, 2016. **[These rules govern all proceedings filed or pending in the circuit court-district division and superior courts in Merrimack County on or after January 1, 2017.]** In exceptional circumstances, when the court finds that the application of these rules to cases pending as of the effective date would not be feasible or would work an injustice, the court may exempt such cases from the application of these rules or from a particular rule.

(c) In Strafford and Cheshire counties, pursuant to RSA 592-B:2, III, all felony and any directly related misdemeanor or violation-level offenses alleged to have occurred on or after January 1, 2016 shall be initiated in superior court. All felony and any directly related misdemeanor or violation-level offenses alleged to have occurred before January 1, 2016 shall be initiated in circuit court.

In Belknap county, pursuant to RSA 592-B:2, III all felony and any directly related misdemeanor or violation-level offenses alleged to have occurred on or after July 1, 2016 shall be initiated in superior court. All felony and any directly related misdemeanor or violation-level offenses alleged to have occurred before July 1, 2016 shall be initiated in circuit court.

**[In Merrimack county, pursuant to RSA 592-B:2, III all felony and any directly related misdemeanor or violation-level offenses alleged to have occurred on or after January 1, 2017 shall be initiated in superior court. All felony and any directly related misdemeanor or violation-level offenses alleged to have occurred before January 1, 2017 shall be initiated in circuit court.]**

## APPENDIX Q

Amend the table of contents of the “Rules of the Superior Court of the State of New Hampshire,” as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

### TABLE OF CONTENTS

#### A. CIVIL RULES

##### I. General Principles

1. Scope, Purpose, Enforcement, Waiver and Substantial Rights
2. Computation of Time
3. Filing and Service

##### II. Commencement of Action

4. Preliminary Process
5. Case Structuring Order

##### III. Pleadings and Motions

6. Pleadings Allowed
7. Pleadings and Motions, General
8. Complaints and Other Claims for Relief
9. Answers; Defenses; Forms of Denials
10. Counterclaims, Cross-claims and Third-Party Claims
11. Motions - General
12. Motions - Specific
  - a. Amend
  - b. Consolidate
  - c. Continue
  - d. Dismiss
  - e. Reconsider
  - f. Recuse
  - g. Summary Judgment
13. Objections

##### IV. Parties and their Representatives

14. Third Parties

15. Intervention
16. Class Actions
17. Appearance and Withdrawal
18. Counsel
19. Out of State Counsel (Admission *Pro Hac Vice*)
20. Non-attorney Representatives

V. Discovery

21. General Provisions
22. Automatic Disclosures
23. Written Interrogatories
24. Production of Documents
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26. Depositions
27. Expert Witnesses
28. Requests for Admissions
29. Discovery Motions

VI. Alternatives to Trial

30. Mediation
31. Summary Jury Trial
32. Alternative Dispute Resolution
33. Arbitration by Agreement
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VII. Trials

35. Trial Management Conference
36. Standing Trial Orders - Procedure
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38. Jurors

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39. Settlements
40. Approval of Settlements: Minors
41. Dismissal of Actions
42. Default
43. Procedure After Trial
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45. Taxation of Costs
46. Appeals and Transfers to Supreme Court

IX. Provisional and Final Remedies

47. Attachments
48. Injunctions
49. Security
50. Deposit in Court
51. Periodic Payments
52. Enforcement, Contempt, Arrest

X. Special Proceedings

53. Special School and Town Meetings
54. Petition for Waiver of Parental Notice Prior to Abortion

**B. CRIMINAL RULES**

For the criminal procedure rules applicable in ~~Strafford, Cheshire, and Belknap~~ **[those]** counties **[in which felonies first (RSA ch. 592-B) has been implemented]**, see the ~~Strafford, Cheshire, and Belknap~~ **[and Merrimack]** County Rules of Criminal Procedure. For the rules applicable statewide except in **[those counties in which felonies first has been implemented]** ~~Strafford, Cheshire, and Belknap~~ counties, see the New Hampshire Rules of Criminal Procedure.

**C. MISCELLANEOUS RULES**

201. Fees
202. Untimely-Filed Guardian ad Litem Reports
203. Access to Confidential Records – Fees and Notice
204. Photographing, Recording and Broadcasting
205. Juror Orientation
206. Duplication of Audio Recordings
207. Business and Commercial Dispute Docket

**D. MEDICAL MALPRACTICE SCREENING PANELS (RSA 519-B)**

301 to 313.

## APPENDIX R

Amend Rule 101 of the “Rules of the Superior Court of the State of New Hampshire,” as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

### **Rule 101.**

For the criminal procedure rules applicable in **[those counties in which felonies first (RSA ch. 592-B) has been implemented]** ~~Strafford, Cheshire, and Belknap~~ counties, see the ~~Strafford, Cheshire, and Belknap~~**[ and Merrimack]** County Rules of Criminal Procedure. For the rules applicable statewide except in ~~Strafford, Cheshire, and Belknap~~ **[those]** counties **[in which felonies first has been implemented]**, see the New Hampshire Rules of Criminal Procedure.

## APPENDIX S

Amend the Preamble to the New Hampshire Rules of Criminal Procedure, as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

### NEW HAMPSHIRE RULES OF CRIMINAL PROCEDURE

#### PREAMBLE

These rules are adopted by the Supreme Court of New Hampshire pursuant to the authority established in Part II, Article 73-A of the New Hampshire Constitution. They apply to criminal actions pending or filed in circuit court or superior court in all counties, except for **[those counties in which felonies first (RSA ch. 592-B) has been implemented.]** ~~Cheshire, Strafford, and Belknap counties.~~ The Strafford, Cheshire, ~~and Belknap~~**[ and Merrimack]** County Rules of Criminal Procedure apply to criminal cases pending or filed in **[those counties in which felonies first has been implemented.]** ~~Strafford, Cheshire, and Belknap Counties.~~ In exceptional circumstances, when the court finds that the application of these rules to cases pending as of the effective date would not be feasible or would work an injustice, the court may exempt such cases from the application of these rules or from a particular rule.



## APPENDIX T

Amend Rule 1 of the New Hampshire Rules of Criminal Procedure, as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

### **Rule 1. Scope and Interpretation**

(a) *Scope.* These rules govern the procedure in circuit court-district division and superior courts in all counties other than Strafford, Cheshire, ~~and Belknap~~, **and Merrimack** counties when a person is charged as an adult with a crime or violation.

(b) *Interpretation.* These rules shall be construed to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

#### Comment

These rules apply to all proceedings in which a person is charged as an adult with an offense, whether a crime, such as a felony or a misdemeanor, or a violation. See RSA 625:9. The rules establish a uniform system of procedure for the circuit court-district division and superior courts **[in all counties except those in which felonies first (RSA ch. 592-B) has been implemented]**, except as otherwise specifically provided. The rules do not govern juvenile proceedings or collateral proceedings such as habeas corpus or mandamus. The rules are subject to suspension by the court when the interest of justice so requires. See Rule 37. However, a court's power to suspend a rule may be limited by the state or federal constitution, state statutes or common law.

## APPENDIX U

Amend Rule 2 of the New Hampshire Rules of Criminal Procedure, as follows (new material is in **[bold and brackets]**; deleted material is in ~~strikethrough~~ format):

### **Rule 2. Adoption and Effective Date**

(a) *Adoption.* The Supreme Court adopts these rules pursuant to Part II, Article 73-A of the New Hampshire Constitution.

(b) *Effective Date.* These rules govern all proceedings filed or pending in the circuit court-district division and superior courts in all counties other than ~~Strafford, Cheshire, and Belknap counties~~ **[those counties in which felonies first (RSA ch. 592-B) has been implemented]** on March 1, 2016. In exceptional circumstances, when the court finds that the application of these rules to cases pending as of the effective date would not be feasible or would work an injustice, the court may exempt such cases from the application of these rules or from a particular rule.

## APPENDIX V

Amend the note which replaced, effective March 1, 2016 (amended effective July 1, 2016), the Circuit Court-District Division Criminal Rules, as follows (new material is in **[bold and in brackets]**; deleted material is in ~~strikethrough~~ format):

### CRIMINAL RULES

For the criminal procedure rules applicable in **[those counties in which felonies first (RSA ch. 592-B) has been implemented,]** ~~Strafford, Cheshire, and Belknap Counties,~~ see the ~~Strafford, Cheshire, and Belknap~~**[ and Merrimack]** County Rules of Criminal Procedure. For the rules applicable statewide except in **[those]** ~~Strafford, Cheshire, and Belknap~~ counties **[in which felonies first has been implemented]**, see the New Hampshire Rules of Criminal Procedure.