

## Superior Court Rules

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

**Superior Court Civil Rules Table of Contents**

**RULES OF THE SUPERIOR COURT  
OF THE STATE OF NEW HAMPSHIRE**

**CIVIL RULES**

**VII. TRIALS**

**Rule 35. Trial Management Conference**

(I) *Jury Trials*

(a) In every case scheduled for jury trial, the court shall schedule a Trial Management Conference which shall take place within 14 days before jury selection, or at such other time as the court shall order. At the Conference, parties will be present or available by telephone, prepared to discuss conduct of the trial and settlement.

(b) 14 days prior to the Trial Management Conference, unless another time is directed by the court or agreed to by the parties, all parties shall file with the court and serve on the other parties Pretrial Statements, which shall include, by numbered paragraphs, a detailed, comprehensive, and good faith statement, setting forth the following:

1. A summary of the case that can be read by the court to the jury at the beginning of trial;
2. Disputed issues of fact;
3. Applicable law;
4. Disputed issues of law;
5. Specific claims of liability by the party making the claim;
6. Defendant's specific defenses;
7. Itemized special damages;
8. Specification of injuries with a statement as to which, if any, are claimed to be permanent;
9. The status of settlement negotiations;
10. A list of all exhibits to be offered in the direct case of each party. The parties, or their counsel, shall bring exhibits, or exact copies of them, to court on the day of the Trial Management Conference for examination by opposing parties or their representatives;
11. A list of all depositions to be read into evidence;
12. A waiver of claims or defenses, if any;
13. A list of the names and addresses of all witnesses who may be called;
14. Whether there will be a request for a view and, if so, who shall pay the cost in the first instance;
15. The names and addresses of the trial attorneys or non-attorney representatives.

(c) Except for good cause shown, only witnesses listed in the Pretrial Statement will be allowed to testify and only exhibits, so listed, will be received in evidence.

(d) Preliminary requests for instructions about unusual or complex questions of law shall be submitted in writing at the Trial Management Conference. Supplementary requests may be

proposed at any time prior to the time the court completes its instructions to the jury.

(II) *Bench Trials*

The court may direct the parties to attend a Trial Management Conference in non-jury cases. Written pretrial statements are not required in non-jury cases unless ordered by the court. Requests for findings of fact and rulings of law shall be submitted in writing in accordance with a schedule to be determined by the court.

**[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)**

**[Superior Court Civil Rules Table of Contents](#)**

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

**Superior Court Civil Rules Table of Contents**

**RULES OF THE SUPERIOR COURT  
OF THE STATE OF NEW HAMPSHIRE**

**CIVIL RULES**

**VII. TRIALS**

**Rule 36. Standing Trial Orders - Procedures**

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

(b) *Opening Statements and Closing Arguments.* Opening statements shall not be argumentative and shall not be longer than 30 minutes unless the court otherwise directs. Closing arguments shall be limited to 1 hour each, unless otherwise ordered by the court in advance. Before any person shall read to the jury any excerpt of testimony from a transcript prepared by the designated court transcriber, he or she shall furnish the opposing party with a copy thereof.

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

(d) *Examination of Witnesses.*

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

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

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

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

(5) *Attorney as Witness.*

(i) *Compelling Testimony.* No attorney shall be compelled to testify in any cause in which he or she is retained, unless the attorney shall have been notified in writing previous to the commencement of the term of trial that he or she will be summoned as a witness therein, and unless he or she shall have been so summoned previous to the commencement of the trial.

(ii) *Participation as Advocate.* An attorney who gives testimony at trial or hearing shall not act as advocate at such trial or hearing unless the attorney's testimony relates to an uncontested issue, or relates to the nature and value of legal services rendered in the case, or unless the court determines that disqualification of the attorney would work unreasonable hardship on the attorney's client.

(e) *Exceptions Unnecessary.* Formal exceptions to non-evidentiary rulings or orders of the court are unnecessary, and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at or before the time the ruling or order of the court is made or sought, makes known to the court by motion or orally on the record the action which the party desires the court to take or his or her objection to the action requested by a party opponent, provided that in each instance the party has informed the court of the specific factual or legal basis for his or her position.

(f) *Objections.* When stating an objection, counsel will state only the basis of the objection (e.g., "leading," "non-responsive," or hearsay"), provided, however, that upon counsel's request, counsel shall be permitted a reasonable opportunity to approach the bench to elaborate and present additional argument or grounds for the objection.

(g) *Submission of Case.* In all trials, the plaintiff shall put in his or her whole case before resting and shall not thereafter, except by permission of the court for good cause shown, be permitted to put in any evidence except such as may be strictly rebutting; and the defendant shall, before resting, put in his or her whole defense, and shall not thereafter introduce any evidence except such as may be in reply to the rebutting evidence.

(h) *Bench Motions.* Motions for dismissal or mistrial as well as offers of proof should be made at the bench and out of the hearing of the jury.

**[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)**

**[Superior Court Civil Rules Table of Contents](#)**

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Superior Court Civil Rules Table of Contents](#)

**RULES OF THE SUPERIOR COURT  
OF THE STATE OF NEW HAMPSHIRE**

**CIVIL RULES**

**VII. TRIALS**

**Rule 37. Standing Trial Orders - Proof**

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

(b) *Criminal Record.*

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

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

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

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

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

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

(g) *Motor Vehicles.*

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

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

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

(i) *Stipulations.* Unless otherwise expressly provided by these rules, all stipulations affecting a civil action, except stipulations which are made in the presence of the court and entered on the record, or embodied in an order of the court, shall be in writing and shall be signed by attorneys of

record, non-attorney representatives of record, or by parties if self-represented. The court may require handwritten stipulations to be replaced by fully executed, typewritten stipulations within 10 days.

**[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)**

**[Superior Court Civil Rules Table of Contents](#)**

STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

HILLBOROUGH, SS

NORTHERN DISTRICT

BENCH TRIAL STANDING ORDER

1. Counsel shall pre-mark exhibits at the Final Trial Management Conference and provide an exhibit list to the Court. If any exhibit is disputed, the Court shall be advised seven (7) days in advance of trial.

2. In addition to the original exhibit introduced at trial, counsel shall provide the Court with two (2) copies of each exhibit;

3. Counsel shall submit proposed orders to the Court on the first day of trial;

4. Counsel shall submit any requests for Findings of Fact and Rulings of Law no later than the day before trial, unless otherwise ordered by the Court;

5. If Alternative Dispute Resolution (Rule 32 ADR) has been ordered, it shall be completed in advance of the Trial Management Conference or the trial will be cancelled;

6. If video or audio equipment is required of the Court, counsel shall notify the Court ten (10) days in advance of trial and shall insure that their audio and video is compatible with the court's equipment;

**SO ORDERED.**

September 26, 2012

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Gillian Abramson  
Presiding Justice



## **Circuit Court- Probate Division Rules**

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- PROBATE DIVISION**

### **Rule 63. STANDING PRETRIAL ORDERS.**

(a) Copies of all medical reports relating to the litigation, in the possession of the Parties, shall be furnished to opposing counsel on receipt of the same.

(b) X-rays and hospital records (which are certified as being complete records) if otherwise admissible and competent may be introduced without calling the custodian or technician. Any Party shall have the right to procure from opposing counsel an authorization to examine and obtain copies of hospital records and X-rays involved in litigation.

(c) All experts, including doctors and law enforcement personnel, who are to testify at trial, shall be advised by counsel to bring their original records and notes to court with them.

(d) All Fiduciaries shall be prepared to present the originals of all documents or other papers at issue in any hearing.

(e) The written reports of the New Hampshire Division for Children, Youth and Families or of any guardian ad litem shall be submitted not later than at the commencement of the hearing for which it is submitted.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- PROBATE DIVISION**

### **Rule 63-A. PROCEDURE DURING TRIAL - Offers of Proof.**

A probate judge or probate master may receive evidence by an Offer of Proof, whenever appropriate and within the discretion of the Court. Whenever a Court exercises discretion to receive evidence by an Offer of Proof, the Court shall inform all Parties that by making an Offer of Proof, the proffering Party represents to the Court that a witness is present in the courtroom and can testify under oath in accordance with the Offer of Proof. Before receiving evidence by an Offer of Proof, the Court shall inform all Parties of the following procedures:

An Offer of Proof as to the testimony of a witness shall be received only if that witness is present in the courtroom at the time of the Offer.

Any witness whose testimony is presented by an Offer of Proof may be cross-examined by the opposing party, subject to the usual authority of the Court.

If a witness' credibility is challenged, or for any other reason within the discretion of the Court, the Court may question the witness or require that the witness' proof be presented from the witness stand.

An Attorney or Pro Se Party making an Offer of Proof represents to the Court that the Attorney or Pro Se Party has examined the witness or document that is the subject of the Offer. Through that examination, the Attorney reasonably believes, taking into account all that the Attorney or Pro Se Party knows about the case, that the evidence is not false; the evidence is admissible through a witness who can testify under oath to establish the purpose for which it is offered; and the evidence is not offered for a frivolous purpose.

In an ex parte proceeding, an Attorney making an Offer of Proof also represents to the Court that the Offer of Proof is accompanied by a statement under oath of all material facts known to the Attorney to enable the Court to make an informed decision as to the issues presented.

In proceedings where the Rules of Evidence either do not apply or are relaxed within the discretion of the Court, evidence may be received by an Offer of Proof without the presence of the witness in Court if that same evidence could be received by the Court without the necessity of a witness' testimony under oath to introduce the evidence.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- PROBATE DIVISION**

### **Rule 65. PROCEDURE DURING TRIAL - Examination of Witness.**

Only one Attorney for each Party, or if Pro Se, only the Pro Se Party shall be permitted to examine a witness.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- PROBATE DIVISION**

### **Rule 66. PROCEDURE DURING TRIAL - Objections.**

When stating an objection, the objecting Party shall state only the basis of the objection (e.g., "leading," "non-responsive," or "hearsay"), provided that upon request, counsel shall be permitted a reasonable opportunity to present additional argument or grounds for the objection.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- PROBATE DIVISION**

### **Rule 67. PROCEDURE DURING TRIAL - Witness Re-examination.**

Unless permitted by the Court, after cross-examination, a witness may not be re-examined by the Party calling the witness, except as may be necessary to explain answers on cross-examination, and except as to new matters elicited by cross-examination regarding which the witness has not previously been examined.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- PROBATE DIVISION**

### **Rule 68. PROCEDURE DURING TRIAL - Criminal Record.**

If a Party plans to use or refer to any criminal record, for the purpose of attacking or affecting the credibility of a witness, the Pro Se Party or Attorney shall first furnish a copy of same to the opposing Party or Attorney, and then obtain a ruling from the Court as to whether the witness may be questioned with regard to any conviction for credibility purposes.

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

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- PROBATE DIVISION**

### **Rule 69. PROCEDURE DURING TRIAL - Recall of Witness.**

After a witness has been dismissed from the stand, the witness shall not be recalled by the same Party, without permission of the Court.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)



[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- PROBATE DIVISION**

### **Rule 70. PROCEDURE DURING TRIAL - Presentation of Case.**

In all trials, the Petitioner shall put in the whole case before resting and shall not thereafter, except by permission of the Court for good cause shown, be permitted to put in any evidence except such as may be strictly rebutting; and the Respondent shall, before resting, put in the whole defense, and shall not thereafter introduce any evidence except such as may be in reply to the rebutting evidence.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- PROBATE DIVISION**

### **Rule 71. PROCEDURE DURING TRIAL - Opening and Closing Statements.**

Opening and closing statements may be allowed within the discretion of the Court. Opening statements shall not be argumentative and shall be no longer than fifteen (15) minutes each, and closing statements shall be limited to thirty (30) minutes each, unless otherwise permitted by the Court.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- PROBATE DIVISION**

### **Rule 72. PROCEDURE DURING TRIAL - Requests and Memoranda.**

All requests for findings of fact and rulings of law and written memoranda of law shall be submitted no later than a time directed by the Court at the structuring conference. If there is no time set forth in the order at the structuring conference, then all requests for findings of fact and rulings of law and memoranda of law must be submitted to the Court no later than the close of the evidence. Nevertheless, it is within the Court's discretion to allow requests and memoranda to be submitted to the Court at a later time.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court Probate Division Rules Table of Contents](#)

## **Circuit Court- Family Division Rules**

(4) if unusual circumstances cause the respective Courts to agree that an order of precedence other than the above shall take place.

#### 1.28 Offers of Proof:

A. When making an offer of proof, an attorney represents to the Court that the witness or document which is the subject of the offer has been examined by the attorney and the attorney reasonably believes, taking into account all that is known about the case, that the evidence is not false, is admissible through a witness who could testify under oath to establish the point for which it is offered, and is not offered for a frivolous purpose. In an ex parte proceeding, the attorney also represents that any offer of proof has been accompanied by a sworn statement of all material facts known to the attorney which will enable the Court to make an informed decision of the issues presented.

B. When the Court exercises discretion to receive evidence by offers of proof, the following procedure shall be employed:

(1) an offer of proof as to the testimony of a witness shall be received only if that witness is in the courtroom at the time of the offer, and that witness would testify to the same information under oath if asked;

(2) any witness whose testimony is presented by offer of proof may be cross-examined by the opposing party, subject to the discretion of the Court; and

(3) where credibility is challenged, or for any purpose in the Court's discretion, the Court may question the witness or require the witness' proof be presented from the witness stand.

C. If evidence could have been accepted by the Court without the necessity of testimony under oath from a witness for its introduction, for example when the parties have agreed, that evidence may also be received by offer of proof without the presence of the witness in court.

D. Requests for restraining orders against any person should not be presented by offers of proof.

#### 1.29 **Photographing, Recording and Broadcasting**

(a) Except as otherwise provided by this rule or by other provisions of law, any person, whether or not a member of an established media organization, shall be permitted to photograph, record and broadcast all court proceedings that are open to the public, provided that such person provides advance notice to the Court in accordance with section (c) of this rule that he or she intends to do so. No person shall photograph, record or broadcast any court proceeding without providing advance notice to the Court that he or she intends to do so. In addition to giving any parties in interest an opportunity to object, the purpose of the notice requirement is to allow the Court to ensure that the photographing, recording or broadcasting will not be disruptive to the proceedings and will not be conducted in such a manner or using such equipment as to violate the provisions of this rule.

(b) Official court reporters, court monitors and other persons employed or engaged by the court to make the official record of any court proceeding may record such proceeding by video and/or audio means without compliance with the notice provisions of section (a) of this rule.

(c) Any person desiring to photograph, record or broadcast any court proceeding, or to bring equipment intended to be used for these purposes into a courtroom, shall submit a written request to the clerk of the court or his or her designee, who, in turn, shall deliver the request to the Court before commencement of the proceeding, or, if the proceeding has already commenced, at the first reasonable opportunity during the proceeding, so the Court before commencement of the proceeding, or at an appropriate time during the proceeding, may give all interested parties a reasonable opportunity to be heard on the request.

(d) Any party to a court proceeding or other interested person who has reason to believe that a request to photograph, record or broadcast a court proceeding will be made and who desires to place limitations beyond that specified by this rule upon these activities may file a written motion seeking such relief. The motion shall be filed as far in advance of the proceeding as is practicable. Upon the filing of such a motion, the court may schedule a hearing as expeditiously as possible before the commencement of the proceeding and, if a hearing is scheduled, the court shall provide as much notice of the hearing as is

E. No agreement for temporary orders shall be approved without the current financial affidavit of each party, or an affidavit of impossibility, having been filed.

2.20 Scheduling Conference: A scheduling conference may be scheduled if the other party has filed an appearance and the matter has not been settled. At the scheduling conference, the Court may (1) refer the parties to mediation, (2) appoint a guardian ad litem for the child(ren), (3) issue discovery orders, and (4) determine the future schedule of the case, including the dates for pretrial, status, motion, final and/or other hearings, as well as issue other orders necessary to the further scheduling of the case. Counsel and parties must be prepared at the scheduling conference to set specific dates for each event. Dates established shall not be extended except in extraordinary circumstances.

#### 2.21 Pretrial Conference:

A. A pretrial conference will generally be held prior to the final hearing to identify contested issues, identify witnesses, mark exhibits, exchange documents, and complete any other matters the Court deems appropriate, including setting further conference and/or hearing dates. At the pretrial conference, the parties shall file and exchange pretrial statements, current financial affidavits, and proposed decrees; and if there are minor children, child support worksheets, uniform support orders, and agreed upon and proposed parenting plans. Following the pretrial conference, the court shall not accept modifications to documents presented at the pretrial conference unless the modified documents have been exchanged within a reasonable time before final hearing. This rule shall be strictly enforced.

B. In divorce actions, legal separation actions, and parenting cases to the extent applicable, pretrial statements must include:

- (1) A list of disputed issues;
- (2) Special circumstances under child support guidelines;
- (3) Factors justifying sole decision-making responsibility;
- (4) Factors justifying unequal property division;
- (5) Circumstances justifying alimony;
- (6) Unresolved discovery issues;
- (7) Valuation(s) agreement status/values;
- (8) A list of witnesses, including expert witnesses;
- (9) A list of exhibits;
- (10) Estimated time for final hearing;
- (11) Likelihood of settlement; and
- (12) Special circumstances affecting trial scheduling.

2.22 Uncontested Final hearing For Divorce or Legal Separation: A decree of divorce may be issued without conducting a final hearing, and without the presence of the parties, if all required documents have been filed, both parties have waived, in writing, their attendance at the final hearing, and the Court is satisfied with the clarity of the documents submitted.

#### 2.23 Settlements and Agreements:

A. All stipulations and agreements shall be typed and signed by the parties and, if represented by counsel, by attorneys for the parties. The Court may accept handwritten agreements, but may require the parties to file a typewritten substitute (conformed copy) with the court within ten (10) days. A typewritten substitute does not need to contain signatures.

B. Whenever the Clerk receives a Mediation Report indicating that a case has settled, or written notice from a party or an attorney that a case has settled, the parties shall have thirty (30) days in which to file all required settlement documents. If the documents are not filed within this timeframe, the Court shall take such action as justice may require, including dismissal of the case where appropriate.

C. No agreement for temporary or final orders shall be approved without a current financial affidavit of each party having been filed, or an affidavit indicating that there has been no change in the financial status of the party since the last time the party filed a financial affidavit.

#### 2.24 Contested Final hearing:

A. For final hearings which were not preceded by a pretrial conference, the parties shall, unless excused by the Court, file and exchange no later than thirty (30) days before the final hearing, the following:

- (1) list of witnesses
- (2) copies of all exhibits to be offered at final hearing
- (3) proposed final decrees

(4) where minor children are involved, an agreed upon parenting plan on those issues to which the parties agree, proposed parenting plans for the issues not agreed upon, child support guidelines worksheets, and proposed uniform support orders.

B. In addition to the requirement for submitting documents at a pretrial conference, or in the event a pretrial conference was not held as outlined above, updated financial affidavits, or affidavits of no financial change if appropriate, shall be filed and exchanged seven days prior to the final hearing.

C. Seven (7) days prior to the final hearing, the parties shall submit jointly prepared agreements and parenting plans on all issues which are not in dispute, and a jointly filed list of personal property, indicating those items which the parties agree each may have, and those items which remain in dispute.

D. Failure to disclose the identity of a witness in accordance with these rules may preclude the party from offering the testimony of that witness at the final hearing. Failure to list and exchange an exhibit in accordance with these rules may result in the Court's denying the admission of the exhibit.

E. The parties are expected to communicate with each other in advance of the final hearing with respect to the sharing and management of the allotted hearing time. The Court reserves the right to participate in this process by conducting a trial management conference.

2.25 Vital Statistics Form. No divorce, legal separation, or annulment shall be heard on its merits, or a final agreement approved, until a completed typewritten vital statistics report is filed with the court by the petitioner/attorney. Access to information contained in the vital statistics report shall be restricted to court personnel, the parties, and counsel.

#### 2.26 Decrees in divorce or legal separation:

A. Temporary. All temporary agreements and proposed decrees shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.

- (1) Type of Case
- (2) Parenting Plan and Uniform Support Order
- (3) Tax Exemptions for Children
- (4) Guardian ad Litem Fees

- (5) Alimony
- (6) Health Insurance for Spouse
- (7) Life Insurance
- (8) Motor Vehicles
- (9) Furniture and Other Personal Property
- (10) Retirement Plans and Other Tax-Deferred Assets
- (11) Other Financial Assets
- (12) Business Interests of the Parties
- (13) Division of Debt
- (14) Marital Home
- (15) Other Real Property
- (16) Restraints against the Property
- (17) Restraining Order
- (18) Other Requests

B. Final. All final agreements and proposed decrees shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.

- (1) Type of Case
- (2) Parenting Plan and Uniform Support Order
- (3) Tax Exemptions for Children
- (4) Guardian ad Litem Fees
- (5) Alimony
- (6) Health Insurance for Spouse
- (7) Life Insurance
- (8) Motor Vehicles
- (9) Furniture and Other Personal Property
- (10) Retirement Plans and Other Tax-Deferred Assets
- (11) Other Financial Assets
- (12) Business Interests of the Parties
- (13) Division of Debt
- (14) Marital Home
- (15) Other Real Property



(16) Enforceability after Death

(17) Signing of Documents

(18) Restraining Order

(19) Name Change

(20) Other Requests

#### 2.27 Decrees in Parenting Petition Actions:

All agreements and proposed decrees in parenting actions shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.

(1) Parenting Plan and Uniform Support Order

(2) Tax Exemptions for Children

(3) Guardian ad Litem Fees

(4) Life Insurance

(5) Enforceability after Death

(6) Restraining Order

(7) Other Requests

2.28 Qualified Domestic Relations Orders: Access to information contained in the qualified domestic relations order shall be restricted to court personnel, the parties, and counsel.

#### 2.29 Effective Dates:

A. Uncontested Matters. Decrees in uncontested cases where the parties have filed a permanent agreement shall become 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:

a. Temporary orders;

b. Parenting plans;

c. Uniform support orders

d. Orders for alimony or payments 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 31st 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 31st 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. 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.

#### Comment

Pursuant to paragraph B(4), the supreme court may specify effective dates of orders when appropriate, but this paragraph is not intended to affect the family court's existing authority to act on certain matters while an appeal is pending. See *Nicolazzi v. Nicolazzi*, 131 N.H. 694 (1989); *Rollins v. Rollins*, 122 N.H. 6 (1982); *Rautenberg v. Munnis*, 107 N.H. 446 (1966).

#### 2.30 Modification of Final Decree:

A. General. After a decree becomes final, either party may petition the court to change the final court order in their case. The petition must be provided to the other party as though it were a new case, with service to be accomplished as set forth in Family Division Rule 2.4. Regardless of which party files the petition, the parties will maintain original party designations. The original petitioner is always the petitioner, and the original respondent is always the respondent, even though the respondent may be the party requesting change.

B. Proper Filing. A properly filed petition to change the court order includes: A Petition to Change Court Order that states the names, dates of birth, and address(es) of the parties; the names and dates of birth the parties' children; the parts of the Court's order that are being requested to be changed; the specific changes that are being sought; reason(s) why the Court should change the order; a statement about the receipt of public/medical assistance; a personal data sheet; and the filing fee.

#### C. Where to File Petitions to Change Court Order.

(1) A Petition to Change Court Order that refers to a family division order should be brought in the family division location that issued the order.

(2) A Petition to Change Court Order that refers to a superior court order issued before the existence of the family division should be filed in the family division location where it would have been filed under Family Division Rule 2.3 B if the family division had been in existence at the time of original filing.

D. Mediation. If the issues raised in the petition are not resolvable at the first post-decree hearing, the Court may order the parties to engage in mediation before scheduling further hearings.

E. By Agreement. If the parties agree to change the final order, they may file an agreement with the court. No petition or service is required. The Court, in its discretion, may approve an agreement to change the final order without a hearing.

F. Legal Separation To Divorce. Parties may agree in writing to change a decree of legal separation to one of divorce, subject to the Court's determination that justice requires such a change.

#### 2.31 Enforcement of Court Order:

A. General. Any party may request that another party be found in contempt for violating an order of the Court by way of motion or petition, as the case may require.

#### B. Requirements.

(1) Open cases. When a contempt action is brought in an open case, a proper filing includes: A Motion for Contempt that explains what court order is believed to have been violated; what specific conduct is alleged to have occurred in violation of the court order; and what relief is being requested of the Court. No filing fee is required. Notification to all parties may be accomplished by regular US mail.

(2) Closed cases. When a contempt action is brought in a closed case, a proper filing includes: A Petition for Contempt that explains what court order is believed to have been violated; what specific conduct is alleged to have occurred in violation of the court order; and what relief is being requested of the Court. A filing fee and personal data sheet are required. Notice to the party alleged to be in contempt must be accomplished by sheriff's service in New Hampshire, or by any person authorized to make service if done outside of New Hampshire. Notice to other parties of the original action may be by regular US Mail.

C. Attachments, Arrests, Incarceration. Attachments or arrests and incarceration for civil contempt may be ordered by the Court upon a finding of the violation of any Court order, after notice and an opportunity to be heard. Parties may be arrested upon Court order and required to post bonds for appearance and compliance with court orders in any case where it shall be deemed necessary.

**[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)**

**[Circuit Court Family Division Rules Table of Contents](#)**

# **Circuit Court- District Division Rules, Criminal**

(c) *Special Notice Requirements.* The following notice requirements apply in all criminal proceedings in either circuit court-district division or superior court.

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

(2) Whenever a party intends to proffer in a criminal proceeding a certificate executed pursuant to RSA 318-B:26-a(II), notice of an intent to proffer that certificate and all reports relating to the analysis in question, including a copy of the certificate, shall be conveyed to the opposing party or parties at least twenty-five days before the proceeding begins. An opposing party who intends to object to the admission into evidence of a certificate shall give notice of objection within ten days upon receiving the adversary's notice of intent to proffer the certificate. A failure to comply with the time limitations regarding the notice of objection required by this section shall constitute a waiver of any objection to the admission of the certificate. The time limitations set forth in this section shall not be relaxed except upon a showing of good cause.

(3) If counsel or the State has a bona fide question about the competency of a defendant to stand trial, counsel or the State shall notify the court. In addition, the court for good cause may raise the issue on its own. When such a bona fide question arises, the court shall proceed in accordance with RSA 135:17, RSA 135:17-a, and any other applicable statutes.

#### Comment

Rule 14(b)(1)(A), requiring the state to provide notice that it may seek an extended term of imprisonment under RSA 651:6, derives from current Superior Court Rule 99-A and RSA 651:6(III). An extended term may be imposed upon a defendant if notice is lawfully provided and the court or jury finds that the prerequisites have been met. See *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *State v. Russell*, 159 N.H. 475 (2009). Rule 14(b)(1)(A) reflects the developments in this area of the law. Rule 14(b)(1)(A) provides that in every case in which a prosecutor may seek the imposition of an extended term of imprisonment pursuant to RSA 651:6, the prosecutor must give notice to the defendant prior to the commencement of the trial. In any case in which there exists the possibility that the court may *sua sponte* impose an extended term, notice must be given by the trial judge prior to the commencement of the trial. *State v. Toto*, 123 N.H. 619 (1983).

### **Rule 15. Pretrial Motions**

#### *(a) Circuit Court-District Division*

(1) *General.* For the general rules governing motions in Circuit Court-District Division, see Circuit Court-District Division Rule 1.8.

#### *(2) Motions to Suppress.*

(A) Whenever a motion to suppress evidence is filed before trial in any criminal case, the court will determine, in its discretion, whether to hear the motion in advance of trial or at the trial when the evidence is offered.

(B) If a hearing is held in advance of trial, neither the prosecution nor the defendant shall be entitled to a further hearing by the court on the same issue at the trial. If the evidence is found to be admissible in advance of trial, it will be admitted at the trial without further hearing as to its admissibility. If the evidence is found to be inadmissible, it will not be admitted at the trial and the prosecution shall not refer to such evidence at any time thereafter. The justice presiding at the pretrial hearing need not be disqualified from presiding at the trial. Objections to the court's ruling in advance of trial admitting the evidence shall be noted by the court and the trial shall proceed as scheduled.

(C) All motions to suppress evidence filed in advance of trial shall be in writing and shall specifically set forth all the facts and grounds in separate numbered paragraphs upon which the motions are based. Such motions shall be filed before the commencement of the trial. The court, in its discretion, may grant such a motion after trial commences.

(D) Upon request of any party, the court shall make sufficient findings and rulings to permit meaningful appellate review.

(3) *Motions to Continue.* For rules governing motions to continue in Circuit Court-District Division, see Circuit Court-District Division Rule 1.8-A.

(b) *Superior Court*

(1) *Pretrial Motions.* The deadline for filing all pretrial motions other than discovery related motions, including but not limited to motions for joinder or severance of offenses, motions to dismiss, motions to suppress evidence, *Daubert* motions, and other motions relating to the admissibility of evidence that would require a substantial pretrial hearing, shall be sixty days after entry of a plea of not guilty or fifteen days after the dispositional conference, whichever is later.

(2) *Motions to Suppress.* Except for good cause shown, motions to suppress shall be heard in advance of trial. If a hearing is held in advance of trial, neither the prosecution nor the defendant shall be entitled to a further hearing by the court on the same issue at the trial. If the evidence is found to be admissible in advance of trial, it will be admitted at the trial without further hearing as to its admissibility. If the evidence is found to be inadmissible on behalf of the prosecution, the prosecution shall not refer to such evidence at any time in the presence of the jury, unless otherwise ordered by the court. Objections to the court's ruling in advance of trial admitting the evidence shall be transferred on appeal after trial and not in advance of trial except in the discretion of the court in exceptional circumstances. Every motion to suppress evidence:

(A) shall be filed in accordance with section (b)(1) of this rule;

(B) shall be in writing and specifically set forth all the facts and grounds in separate numbered paragraphs upon which the motion is based; and

(C) shall be signed by the defendant or counsel and verified by a separate affidavit of the defendant or such other person having knowledge of the facts upon which the affidavit is based. Upon request of any party, the court shall make sufficient findings and rulings to permit meaningful appellate review.

(3) *Motions in Limine.* The parties shall file all motions *in limine* no less than five calendar days prior to the final pretrial conference. For purposes of this paragraph, a motion which seeks to exclude the introduction of evidence on the ground that the manner in which such evidence was obtained was in violation of the constitution or laws of this state or any other jurisdiction shall be treated as a motion to suppress and not a motion *in limine*.

#### (4) *Motions to Continue*

(A) Except in exceptional circumstances, all requests for continuances or postponements by the defendant in a criminal case shall be in writing signed by the defendant and counsel. The request shall include an express waiver of the defendant's right to a speedy trial as it relates to the motion.

(B) A court may rule on a contested motion to continue without a hearing provided that both parties have had an opportunity to inform the court of their respective positions on the motion.

(C) The court shall rule on assented-to motions to continue expeditiously. Notwithstanding the agreement of the parties, the court shall exercise its sound discretion in ruling on such motions.

(D) Where a trial has been scheduled in one case prior to the scheduling of another matter in another court where an attorney or party has a conflict in date and time, the case first scheduled shall not be subject to a continuance because of the subsequently scheduled matter which is in conflict as to time and date except as follows:

(i) A subsequently scheduled case involving trial by jury in a superior or federal district court, or argument before the Supreme Court.

(ii) The court finds the subsequently scheduled case should take precedence due to the rights of a victim under RSA 632-A:9.

(iii) The court finds that the subsequently scheduled case should take precedence due to a defendant's rights to speedy trial or other constitutional rights.

(iv) Unusual circumstances causing the respective courts to agree that an order of precedence other than the above shall take place.

(E) Other grounds for continuance may be illness of a defendant, defense attorney, or prosecutor; want of material testimony, documents, or other essential evidence; unavoidable absence of an essential witness; and such other exceptional grounds as the court may deem to be in the interest of justice.

#### **Rule 16. Videotape Trial Testimony**

(a) The State may move to take videotape trial testimony of any witness, including the victim, who was sixteen years of age or under at the time of the alleged offense. Any victim or other witness who was sixteen years of age or under at the time of the offense may also move to take videotape trial testimony. The court shall order videotape trial testimony if it finds by a preponderance of the evidence that:

(1) The child will suffer emotional or mental strain if required to testify in open court; or

(2) Further delay will impair the child's ability to recall and relate the facts of the alleged offense.

**Rule 24. Trial Procedure***(a) Circuit Court – District Division*

(1) *Opening Statements.* Opening statements are not permitted in circuit court – district division trials except with permission of the court for good cause shown. When opening statements are permitted, the prosecution shall make an opening statement prior to presenting evidence. At its option in such a case, the defense may open immediately thereafter or after the prosecution has concluded its case-in-chief and before presenting defense evidence. Opening statements shall not be argumentative, and except by prior leave of the court, shall be no longer than thirty minutes.

(2) *Order of Evidence.* The prosecution shall present evidence first in its case-in-chief. During the case-in-chief, the defense may introduce evidence through the prosecution's witnesses. After the prosecution has rested, the defense may present evidence.

(3) *Rebuttal Evidence.* Evidence that is strictly rebutting may be permitted at the discretion of the court upon good cause shown.

(4) *Attorneys Examining.* Only one attorney for each party is permitted to examine or cross-examine each witness.

(5) *Objections; Offers of Proof.* When objecting or responding to an objection, counsel shall state the basis for the objection or response. Upon request, the court shall permit counsel to present offers of proof in support of the objection or response. Only the attorney examining or cross-examining a witness may raise objections or respond to objections regarding that witness.

(6) *Re-Examining and Recalling Witnesses.* Redirect examination shall be limited to topics covered on cross-examination except for good cause shown. Prior to being dismissed, a witness is subject to recall by either party. After being dismissed, a witness may be recalled with the court's permission.

(7) *Testimony of Witnesses.* In all proceedings, the testimony of witnesses shall be given, by oath or affirmation, orally in open court, unless otherwise provided by law.

*(8) Closing Argument*

(A) Only one attorney shall argue for each party, except by leave of the court.

(B) After the close of evidence, the defense shall argue first and the prosecution shall argue last. In cases in which the defense of insanity has been raised and the case has been bifurcated for trial, the defense shall have the right to argue last on the issue of insanity.

(C) Before any attorney shall in closing argument read any excerpt of testimony prepared by the court reporter, the attorney shall furnish opposing counsel with a copy thereof prepared by the reporter.

(9) *Motions to Dismiss; Motions for Mistrial.* Motions to dismiss or for a mistrial shall be made on the record.

(10) *Reopening Evidence.* Prior to submission of the case to the court, a party may reopen evidence for good cause shown. After submission of the



case, but before the return of a verdict, a party may reopen evidence after showing good cause, in the discretion of the court.

(b) *Superior Court*

(1) *Opening Statements.* Prior to presenting evidence, the prosecution shall make an opening statement. At its option, the defense may make an opening statement. The defense may open immediately after the prosecution's opening statement or after the prosecution has concluded its case-in-chief and before presenting defense evidence. Opening statements shall not be argumentative, and except by prior leave of the court, shall be no longer than thirty minutes.

(2) *Order of Evidence.* The prosecution shall present evidence first in its case-in-chief. During the case-in-chief, the defense may introduce evidence through the prosecution's witnesses. After the prosecution has rested, the defense may present evidence.

(3) *Rebuttal Evidence.* Evidence that is strictly rebutting may be permitted at the discretion of the court upon good cause shown.

(4) *Attorneys Examining.* Only one attorney for each party is permitted to examine or cross-examine each witness.

(5) *Objections; Offers of Proof.* When objecting or responding to an objection before the jury, counsel shall state only the basis, without elaboration, for the objection or response. Upon request, the court shall permit counsel a reasonable opportunity, on the record and outside the hearing of the jury, to present additional grounds, argument, or offers of proof in support of the objection or response. Only the attorney examining or cross-examining a witness may raise objections or respond to objections regarding that witness.

(6) *Re-Examining and Recalling Witnesses.* Redirect examination shall be limited to topics covered on cross-examination except for good cause shown. Prior to being dismissed, a witness is subject to recall by either party. After being dismissed, a witness may be recalled with the court's permission.

(7) *Testimony of Witnesses.* In all proceedings, the testimony of witnesses shall be given, by oath or affirmation, orally in open court, unless otherwise provided by law.

(8) *Closing Argument*

(A) Each party shall be limited to one hour of argument unless otherwise ordered by the court in advance. Only one attorney shall argue for each party except by leave of the court.

(B) After the close of evidence, the defense shall argue first and the prosecution shall argue last. In cases in which the defense of insanity has been raised and the case has been bifurcated for trial, the defense shall have the right to argue last on the issue of insanity.

(C) Before any attorney shall in closing argument read to the jury any excerpt of testimony prepared by

the court reporter, the attorney shall furnish opposing counsel with a copy thereof prepared by the reporter.

(9) *Jury Instructions*

(A) At such time as the court may reasonably permit, any party may request specific jury instructions.

(B) The court shall inform counsel of its intended jury instructions prior to counsel's closing arguments. All objections to the charge shall be taken on the record before the jury retires. Opportunity shall be given to make objections outside of the hearing of the jury.

(10) *Motions to Dismiss; Motions for Mistrial.* Motions to dismiss or for a mistrial shall be made on the record outside the hearing of the jury.

(11) *Reopening Evidence.* Prior to submission of the case to the court, a party may reopen evidence for good cause shown. After submission of the case, but before the return of a verdict, a party may reopen evidence after showing good cause, in the discretion of the court.

**Rule 25. Verdict**

(a) *Non-Jury Cases.* The court shall return its verdict within a reasonable time after trial.

(b) *Jury Cases.* The verdict shall be unanimous and shall be returned by the jury in open court.

(c) *Poll of Jury.* When a verdict is returned and before it is recorded the jury may be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(d) *Bail.* After a verdict, either party may request a change in bail as provided by law.

(e) *Motion to Set Aside Verdict.* A motion to set aside a jury verdict or a non-jury verdict announced on the record in open court shall be filed within ten days after its rendition, and a motion to set aside any other verdict or decree shall be filed within ten days from the date on the clerk's written notice with respect to same, which shall be mailed by the clerk on the date of the notice. In each case, the motion shall fully state all reasons and arguments relied upon.

**Rule 26. Presence of Counsel**

After a case has been submitted to the jury and the jury has retired for deliberations, counsel shall not leave the courthouse without permission of the court. The court may permit counsel to leave the courthouse upon appropriate conditions. If counsel is absent from the courthouse without permission when a jury requests additional instructions, such absence shall constitute a waiver of the right to be present during instructions given in response to the request.

**Circuit Court- District Division Rules, Civil**

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court District Division Rules Table of Contents](#)

**RULES OF THE CIRCUIT COURT OF THE STATE OF NEW  
HAMPSHIRE -- DISTRICT DIVISION**

**CIVIL RULES**

**Rule 3.20. Procedure during trial.**

Procedure during all civil trials shall be governed in the following manner:

A. Counsel shall seasonably furnish for the convenience of the presiding justice, as he may require, copies of the specification, contracts, letters or other papers offered in evidence.

B. After a witness has been dismissed from the stand, he cannot be recalled without permission of Court.

C. In all trials, the plaintiff shall put his whole case before resting, and shall not thereafter, except by permission of the Court for good cause shown, be permitted to put in any evidence except such as may be strictly rebutting; and the defendant shall, before resting, put in his whole defense, and shall not thereafter introduce any evidence except such as may be in reply to the rebutting evidence.

D. Unless otherwise ordered by the Court, all requests for findings of fact and rulings of law must be submitted at the commencement of trial; memoranda of law must be submitted at the close of the evidence.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court District Division Rules Table of Contents](#)

**Circuit Court- District Division Rules, Landlord Tenant**

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court District Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- DISTRICT DIVISION**

### **LANDLORD AND TENANT ACTIONS**

#### **Rule 5.6. Discovery and Continuances.**

A. Both parties to a landlord and tenant action shall have a right to engage in discovery prior to the hearing on the merits, subject to the time frames set forth below:

1. All requests for discovery shall be made within five (5) days of the RETURN DAY.
2. Responses to interrogatories, requests for admissions and production of documents shall be made within fourteen (14) days after receipt of said requests.
3. Depositions shall be taken no less than three (3) days from the date of the notice of deposition and within no less than seven (7) days of the scheduled trial date.

B. Upon the request of any party, the Court may grant a continuance of the scheduled trial date to allow time to complete discovery. Landlord and tenant actions shall be given priority on the Court's docket and, whenever possible, rescheduled within thirty (30) days.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court District Division Rules Table of Contents](#)

## **Circuit Court- District Division Rules, Small Claims**

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court District Division Rules Table of Contents](#)

## **RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- DISTRICT DIVISION**

### **CIVIL RULES**

#### **Rule 3.20. Procedure during trial.**

Procedure during all civil trials shall be governed in the following manner:

A. Counsel shall seasonably furnish for the convenience of the presiding justice, as he may require, copies of the specification, contracts, letters or other papers offered in evidence.

B. After a witness has been dismissed from the stand, he cannot be recalled without permission of Court.

C. In all trials, the plaintiff shall put his whole case before resting, and shall not thereafter, except by permission of the Court for good cause shown, be permitted to put in any evidence except such as may be strictly rebutting; and the defendant shall, before resting, put in his whole defense, and shall not thereafter introduce any evidence except such as may be in reply to the rebutting evidence.

D. Unless otherwise ordered by the Court, all requests for findings of fact and rulings of law must be submitted at the commencement of trial; memoranda of law must be submitted at the close of the evidence.

[Browse Previous Page](#) | [Table of Contents](#) | [Browse Next Page](#)

[Circuit Court District Division Rules Table of Contents](#)



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

(e) 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