

# Bill as Introduced

HB 254 - AS INTRODUCED

2011 SESSION

11-0897

09/04

HOUSE BILL           **254**

AN ACT               relative to offers of judgments.

SPONSORS:           Rep. B. Murphy, Rock 18; Rep. Steven Smith, Sull 5; Rep. Tregenza, Carr 2;  
Rep. Huxley, Hills 3

COMMITTEE:         Judiciary

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ANALYSIS

This bill establishes procedures for offers of judgments in civil cases based on Rule 68 of the Federal Rules of Civil Procedure.

.....

Explanation:       Matter added to current law appears in *bold italics*.  
Matter removed from current law appears ~~[in brackets and struck through]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT                   relative to offers of judgments.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 New Subdivision; Offers of Judgments in Civil Cases. Amend RSA 507 by inserting after  
2 section 17 the following new subdivision:

3                                           Offers of Judgments in Civil Cases

4           507:18 Offers of Judgment in Civil Cases.

5           I. More than 10 days before the trial begins, a party defending against a claim may serve on  
6 an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If,  
7 within 10 days after being served, the opposing party serves written notice accepting the offer, either  
8 party may then file the offer and notice of acceptance, plus proof of service. The clerk shall then  
9 enter judgment.

10           II. An unaccepted offer shall be considered withdrawn, but does not preclude a later offer.  
11 Evidence of an unaccepted offer shall not be admissible except in a proceeding to determine costs.

12           III. When one party's liability to another has been determined, but the extent of liability  
13 remains to be determined by further proceedings, the party held liable may make an offer of  
14 judgment. This offer shall be served within a reasonable time, but at least 10 days, before a hearing  
15 to determine the extent of liability.

16           IV. If the judgment that the offeree finally obtains is not more favorable than the unaccepted  
17 offer, the offeree shall pay the costs incurred, including reasonable attorney's fees, after the offer was  
18 made.

19           2 Effective Date. This act shall take effect January 1, 2012.

HB 254 - AS AMENDED BY THE HOUSE

16Mar2011... 0747h

2011 SESSION

11-0897  
09/04

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9 judgment.

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11 Evidence of an unaccepted offer shall not be admissible except after judgment in a proceeding to  
12 determine costs.

13 III. When one party's liability to another has been determined, but the extent of liability  
14 remains to be determined by further proceedings, the party held liable may make an offer of  
15 judgment. This offer shall be served within a reasonable time, but at least 10 days, before a hearing  
16 to determine the extent of liability.

17 IV. If the judgment that the offeree finally obtains is not more favorable than the unaccepted  
18 offer and the court finds that the offeree was unreasonable in rejecting the offer, the offeree shall pay  
19 the costs incurred, including reasonable attorney's fees, after the offer was made.

20 2 Effective Date. This act shall take effect January 1, 2012.

# Committee Minutes

## SENATE CALENDAR NOTICE JUDICIARY

Senator Matthew Houde Chairman  
 Senator Sharon Carson V Chairman  
 Senator Fenton Groen  
 Senator Jim Luther

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: April 5, 2011**

### HEARINGS

Thursday

4/14/2011

JUDICIARY

LOB 101

1:00 PM

(Name of Committee)

(Place)

(Time)

#### EXECUTIVE SESSION MAY FOLLOW

1:00 PM	HB146	(New Title) relative to the right of a jury to judge the application of the law in relationship to the facts in controversy.
1:15 PM	HB174	relative to insurance coverage for court-ordered counseling in divorce proceedings.
1:30 PM	HB254	relative to offers of judgments.
1:45 PM	HB259	requiring the supreme court to adopt rules of evidence for the judicial branch family division.
2:00 PM	HB478-FN-L	relative to testimony by video teleconference.

**Sponsors:**

**HB146**

Rep. Lars Christiansen

**HB174**

Rep. Amy Perkins

Rep. Timothy Comerford

**HB254**

Rep. Brian Murphy

Rep. Steven Smith

Rep. Norman Tregenza

Rep. Robert Huxley

**HB259**

Rep. Kenneth Sheffert

**HB478-FN-L**

Rep. Karen Umberger

Rep. Jordan Ulery

Sen. Jeb Bradley

Susan Duncan 271-8631

Sen. Matthew Houde

Chairman

# Judiciary Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Susan Duncan, Senior Legislative Aide

**RE:** Hearing report on HB 254 – relative to offers of judgments.

**HEARING DATE:** April 14, 2011

**MEMBERS OF THE COMMITTEE PRESENT:** Senators Houde,  
Carson, Luther and Groen

**MEMBERS OF THE COMMITTEE ABSENT:** No one

**Sponsor(s):** Representatives B. Murphy; S. Smith; Tregenza and Huxley

**What the bill does:** This bill establishes procedures for offers of judgments in civil cases based on Rule 68 of the Federal Rules of Civil Procedure.

**Who supports the bill:** Representatives Brian Murphy, Don McClarren, Robert Rowe, and B. Guida;

**Who opposes the bill:** Attorney Michael McGrath; Representatives S. Cohn; Dan Itse; Attorney Kevin Dugan; Attorney Joshua Gordon; Attorney George Roussos on behalf of the Association of Domestic Insurance Companies and AIA; Denis Goddard;

**Others testifying:** Attorney Howard Zibel on behalf of the Judicial Branch and the Supreme Court

### Summary of testimony received:

- **Senator Houde** opened the hearing at 2:45 p.m.
- **Representative Murphy** introduced the bill and explained that this is an attempt to ease the over-burdened civil docket. He said that 95% of these cases settle before jury trial – and that this provision would facilitate and move the process forward allowing for the resolution of cases more quickly.
- He said that this enables either the plaintiff or defendant to make an offer of judgment – similar to federal rule 68. He noted that the federal rule is seldom used because there are no “teeth” to it.



- He testified that 41 other states and the District of Columbia have this or a similar provision – and 9 states have exactly the same as this.
- He said that under Rule 68, one can make an offer, and the other party can make a counter offer. He noted that Rule 68 has been in existence since 1938.
- He said that enacting this would prevent folks from being fool-hearty or stubborn.
- **Senator Groen** asked if this is a new concept. **Representative Murphy** explained no, and used as an example where the plaintiff files against the defendant in the amount of \$100,000 – and then the defendant comes back and says “yes, but it’s more like \$50,000 in damages” and makes an offer. If accepted, then the case is over. If rejected, it then goes to final adjudication. If the \$50,000 is the final award, then the plaintiff would be on the hook for attorneys’ fees, if the judge rules it. He said that it is not absolute. He said that the primary focus is on condensing the case and getting a determination of the true value. He said that there is a lot of precedent out there with states doing this.
- **Senator Luther** noted that his statistic of 95% of cases being settled before trial, and asked if this would speed the process up. **Representative Murphy** responded “yes” and noted that with the “scorched earth” litigants, this would help to reserve judicial resources.
- **Representative Seth Cohn** testified in opposition to the bill. He said that the Constitutional Review Committee became aware of this legislation too late in the process to be able to review the bill due to timing. He said that he and Representative Itse believe that this is in direct conflict to the right to a jury trial. He said that this legislation could ultimately put a larger burden on individuals who would have to pay for additional costs.
- **Attorney Zibel** testified and distributed a copy of NH Superior Court Rules 60 and 61 relative to paying money into court. He explained that HB 254 would allow for shifting of attorneys’ fees but that this court rule does not allow it. (He explained that under American Rule, each party pays their own attorneys’ fees whereas under English Rule, the loser pays all attorneys’ fees.) He noted that HB 254 does not go all the way to English Rule, but moves in that direction. He noted that adoption of HB 254 could actually lead to additional hearings in cases as a process would be needed to determine factual questions or reasonableness or unreasonableness.
- **Senator Groen** asked if he had a thought as to whether this is Constitutional or not. **Attorney Zibel** responded that he does not.
- **Attorney Michael McGrath** on behalf of the NHAJ testified in opposition. He said that as written, the bill would not alleviate burdens on the system but would add another layer – and commented that it would not speed the process of settlement. He commented about discovery time and how this enables both sides to figure out the

facts of the case and that it's a time where both sides learn things that they did not know beforehand. He further commented that if the offer does not need to be made until ten days before trial, then this will not speed up at the process at all. He noted that individuals who cannot run the risk of having to pay may instead fold.

- **Senator Luther** asked if he could suggest another approach. **Attorney McGrath** responded that the Rule 70 mediation system is successful in helping cases settle. He also commented that while he understands the fiscal realities, filling the vacant judicial and court staff positions would also help.
- **Attorney George Roussos** testified in opposition. He clarified for the record that Federal Rule 68 only applies to costs, not to attorneys' fees – and noted for the record that this is a very big difference. He said that he favors the federal rule as it is a modest but reasonable rule and noted that most attorneys' fees occur during the trial. He said that it is his understanding that Alaska is the only state that allows costs and attorneys' fees. He said that this is not the usual practice for the losing party at all. He said that generally speaking, we have a pretty good system and that he's concerned about this big change.
- **Senator Luther** asked if there would be an incremental change. **Attorney Roussos** responded that Rule 68 would be agreeable. **Senator Luther** noted that the sponsor said that it doesn't have enough teeth to it. **Attorney Roussos** responded that he understands, but that the costs are limited to certain things and is a much smaller number than the attorneys' fees. **Senator Luther** asked again if there is something in between. **Attorney Roussos** responded that they would just as soon see the existing law, but would not oppose Rule 68.
- **Attorney Kevin Dugan** testified in opposition and noted that there are constitutional issues with this bill. He spoke of Article 14 and the right to a prompt and free trial – and spoke of the loser pay situation. He felt that this would have the effect of discouraging people from even bringing cases and seeking justice in the courts. He noted that there is always a chance that you can lose.
- **Attorney Joshua Gordon** testified in opposition as an appellate attorney. He spoke of State v. Cushing whereby the NH Supreme Court ruled that even the very small entry fee of \$10 or \$12 was ruled unconstitutional. He also spoke that settlement negotiations are privileged so that people are free to speak and negotiate openly. He said that this legislation would hinder settlements.

**Future Action:** The Committee took the bill under advisement.

sfd

[file: HB 0254 report]  
Date: April 18, 2011

# Speakers







# Testimony

-----Original Message-----

From: Daniel C. Itse [mailto:itsenh@comcast.net]  
Sent: Mon 4/18/2011 11:01 AM  
To: Houde, Matthew  
Subject: HB254 relative to offers of judgement

HB 254  
judiciary

Chairman Houde,

I am sorry that I was not able to attend the hearing on HB254 relative to offers of judgments. I would like to clarify my position, and the position of my Committee.

First, I fully support the objective of the House of Representatives to reduce any abuse of our judicial system. It is wrong to treat the openness of our system as a sort of lottery.

Second, it is wrong to say that our Committee had an opinion, since we did not have a hearing on HB254, and therefore, had no opportunity to form a Committee position. That was the issue when HB254 was on the floor of the House. There were those of us who were very concerned that the bill touches upon one of our most fundamental "sacred" rights, and that it deserved to be vetted specifically in that light.

I have attached a judicial opinion regarding Part 1, Article 20. It does not deal precisely with this tactic on judgements, but pre-trial tribunals. However, it does present a perspective on the sacred nature of jury trials in civil suits that is considerably closer to the founders than we are.

I trust that you and your Committee will assure yourselves, and myself, that the proposed legislation complies with Part 1, Articles 14 and 20.

Daniel C. Itse

Hon. Daniel C. Itse  
Chairman, Constitutional Review and Statutory Recodification  
(603) 642-9403

Government does few things well and most things poorly; therefore, it should do as little as possible.



Complete Document

Can Be Viewed

In Bill Folder

*yes*

**C**  
Supreme Judicial Court of New Hampshire.  
EAST KINGSTON  
v.  
DARIUS TOWLE.

June, 1868.

\*1 The act of July 3, 1863, entitled "an act in relation to damages occasioned by dogs," so far as it undertakes to charge the owner with the amount of damage done by his dog as fixed by the selectmen of the town without an opportunity to be heard, is unconstitutional, because it is contrary to natural justice and not within the scope of legislative authority conferred by the constitution on the general court; and also because it is in violation of the provision in the bill of rights, which secures the right of trial by jury in all controversies concerning property, except in cases where it had heretofore been otherwise used and practiced.

An act may be in part beyond legislative authority and within it for the residue; and if it is capable of being administered in the parts which are within the power of the legislature to enact, it will so far be a valid law.

The legislature have power to make towns liable for damage done within their limits by dogs, and to give towns a right of action to recover the actual damage from the owners of the dogs.

A town may maintain an action against the owner of a dog under the act of July 3, 1863, and recover the amount of the actual damage done as found by the jury on trial, not exceeding the amount of the order drawn for the damages by the selectmen.

On the question whether the defendant's dog did the damage, the character of the dog is not competent evidence, nor the fact that he had killed other sheep.


ASSUMPSIT on the statute of July 3, 1863, against the owner of a dog alleged to have been concerned in killing three sheep of John Towle.

The defendant demurred on the ground that the statute was unconstitutional. The court overruled the demurrer.

The defendant owned a dog and the sheep were killed; the only question of fact was, whether they were killed by the defendant's dog. The plaintiff offered to show that the general character of the defendant's dog for killing sheep was bad, and that he had been seen to kill a sheep in John Towle's pasture the fall before, and that the defendant paid John Towle for the sheep so killed, and that the same dog had before killed other sheep in other places. The defendant offered to show that John Towle refused to accept the amount determined by the selectmen, and the town finally paid him a larger sum. The court reserved the questions arising on the foregoing case.

West Headnotes

Animals  53  
28k53


Animals  66.5(1)  
28k66.5(1)  
(Formerly 28k68)

Animals  81  
28k81

Constitutional Law  302  
92k302

Act July 3, 1863, entitled "An act in relation to damages occasioned by dogs," in so far as it undertakes to charge the owner with the amount of damage done by his dogs, as fixed by the selectmen of the town, without an opportunity to be heard, is not within the general scope of legislative authority delegated by the constitution to the general court, since such law is in plain violation of the fundamental principles of natural justice, and the power delegated by the constitution "to make and ordain all manner of reasonable and wholesome laws," etc., confers no authority to make such a law.

Animals  85  
28k85

Evidence  141  
157k141

Evidence that a dog had killed other sheep than those mentioned in the complaint is incompetent on an issue as to whether he did the damage complained of.

case of obstructions placed on highways; and we think an action may be maintained on this statute by the town to recover from the owner of the dog the actual damage, which the jury who try the cause find the owner of the animals to have suffered, not exceeding the amount of the order drawn by the selectmen. If the declaration in this case relies on the order to establish the amount of damage, it may need amendment by inserting an averment that the actual damage was equal to the amount of the order drawn.

By the statute the owner of the dog is made liable for the damage done, whether the dog was accustomed to kill and worry sheep or not. We are not acquainted with any rule of evidence which will allow the character of the dog, or the fact that he had killed or worried sheep before to be admitted as evidence that he did the damage complained of in this suit. To show that he did this mischief it is not competent to prove that he had done similar mischief before, more than it would be to prove that a defendant sued for an assault and battery had beaten other men before, or the same man.

On the last point, DOE, J., dissented.

48 N.H. 57, 1868 WL 2260 (N.H.), 97 Am.Dec. 575,  
2 Am.Rep. 174

END OF DOCUMENT

**Duncan, Susan**

---

**From:** George W. Roussos [GRoussos@orr-reno.com]

**Sent:** Thursday, May 12, 2011 9:56 AM

**To:** Matt Houde (matthewhoude@yahoo.com)

**Subject:** HB 254

Senator—this legislation is federal rule 68 on steroids. The difference is that attorney fees will be awarded to the other side, in addition to costs. That adds to the risks of litigation in a way entirely new to NH. In fact, I think the only state which goes as far as this bill would go is Alaska. I think the testimony about many states having 'similar laws' really refers to provisions like the federal rule, not HB 254.

The bill will severely penalize a party to a civil case who loses the case. The litigation process exists because two sides have different views about the value of their cases. It is often hard to evaluate a case. This bill exposes a party to enormous penalty if a jury doesn't agree with him.

Awards of attorney fees in NH are allowed in certain limited circumstances today—vexatious litigation, bad faith, etc., and this bill would be a radical change in our civil litigation system.

The bill was opposed by both plaintiff and defendant interests (it is not too often that the NH Assoc for Justice and my clients are in agreement). I think this bill goes farther than is good and may cause harm to a system that works pretty well today. Thanks. I would be glad to work with the committee if it decides to study this bill further. George

**George W. Roussos**

ORR&RENO

One Eagle Square, P.O. Box 3550

Concord, NH 03302-3550

Phone: 603.224.2381

Direct Ext: 603.223.9143

Fax: 603.224.2318

[www.orr-reno.com](http://www.orr-reno.com)

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[Superior Court Rules Table of Contents](#)

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

**PAYING MONEY INTO COURT**

60. In proper cases, the defendant may pay into Court any sum of money which he admits to be due, accompanied by the general issue as to the balance; and, if the plaintiff shall refuse to accept the same with his costs, in full satisfaction of his claim, such sum shall be struck out of the declaration; and unless the plaintiff shall prove that a larger sum be due him, he shall have no costs, but the defendant shall be allowed costs from the time of such payment.

61. When a sum of money shall be paid into Court accompanied by a special plea, or when a set-off, counterclaim or recoupment shall be filed and a sum of money paid into Court as the balance due the plaintiff, the costs of the plaintiff up to that time shall also be paid into Court; and the defendant, if he prevail, shall be allowed only his subsequent costs.

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[Superior Court Rules Table of Contents](#)

HB 254

applicable to bankruptcy receivers. See 1 *Collier on Bankruptcy*, 14th ed. by Moore and Oglebay, §92.23-2.36.

#### 1948 Amendment

The amendment effective October 1949 deleted a sentence which formerly appeared immediately following the first sentence and which read as follows: "A receiver shall have the capacity to sue in any district court without ancillary appointment; but actions against a receiver may not be commenced without leave of the court appointing him except when authorized by a statute of the United States."

#### 2007 Amendments

The language of Rule 66 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 67. Deposit into Court

- (a) **Depositing Property.** If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.
- (b) **Investing and Withdrawing Funds.** Money paid into court under this rule must be deposited and withdrawn in accordance with 28 U.S.C. §§ 2041 and 2042 and any like statute. The money must be deposited in an interest-bearing account or invested in a court-approved, interest-bearing instrument.

(Amended December 29, 1948, effective October 20, 1949; April 28, 1983, effective August 1, 1983; April 30, 2007, effective December 1, 2007.)

#### 1937 Adoption

This rule provides for deposit in court generally, continuing similar special provisions contained in such statutes as U.S.C., Title 28, [§§ 1335, 1397, 2361, formerly] § 41(26) (Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader). See generally *Howard v. United States*, 1902, 22 S.Ct. 543, 184 U.S. 676, 46 L.Ed. 754; United States Supreme Court Admiralty Rules (1920), Rules 37 (Bringing Funds into Court), 41 (Funds in Court Registry), and 42 (Claims Against Proceeds in Registry). With the first sentence, compare *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 22, r. 1(1).

#### 1948 Amendment

The amendment effective October 1949 substituted the reference to "Title 28, U.S.C.A., §§ 2041, and 2042" for the

reference to "Sections 995 and 996, Revised Statutes, as amended, U.S.C.A., Title 28, §§ 851, 852." The amendment also added the words "as amended" following the citation of the Act of June 26, 1934, c. 756, § 23, and, in the parenthetical citation immediately following, added the reference to "58 Stat. 845".

#### 1983 Amendment

Rule 67 has been amended in three ways. The first change is the addition of the clause in the first sentence. Some courts have construed the present rule to permit deposit only when the party making it claims no interest in the fund or thing deposited. E.g., *Blasin-Stern v. Beech-Nut Life Savers Corp.*, 429 F.Supp. 533 (D. Puerto Rico 1975); *Dinkins v. General Aniline & Film Corp.*, 214 F.Supp. 281 (S.D.N.Y.1963). However, there are situations in which a litigant may wish to be relieved of responsibility for a sum or thing, but continue to claim an interest in all or part of it. In these cases the deposit-in-court procedure should be available; in addition to the advantages to the party making the deposit, the procedure gives other litigants assurance that any judgment will be collectable. The amendment is intended to accomplish that.

The second change is the addition of a requirement that the order of deposit be served on the clerk of the court in which the sum or thing is to be deposited. This is simply to assure that the clerk knows what is being deposited and what his responsibilities are with respect to the deposit. The latter point is particularly important since the rule as amended contemplates that deposits will be placed in interest-bearing accounts; the clerk must know what treatment has been ordered for the particular deposit.

The third change is to require that any money be deposited in an interest-bearing account or instrument approved by the court.

#### 2007 Amendments

The language of Rule 67 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 68. Offer of Judgment

- (a) **Making an Offer; Judgment on an Accepted Offer.** At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.
- (b) **Unaccepted Offer.** An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not

## Rule 68

## RULES OF CIVIL PROCEDURE

admissible except in a proceeding to determine costs.

(c) **Offer After Liability is Determined.** When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least 14 days—before the date set for a hearing to determine the extent of liability.

(d) **Paying Costs After an Unaccepted Offer.** If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

(Amended December 27, 1946, effective March 19, 1948; February 28, 1966, effective July 1, 1966; March 2, 1987, effective August 1, 1987; April 30, 2007, effective December 1, 2007; March 26, 2009, effective December 1, 2009.)

### 1937 Adoption

See 2 Minn.Stat. (Mason, 1927) § 9323; 4 Mont.Rev.Codes Ann. (1935) § 9770; N.Y.C.P.A. (1937) § 177.

For the recovery of costs against the United States, see Rule 54(d).

### 1946 Amendment

**Note.** The third sentence of Rule 68 has been altered to make clear that evidence of an unaccepted offer is admissible in a proceeding to determine the costs of the action but is not otherwise admissible.

The two sentences substituted for the deleted last sentence of the rule assure a party the right to make a second offer where the situation permits—as, for example, where a prior offer was not accepted but the plaintiff's judgment is nullified and a new trial ordered, whereupon the defendant desires to make a second offer. It is implicit, however, that as long as the case continues—whether there be a first, second or third trial—and the defendant makes no further offer, his first and only offer will operate to save him the costs from the time of that offer if the plaintiff ultimately obtains a judgment less than the sum offered. In the case of successive offers not accepted, the offeror is saved the costs incurred after the making of the offer which was equal to or greater than the judgment ultimately obtained. These provisions should serve to encourage settlements and avoid protracted litigation.

The phrase "before the trial begins", in the first sentence of the rule, has been construed in *Cover v. Chicago Eye Shield Co.*, C.C.A.7th, 1943, 136 F.2d 374, certiorari denied 64 S.Ct. 53, 320 U.S. 749, 88 L.Ed. 445.

### 1966 Amendment

This logical extension of the concept of offer of judgment is suggested by the common admiralty practice of determining liability before the amount of liability is determined.

### 1987 Amendment

The amendments are technical. No substantive change is intended.

### 2007 Amendments

The language of Rule 68 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### 2009 Amendments

Former Rule 68 allowed service of an offer of judgment more than 10 days before the trial begins, or—if liability has been determined—at least 10 days before a hearing to determine the extent of liability. It may be difficult to know in advance when trial will begin or when a hearing will be held. The time is now measured from the date set for trial or hearing; resetting the date establishes a new time for serving the offer.

The former 10-day periods are extended to 14 days to reflect the change in the Rule 6(a) method for computing periods less than 11 days.

## Rule 69. Execution

### (a) In General.

(1) **Money Judgment; Applicable Procedure.** A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) **Obtaining Discovery.** In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

(b) **Against Certain Public Officers.** When a judgment has been entered against a revenue officer in the circumstances stated in 28 U.S.C. § 2006, or against an officer of Congress in the circumstances stated in 2 U.S.C. § 118, the judgment must be satisfied as those statutes provide.

(Amended December 29, 1948, effective October 20, 1949; March 30, 1970, effective July 1, 1970; March 2, 1987, effective August 1, 1987; April 30, 2007, effective December 1, 2007.)

### 1937 Adoption

Note to Subdivision (a). This follows in substance U.S.C. Title 28, [former] §§ 727 (Executions as provided by State

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# Committee Report



STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: May 12, 2011

THE COMMITTEE ON Judiciary

to which was referred House Bill 254

AN ACT                    relative to offers of judgments.

Having considered the same, the committee recommends that the Bill:

**IS INEXPEDIENT TO LEGISLATE**

BY A VOTE OF:    4 - 0

AMENDMENT #        s

Senator Matthew Houde  
For the Committee

Susan Duncan 271-8631

New Hampshire General Court - Bill Status System

**Docket of HB254**

Docket Abbreviations

**Bill Title:** relative to offers of judgments.

*Official Docket of HB254:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/20/2011	H	Introduced 1/6/2011 and Referred to Judiciary; <b>HJ 11</b> , PG. 179
1/26/2011	H	Public Hearing: 2/3/2011 2:00 PM LOB 208
2/16/2011	H	==CANCELLED== Executive Session: 3/1/2011 1:00 PM LOB 208 (If Necessary Continued 3/3/2011 10:00 AM LOB 208)
3/2/2011	H	Executive Session: 3/9/2011 10:00 AM LOB 208 (If Necessary Continued 3/10/2011 10:00 AM LOB 208)
3/10/2011	H	Majority Committee Report: Ought to Pass with Amendment #0747h for Mar 15 (Vote 13-4; RC); <b>HC 22</b> , PG.557
3/10/2011	H	Proposed Majority Committee Amendment <b>#2011-0747h; HC 23</b> , PG.595
3/10/2011	H	Minority Committee Report: Inexpedient to Legislate; <b>HC 22</b> , PG.557
3/16/2011	H	Amendment #0747h Adopted, VV; <b>HJ 28</b> , PG.874
3/16/2011	H	Suspend House Rules as to Allow Referral to Committee on Constitutional Review and Statutory Recodification, Beyond Deadline (Rep Itse): MF DIV 155-194; <b>HJ 28</b> , PG.874
3/16/2011	H	Ought to Pass with Amendment #0747h: MA VV; <b>HJ 28</b> , PG.874
3/23/2011	S	Introduced and Referred to Judiciary; <b>SJ 11</b> , Pg.191
4/6/2011	S	Hearing: 4/14/11, Room 101, LOB, 1:30 p.m.; <b>SC19</b>
5/13/2011	S	Committee Report: Inexpedient to Legislate, 5/25/11; <b>SC25</b>
5/25/2011	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===; <b>SJ 18</b>

NH House

NH Senate

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

           ORIGINAL REFERRAL

           RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S) (3)

**ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:**

<input checked="" type="checkbox"/> - AMENDMENT # _____	<input type="checkbox"/> - AMENDMENT # _____
<input checked="" type="checkbox"/> - AMENDMENT # _____	<input type="checkbox"/> - AMENDMENT # _____

**ALL AVAILABLE VERSIONS OF THE BILL:**

<input checked="" type="checkbox"/> AS INTRODUCED	<input checked="" type="checkbox"/> AS AMENDED BY THE HOUSE
<input type="checkbox"/> FINAL VERSION	<input type="checkbox"/> AS AMENDED BY THE SENATE

           OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

*Ø*

DATE DELIVERED TO SENATE CLERK

7/21/11

By:

Susan F. Deacon  
COMMITTEE AIDE