

CONSENT CALENDAR

February 7, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Children and Family Law to which
was referred HB 218-FN,**

**AN ACT relative to court rules and transcripts in the
judicial branch family division. Having considered the
same, report the same with the following resolution:**

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Heather Raymond

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Children and Family Law
Bill Number:	HB 218-FN
Title:	relative to court rules and transcripts in the judicial branch family division.
Date:	February 7, 2023
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill would allow any party in any family court proceeding to make a recording of the process. The committee is concerned that this bill would allow parties involved in the Division of Children, Youth and Families, Juvenile Justice, and other non-public cases, to make recordings that could compromise the privacy of involved children. The committee also opposes the prohibition against family court judges using discretion to waive court rules on a case by case basis. An amendment was offered to add some privacy protections and reduce cost of the digital copy of the official court recording but it failed to pass.

Vote 16-0.

Rep. Heather Raymond
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Children and Family Law

HB 218-FN, relative to court rules and transcripts in the judicial branch family division.
INEXPEDIENT TO LEGISLATE.

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Original: House Clerk
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HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on HB 218-FN

BILL TITLE: relative to court rules and transcripts in the judicial branch family division.

DATE: February 7, 2023

LOB ROOM: 206-208

MOTIONS: **OUGHT TO PASS WITH AMENDMENT - 2023-0276h**

Moved by Rep. M. Pearson Seconded by Rep. DeSimone Vote: 7-9

MOTIONS: **INEXPEDIENT TO LEGISLATE**

Moved by Rep. Raymond Seconded by Rep. Bickford Vote: 16-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Peter Petrigno, Clerk

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CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Peter Petrigno, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2023 7:58:02 AM
Roll Call Committee Registers
Report

2023 SESSION

Children and Family Law

Bill #: HB 212-FN Motion: OTP AM #: 2023 0276h Exec Session Date: 2/7/23

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Pearson, Mark A. Chairman	✓		
Long, Patrick T. Vice Chairman		✓	
DeSimone, Debra L.	✓		
Bickford, David A.		✓	
Nelson, Jodi L	✓		
McMahon, Charles E.	✓		
Ball, Lorie	✓		
Panek, Sandra L	✓		
Seidel, Sheila C	✓		
Grossman, Gaby M.		✓	
Levesque, Cassandra N.		✓	
Petrigno, Peter Clerk		✓	
Perez, Maria		✓	
Gregg, Alicia C		✓	
Moulton, Candace		✓	
Raymond, Heather		✓	
TOTAL VOTE:	7	9	



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2023 7:58:02 AM
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2023 SESSION

Children and Family Law

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<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Pearson, Mark A. Chairman	✓		
Long, Patrick T. Vice Chairman		✓	
DeSimone, Debra L.	✓		
Bickford, David A.		✓	
Nelson, Jodi L	✓		
McMahon, Charles E.	✓		
Ball, Lorie	✓		
Panek, Sandra L	✓		
Seidel, Sheila C	✓		
Grossman, Gaby M.		✓	
Levesque, Cassandra N.		✓	
Petrigno, Peter Clerk		✓	
Perez, Maria		✓	
Gregg, Alicia C		✓	
Moulton, Candace		✓	
Raymond, Heather		✓	
TOTAL VOTE:	7	9	

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 218-FN

BILL TITLE: relative to court rules and transcripts in the judicial branch family division.

DATE: January 17, 2023

LOB ROOM: 206-208 **Time Public Hearing Called to Order:** 1:47 pm

Time Adjourned: 3:16 pm

Committee Members: Reps. M. Pearson, Long, Petrigno, DeSimone, Bickford, J.Nelson, McMahon, Ball, Panek, Seidel, Grossman, Levesque, M.Perez, Gregg, and Raymond.

Bill Sponsors:

Rep. Bernardy

Rep. O. Ford

Rep. Stapleton

Rep. Cannon

Rep. Love

Rep. Weyler

Rep. Post

Rep. Moffett

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

- Supports bill
- 3 Points: Waiver of court, ability to record testimony and use recordings in appeals procedure
- 1.2 allows court to waiver family court rules
- 2.2 allows waive all rules of evidence in court system
- Set court rules and follow those rules, maybe waived for fees only, if so, identify specific reason for waiver
- Request for digital Court Audio Recording
- See written document
- Asking for system where we do not need court reporters
- Referred to question: 2a
- Referred to item #6
- Last page refers to 3rd. point - foot peddle to turn recordings on and off
- Why ask for recording and transcriptions? Because transcripts do not contain all information, consequences significant to one party when information is blanked out on transcripts.

Rep. Raymond

- Question: (What) about recourse (when) impacted by transcripts missing information?
Answer: None - it is very limited since they can not record hearings.

Rep. Bernardy

- #1 Is there (is) a chain of custody to assure lay people have not edited recordings?
- #2 Also, concern about children's confidentiality?

Answer:

- #1 Recordings typically have a click when turned on and off.
- #2 No video allowed in court. You can't keep audios from being shared with the public. Normally children are not allowed to be witnesses so they would not be in the court room.

Rep. Nelson

- Line #13 & 14 - Question: Whose job to review differences?

Rep. Bernardy

- Answer: Would think that would be the judge as in any other case. If judge is not behaving appropriately and they find parts that he does not want in transcript, he/she can hit a badge to stop transcripts.
- If you believe judges, reasonable judicial conduct is not always being followed.
- Looking for backup system to address trouble in the family court.
- Constituents continue to bring forth concerns - that is the fundamental under pinnings of this bill

***Kathrina Heinrich**

- Submitted written testimony
- Supports this bill
- 3 problems across similar cases:
 1. Family court acts like a business , looking to make money court orders without due process.
 2. Court transcripts costs and a funding and inaccurate reporting seem to be main purpose of court.
 3. Often in court recordings, you can hear pause allowing judges to deliberately leave out information from transcripts.

Vivian Girard

- No position noted
- Cost \$25.00 per CD - rely on transcripts to be correct
- Found her transcripts were missing information
- Went to Supreme court and found that judges can make up their own rules
- When you go to the Supreme court you must provide transcript - to do that you have to have audio

Justin Nadeau

- Supports bill
- Our Family Court system is more than just fractured. Numerous documents and transcripts problems - missing information
- Witnessed judge have a meltdown just prior to the audio shutting out
- Believes bill has great merit. Bill ensures fair and balance court system.

Dana Albrect

- Supports bill
- Adversely affected by issues brought up by this bill
- 2 Reasons:
 1. Provides strong accountability to court system
 2. Helps alleviate costs: transcripts \$795.
- Email referring to audio: called kids morons and asked if he needed to include it in transcript.
- Described inaccurate transcripts of proceedings
- Judicial misconduct left out of transcript
- Final order based off completely inaccurate transcript
- Transcripts were different lengths in each of the 3 versions of transcripts of his proceedings
- The bill as written says a "party" to case can make recording
- 3 audio transcripts - plaintiff, defendant, but court decides what will be in transcripts
- If they appeal plaintiff is better off with transcription rather than without it
- This bill allows 3 audio versions (see line 13)

Richard Head

- Opposes bill
- No longer family court - it is family division - Child support, abuse/neglect, chins, adoptions, etc.
- This bill is not limited in its scope
- Currently Rule regarding photos 1.29 - they can photo/audio all public procedures
- Intent of Bill is to provide a record with no discretion of judge
- Recording can be used in an abusive way
- If someone in audience is recording. (they) could capture conversation not meant to be recorded.
- Re-editing is judges don't decide what is in the transcript
- Official transcripts created by scribes
- Knowing proceedings are being recorded can affect how people are testifying - re: Judge turning on and off recording - checked claims of judge in Nashua - could not be done from the bench, but there is a mute button, (and) recording continues to run. They could not recreate claims being made.
- Re: Court Rules
 1. 1.2 talks about waiver of rules does not say judge can waive any rule
 2. 2.2 States can waive rules of evidence - evidence has to be relevant
- This bill is too broad if no rules can be waived, there are times to waive rules - (Suppose a) person can't attend court on that day, (she/he) cannot stand but rule says he has to attend.
- Blanket prohibition has opportunity to create barriers to fairness, creates non waivable process (which) will interfere with courts ability to do its job.

Rep. DeSimone

- Children testify having their testimony redacted
- Richard Head - unable to answer- What if judge is the problem? The judges referenced are no longer judges. Unable to find "can of words" comments but judicial committee did indicate they heard it.
- Judicial Conduct Committee is available for those who believe information is missing.
- Old recording system missing testimony if people were talking over each other. New audio equipment does not do that.

Rep. Nelson

- Waivers - Are there records of when a judge does waivers to show pattern?
- No there is not a way to do that
- Problem is this would require a data base - too much happens during court proceeding to collect the data - would require a fair amount of resources.
- No more narrated masters Delpro - long tenure (20 yrs.)
- Looking at bill - who makes decision on who waives the rates - the presiding judge?
- Waives can be made in the court room during proceedings.
- Is there ever a time where the judicial conduct committee notices the same judge is waiving rooms, due to bias?

Hon. Betty Gay

- In Support of Bill
- Transcripts are 50 pages an hour, cost \$ \$7.00 per page
- This cost is not affordable for most
- This bill recordings for appellate court only. Would like bill if recording could only (play) within the court system.
- 7 [points:
 - 1 - We need amendment
 - 2 - Children do not testify (not allowed) without Judge's permission
 - 3- E-Scribers prices
 - 4 - It won't take long for differences in transcripts to be found
 - 5 - Court objects every effort to reform

Hon. Betty Gay - continued

- Please fix bill and fine tune the wording

Respectfully submitted,

Rep. Lorie Ball, Clerk

House Remote Testify

Children and Family Law Committee Testify List for Bill HB218 on 2023-01-1
Support: 6 Oppose: 1 Neutral: 0 Total to Testify: 0

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<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Support	No	No
Werme, Paula	Milford, NH pwerme@comcast.net	A Member of the Public	Myself	Support	No	No
Jasina, Erin	Portsmouth, NH ejasina@nhla.org	A Lobbyist	New Hampshire Legal Assistance	Oppose	No	No
Itse, Daniel	Manchester, NH itsenh@comcast.net	A Member of the Public	Myself	Support	No	No
Hoell, JR	Dunbarton, NH jr@jrhoell.com	An Elected Official	Myself and members of the public	Support	No	No
Post, Lisa CM	Lyndeborough, NH LISA.POST@LEG.STATE.NH.US	An Elected Official	Myself	Support	No	No
Routhier, Matthew	manchester, NH mrrouthier@comcast.net	A Member of the Public	Myself	Support	No	No



Memorandum

TO: Rep. Mark Pearson,
Chairman, Children and Family Law Committee

FROM: Christina Dyer,
Committee Researcher

DATE: January 16, 2023

SUBJ: HB 218-FN: relative to court rules and transcripts in the judicial branch family division.

SUMMARY

This bill prohibits the waiver of family court rules, except for fees, and allows a party to a family court proceeding to create and submit their own recording or transcript of the proceedings to the court of appeals for comparison with the official family court record. Previous iterations of this bill were brought before the House in 2022, however none passed.

New Hampshire law establishes the Judicial Branch Family Division under RSA 490-D however court rules for proceedings are created and enforced by the Judicial Branch. The court does permit personal recordings and transcripts with advance notice. The presiding judge or marital master does reserve the right to prohibit or limit recordings if they interfere with proceedings well as waive other rules at their discretion.¹

Because the Family Court Division manages cases that involve minor children as party to abuse or neglect cases, guardianship, mediation and divorce, or juvenile justice, these proceedings are not open to the public. Further, these proceedings are subject to confidentiality laws that prohibit disclosure of identifying information of any of the parties.

New Hampshire Law

169-C:14 Hearings Not Open to the Public. – The general public shall be excluded from any hearing under this chapter and such hearing shall, whenever possible, be held in rooms not used for criminal trials. Only such persons as the parties, their witnesses, counsel and representatives of the agencies present to perform their official duties shall be admitted, except that other persons invited by a party may attend, with the court's prior approval. The court may provide docket information to invited persons.

¹ [Supreme Court Rule 51](#) created an Advisory Committee on Rules wherein “Any person or group may submit to the Supreme Court a suggestion to adopt, amend or repeal a court rule.”

169-C:14-a Records of Hearings. – The court shall notify parties of their right to request in advance of any hearing under this chapter that a record of such hearing shall be preserved and made available to the parties.

169-C:25 Confidentiality. –

I (a) The court records of proceedings under this chapter shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by the parties, child, parent, grandparent pursuant to subparagraph (b), guardian, custodian, attorney, or other authorized representative of the child.

(b) A grandparent seeking access to court records under subparagraph (a) shall file a request for access with the court clerk supported by an affidavit signed by the grandparent stating the reasons for requesting access and shall give notice of such request to all parties to the case and the minor's parents. Any party to the case or parent may object to the grandparent's request within 10 days of the filing of the request. If no objection is made, and for good cause shown, the grandparent's request may be granted by the court. If an objection is made, access may be granted only by court order.

II. It shall be unlawful for any person present during a child abuse or neglect hearing to disclose any information concerning the hearing that may identify a child or parent who is involved in the hearing without the prior permission of the court. Any person who knowingly violates this provision shall be guilty of a violation.

III. All case records, as defined in RSA 170-G:8-a, relative to abuse and neglect, shall be confidential, and access shall be provided pursuant to RSA 170-G:8-a.

Family Court Rules

The Judicial Branch provides an online version of its [Rules](#). Rules governing waivers, fees, confidentiality and recordings, etc., are attached to this memo.

Prior Legislation

2022, [HB 1265](#), relative to the waiver of rules in family court proceedings and requiring the establishment of a family division rule waiver database.

Referred to Children and Family Law Committee, Vote 14-0
Majority: Ought to Pass

Rep. Josh Yokela for Children and Family Law. The majority of the committee found that, as amended, this bill would give the legislature necessary information to understand the scope of the issue surrounding family court judges waiving rules. There has been testimony that suggests that the waiving of rules may result in unjust decisions. Fairness is a significant part of justice and this bill will help us find injustices in the family court system.

Outcome: Died in the Senate

2022, [HB 1511-FN](#), relative to submitting officially authorized recordings of hearings for appeal of family court decisions.

Referred to Children and Family Law Committee, Vote 14-0
Majority: Inexpedient to Legislate

Rep. Jodi Nelson for Children and Family Law. This bill could result in disputes regarding the content of the record, as contents could be modified and different recordings and subsequent transcripts can differ from one another. The subject matter may not be confidential and could easily be shared to different outlets, such as social media which could have devastating results.

Outcome: Died in the House

2022, [HB 1551](#), relative to the right of a party in a family court case to create their own written transcripts of court proceedings.

Referred to Children and Family Law Committee, Vote 14-0
Majority: Inexpedient to Legislate

Rep. Jodi Nelson for Children and Family Law. The reliability of transcripts is a tremendous concern if non-certified transcripts are allowed. As written, there is no criteria on standard.

Outcome: Died in the House

2022, [HB 1592-FN](#), allowing parties in family court cases to create their own recordings of the proceedings.

Referred to the Judiciary Committee, Vote 19-1
Majority: Ought to Pass with Amendment

Rep. Edward Gordon for Judiciary. This bill will allow parties to record proceedings in the Family Division of the Circuit Court. The committee agreed that there are circumstances where an individual recording would be valuable, either for reference by the party or when the court's recording is unavailable or insufficient. However, the committee believed that there needs to be some restrictions imposed. The committee amendment restricts the right to an audio recording. Any party who wishes to record must notify the court and the other parties present that they will be recording. The right is limited to the party's proceeding and the equipment should not interfere with the court process.

Outcome: Died in the Senate



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Rule 1.29 Photographing, Recording and Broadcasting

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(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 the 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 reasonably possible to all interested parties and to the Associated Press, which shall disseminate the notice to its members.

(e) No court or justice shall establish notice rules, requirements or procedures that are different than those established by this rule.

(f) At any hearing conducted pursuant to subsections (c) or (d) of this rule, the party or person seeking to prohibit or impose restrictions beyond the terms of this rule on the photographing, recording or broadcasting of a court proceeding that is open to the public shall bear the burden of demonstrating: (1) that the relief sought advances an overriding public interest that is likely to be prejudiced if the relief is not granted; (2) that the relief sought is no broader than necessary to protect that interest; and (3) that no reasonable less restrictive alternatives are available to protect the interest. Any order prohibiting or imposing restrictions beyond the terms of this rule upon the photographing, recording or broadcasting of a court proceeding that is open to the public shall be supported by particularized findings of fact that demonstrate the necessity of the court's action.

(g) The Court retains discretion to limit the number of cameras, recording devices and related equipment allowed in the courtroom at one time. In imposing such limitations, the Court may give preference to requests to photograph, record or broadcast made by a representative of an established media organization that disseminates information concerning court proceedings to the public. The Court also may require representatives of the media to arrange pool coverage.

(h) It is the responsibility of representatives of media organizations desiring to photograph, record or broadcast a court proceeding to contact the clerk of court in advance of a proceeding to ascertain if pool coverage will be required. If the Court has determined that pool coverage will be required, it is the sole responsibility of such media representatives, with assistance as needed from the clerk or his or her designee, to determine which media organization will provide the coverage feed. Disputes about pool coverage will not ordinarily be resolved by the court, and the court may deny media organizations' requests to photograph, record or broadcast a proceeding if pool agreements cannot be reached. It also is the responsibility of said

person to make arrangements with the clerk of court or his or her designee sufficiently in advance of the proceeding so that the set up of any need equipment in the courtroom, including equipment for pool coverage, can be completed without delaying the proceeding. The court shall allow reasonable time prior to a proceeding for the set up of such equipment.

(i) The court shall make all documents and exhibits filed with the court, and not sealed, available for inspection by members of the public in a reasonably timely fashion, it being recognized that the court's need to make use of documents and exhibits for official purposes must take precedence over their availability for public inspection. The court may elect to make one "public" copy of an exhibit available in the clerk's office.

(j) The exact location of all recording, photographing and broadcasting equipment within the courtroom shall be determined by the Court. Once established, movement of such equipment within the courtroom is prohibited without the express prior approval of the presiding justice. The court may prohibit the use of any equipment which requires the laying of cords or wires that pose a safety hazard or impair easy ingress and egress from the courtroom. All equipment used must operate with minimal noise so as not to disrupt the proceedings.

(k) Unless otherwise ordered by the Court, the following standing orders shall apply to all recording, photographing or broadcasting of proceedings within any courtroom:

(1) No flash or other artificial lighting devices shall be used.

(2) Set up and dismantling of equipment in a disruptive manner while court is in session is prohibited.

(3) No recording, photographing or broadcasting equipment may be moved into, out of, or within the courtroom while court is in session.

(4) Recording, photographing or broadcasting equipment must remain a reasonable distance from the parties, counsel tables, alleged victims a their families and witnesses, unless such person(s) voluntarily approach the position where such equipment is located. No such equipment shall be used or set up in a location that creates a risk of picking up confidential communications between lawyer and client or conferences held at the bench among the presiding justice and counsel or the parties.

(5) All persons using recording, photographing or broadcasting equipment must abide by the directions of court officers at all times.

(6) Interviews within the courtroom are not permitted before or after a proceeding.

(7) A person who has been granted permission to record, photograph or broadcast a court proceeding shall not engage in any activity that distract the participants or impairs the dignity of the proceedings.

Comment

With respect to subsection (c) of this rule, it is contemplated that such requests will be deemed timely if they are filed enough in advance of the proceeding that the presiding justice has an opportunity to read and consider the request, to orally notify all interested parties of its existence, and conduct a brief hearing in the event that any interested party objects to the request. Given the strong presumption under New Hampshire law that photographing, recording and/or broadcasting court proceedings that are open to the public is allowable, this subsection is not intended to impose lengthy or onerous advance notice requirements; instead, it recognizes that frequently such requests will be filed only shortly before the proceeding question is to begin.

Rule 1.30 Access to Confidential Records – Fees and Notice

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Any person or entity not otherwise entitled to access may file a motion or petition to gain access to:

A. A financial affidavit filed pursuant to Family Division Rule 2.16 and kept confidential under RSA 458:15-b, I, or RSA 461-A:3.

B. Any other sealed or confidential court record. See *Petition of Keene Sentinel*, 136 N.H. 121 (1992).

Filing Fee: There shall be no filing fee for such a motion or petition.

Notice: In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the Clerk. In closed cases, the Court shall order that the petitioner notify the parties of the petition to grant access by certified mail to the last known address of each party, return receipt requested, restricted delivery, signed by the addressee only, unless the Court expressly determines that another method of service is necessary in the circumstances.

Rule 1.31 Appeals to the Supreme Court

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A. When a question of law is to be transferred after a decision on the merits, all appeals shall be deemed waived and final judgment shall be entered on the thirty-first (31st) day from the date on the Clerk's written notice that the Court has made the decision on the merits, unless the party aggrieved enters a notice of appeal in the Supreme Court within thirty days from the date on the Clerk's written notice of the Court's decision that aggrieves that party, pursuant to Supreme Court Rule 7, and mails the number of copies provided for by the rules of the Supreme Court to its Clerk. The Court shall not grant any requests for extensions of time to file an appeal document in the Supreme Court or requests for late entry of an appeal document in the Supreme Court; such requests shall be filed with the Supreme Court. See Supreme Court Rule 21(6).

B. Whenever any question of law is to be transferred by interlocutory appeal from a ruling or by interlocutory transfer without ruling, counsel shall prepare and file with the Clerk of the family division the interlocutory appeal statement or interlocutory transfer statement pursuant to Supreme Court Rule 8 and Supreme Court Rule 9, and after the Court has signed the statement, counsel shall mail the number of copies provided for by the rules of the Supreme Court to its Clerk.

Rule 1.32 Dismissal of Cases Pending Without Action

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With the exception of a case which has been accepted for appeal by the New Hampshire Supreme Court, any non-criminal matter which has been pending without action for two calendar years from the date of the last court action may be dismissed by the court. Thirty days prior to dismissal the court shall send a notice of the pending dismissal to the last known address of all parties and counsel of record. A case may be considered "pending without action" in the following circumstances:



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Rule 1.1 Scope and Application

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These general provisions apply to all family division case types, unless otherwise stated. All references to "judge" include "marital master" unless otherwise stated. References in court rules to the judicial branch family division shall be deemed to include the circuit court – family division; references to the district court shall be deemed to include the circuit court – district division; and references to the probate court shall be deemed to include the circuit court – probate division.

Rule 1.2 Waiver of Rules

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As good cause appears and as justice may require, the family division may waive the application of any rule, except where prohibited by law.

Rule 1.3 Fees

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- A. The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.
- B. 18.22% of the entry fee paid in each petition and cross-petition in marital cases (\$41.00) shall be deposited into the mediation and arbitrat fund to be used to pay for mediation where both parties are indigent.
- C. (1) Original Entry of all Marital Matters, Parenting Petitions
(including Order of Notice and Guardian ad Litem Fee) and Foreign Decrees \$225.00
- (2) Cross Petition in all original entry Marital Matters and Parenting Petitions \$225.00
- (3) Petition to Change Court Order in all Marital Matters and Parenting Petitions
 - (a) With full agreement \$100.00
 - (b) Without full agreement \$225.00
- D. (1) Divorce Certificate (VSR) only \$10.00
- (2) Divorce Certificate, Certified Copy of Decree and if applicable, Agreement, QDRO, USO, and other Decree-related documents \$40.00
- E. Petition for Ex Parte Attachment; Ex Parte Petition for Writ of Trustee Process \$40.00
- F. Reissued Orders of Notice \$25.00
- G. Writ of Execution \$40.00
- H. Petition for Termination of Parental Rights \$155.00
- I. Petition for Guardian Minor Person \$85.00
- J. Petition Change of Name (includes one certificate) \$85.00
- K. Petition for Adoption, includes one certificate (no entry fee when accompanied by a Petition for termination) \$125.00
- L. Motion for Successor Guardian of Person \$50.00

M. Marriage Waiver \$75.00

N. Surcharges and Additional Fees

(1) Pursuant to RSA 490:26-a, II, the sum of \$25.00 shall be added to each civil filing fee set forth in paragraphs (C)(1), (C)(2), (C)(3), (H), (J), (K) and (M) above, except for the following types of cases which pursuant to RSA 490:26-a, II(b) are exempt from the surcharge:

- (a) Actions relating to children under RSA 169-B, RSA 169-C, and RSA 169-D.
- (b) Domestic violence actions under RSA 173-B.

(2) On the commencement of any proceeding involving the determination of parental rights and responsibilities for which a fee is required, including petitions and cross-petitions for divorce with minor children, an additional fee of \$2.00 shall be paid by the petitioner or cross-petitioner.

O. OTHER FEES:

(1) Defaults in Minor Guardianship Actions	\$25.00/each occurrence
(2) Citations in Minor Guardianship Actions	\$50.00/each occurrence
(3) Duplicate Audio	\$25.00/each CD or download
(4) Application to Appear Pro Hac Vice	\$350.00

P. CERTIFICATES & COPIES:

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

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

Q. The family division may waive any fee for good cause shown.

R. Records Research Fees:

(1) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of \$20 per name will be assessed for up to 5 names. Additional names will be assessed \$5 per name.

(2) The Clerk may waive the records research fee when a request for record information is made by a member of the media consistent with public's right to access court records under the New Hampshire Constitution.

S. Electronic Case Filing Surcharge

The sum of \$20.00 shall be added to the filing fee set forth in paragraphs (J) and (M) above.

Rule 1.4 Open to the Public

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Open to the Public: Hearings in the family division are open to the public unless otherwise specified by statute or order.



New Hampshire Judicial Branch

1 Granite Place, Suite N400 • Concord, NH 03301

Phone Number: [1-855-212-1234](tel:1-855-212-1234)

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NH Courts Permit Only eScribers.net to Sell the Recordings of NH Hearings and Transcriptions At Prices About Four Times Higher Than the Competition, such as SpeechPad.com, and Infinitely Higher Than Those Made by Litigants.

Pricing as of Jan 2023	16	Pages transcribed / Hour	12-hour turnaround	24-hour turnaround	3-day turnaround	7-day turnaround	14-day turnaround	30-day turnaround
eScribers.net Price per Page			n/a	\$7.00	\$5.50	\$4.25	\$3.75	\$2.95
	50		n/a	\$350	\$275	\$213	\$188	\$148
eScribers.net Price per One Minute of Hearing	50		n/a	\$5.83	\$4.58	\$3.54	\$3.13	\$2.46
eScribers.net Price per 2-Hour Hearing				\$700.00	\$550.00	\$425.00	\$375.00	\$295.00
Speechpad.com Price/Minute of Hearing		n/a	\$1.40	\$1.20				
Speechpad.com Price per 2-Hour Hearing			\$168.00	\$144.00				
There is no danger of errors going undiscovered because the opposing litigant will be highly motivated to point out any.								

HB 218-FN

HB 218 Court Rules and transcripts

Chairman and Members of Children and Family Law Committee,

My name is Vivian Girard, and I'm the mother of two daughters. I live in Hollis, New Hampshire, and am a business owner of the Timber Post Bed and Breakfast in Hollis.

Transcripts

As a self-employed single mother, it can sometimes be tough to make ends meet. And, I've had extensive legal bills totaling \$280,000. I'm the *Silva v. Silva* case, that's been up to the New Hampshire Supreme Court four times, docket numbers 2016-0478; 2017-0063; 2019-0390; and 2020-0152. Every time the Supreme Court ruled, it vacated and remanded the trial court.

So far, over nine years, I've had TWENTY SEVEN trial court hearings, many before former judge Julie Introcaso and Former Marital Master Bruce DelPra, and FIVE appeals.

At \$25 per audio CD from the court, that's \$550.00 right there (\$50 x 22) for just audio I am not presently even allowed to record myself. Even if it's not needed for any appeal, maybe a party or their attorney just wants it for their own records, and a party's own recording is certainly good enough for that.

And you don't even want to know what transcripts cost! Then find out they are not complete.

In my case Introcaso said "I'm glad you're trying to live the all american dream but go out and get a real job", consequently because I just can't shut down my business she took away all alimony and child support. The attorney requested my transcript which does not include the condescending comment that was the actual statement from the judge said in the hearing. Being able to make my own recordings would allow me to hold the judge accountable through a JCC complaint for example. I have no way to independently confirm the statement from court that day except testimony from my former attorney who requested the transcript.

When I ordered official audio and transcripts on 12/13/2021 from Nashua Family for my last three hearings (\$75) to prepare for my upcoming hearing on 1/18/2022, it took the trial court until 12/24/2022 --- TWO WEEKS LATER -- to even give the official audio to me and eScribers, causing me not to have transcripts ready before my upcoming 1/18/2022 hearing.

Master DelPra had also said many condescending comments to be and was reprimanded by the JCC on April 29, 2022 where he said in an audio but not documented on the public's copy or in transcript saying 'I don't want to re-open a can of worms' heard by the JCC but I did not find that on any of my documents. It was able to be produced by the JCC or anyone else in the court system.

The current system compels a party wanting or needing a transcript to engage in commerce with a private for profit company and we are forced to pay what the company charges even if the party can't make ends meet.

Nothing in this bill prevents any party from getting audio and transcripts through eScribers or CDs from the court like they've always done. We just need to have the ability to have some competition in this business, and some more options for parties on a budget, or who need a same-day recording the trial court is unable to provide, but they could just record themselves.

Court Rules

In my case, Depends on what is going on in the judge's life. Former Judge Introcaso constantly allowed my ex to FILE MOTION SO LATE that it was very biased against me, not allowing my lawyer enough time to prepare for my hearing.

My attorney said these multiple late filings have blindsided me.

Former Judge Introcaso also allowed my ex to submit evidence after the fact. But not for me.

Judges should not have the discretion they have, they should resort to a flowchart to explain why the chart does not fit the family. Everyone's life is different but a flow chart can help parties explain why the judge made a decision the way they did.

Those were multiple, serious, violations of family division rules that really hurt me. I have a 10 inch binder to show all the judges discretion that the judge made on my case. Related to property division, child support, kids 529 account, alimony.

The standards of evidence and the standards of proof based on the judicial system in the family division is so low as opposed to what a criminal case would require, its stunning of what they allow for evidence or excluded from the case. This leaves some parties at a profound disadvantage.

I had TWENTY SEVEN trial court hearings, mostly before Julie Introcaso, and more before former Master Bruce DalPra.

I had FIVE soon to be SIX appeals to the New Hampshire Supreme Court. The rulings from them and were remanded back to the lower court but still unresolved.

And THIS YEAR MAKES A NINE A YEAR SENTENCE from HELL.

Clearly, something is VERY, VERY WRONG here. So, maybe, just maybe, we should figure out what that is?

It causes many years of unnecessary court battles, financial hardships and hardship on the children involved.

Thank you,

Vivian Girard
Timber Post Bed & Breakfast LLC.
Owner/Operator
603-557-4534

LSR Number 23-0547

Testimony Katrina Heinrich

1/17/2023 (2 pages)

I support HB 218 relative to court rules and transcripts in the judicial family division.

In my experience with over a decade of court litigation and fabricated orders, this bill addresses 3 of the most egregious and significant problems that are consistent across comparable NH cases. The family court acts like a business instead a court of law by omitting due process, creating unnecessary financial hardship and dismissing the right to rules of evidence.

1. NH Rule 2.2

Rule 2.2 Application of New Hampshire Rules of Evidence

The New Hampshire Rules of Evidence do not apply to the actions listed above. However, the Court in its discretion may utilize the New Hampshire Rules of Evidence to enhance the predictable, orderly, fair, and reliable presentation of evidence.

This rule clearly states that the court will not allow evidence in circuit/family court. For over a decade, I have personally been citing zero due process in my case and the churning out of fabricated orders. Fabricated, because there was no evidence allowed and orders were written on one litigant's alleged claims.

Court orders are anchored in fabricated fantasy, yet for over a decade has churned out orders that unnecessarily protracted the case, intentionally involved expensive 3rd party private contractors that were unwarranted, and damaged and harmed the children and litigant.

The court fabricated orders are not based in reality or fact and therefore are artificially manufactured orders to achieve a specific agenda. These orders without evidence violate due process law but even more egregiously carry the weight of consequences. Lifelong and life altering consequences for those victimized by such court process and resulting orders. The non-offending litigant and the children.

2. Court Transcripts Costs
3. Court Recording Accuracy

Transcripts are the only resource that a litigant can use to appeal the fabricated orders. Written transcripts are beyond reasonable for the typical litigant with a hefty fee schedule.

- a. Written transcripts are beyond reasonable for the typical litigant with a hefty fee schedule.
- b. Transcript accuracy is at the discretion of the court. Transcripts have testimony and court room behaviors missing without proper law citation or justification of missing testimony and court room behaviors.
- c. Transcripts missing testimony and court room behaviors typically show as a large time segment missing with the accompanying word 'PAUSE'. This indicates that the live recording is being stopped and started during court. Therefore, not an accurate and true accounting of court.

As an example, I entered a hearing by Judge Foley who was using a computer standing desk with full view of keyboard, mouse and foot pedal. During the hearing, Judge Foley tapped the foot pedal and the keyboard area – he proceeded to verbally bully and belittle the litigant. ----- When the litigant was finally able to get a copy of the transcript the pause segment had been activated and that entire court behavior was missing.

With over a decade of being forced into family court, my own examples of missing testimony began as early as 2007 assault trial prior to my 2008 divorce.

With this brief summary of my experiences, House Bill 218 not only addresses these distinctive issues but, (1) addresses the lack of due process, (2) (3) the organization of a business entity that engages in 3rd party associations with private contracted guardian ad litem, therapists, and transcription companies -collaboratively forcing litigants into protracted cases and financial distress void of due process.



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Rule 1.1 Scope and Application

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These **general provisions** apply to all family division case types, unless otherwise stated. All references to "judge" include "marital master" unless otherwise stated. References in court rules to the judicial branch family division shall be deemed to include the circuit court – family division; references to the **district court** shall be deemed to include the circuit court – district division; and references to the probate court shall be deemed to include the **circuit court** – probate division.

Rule 1.2 Waiver of Rules

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As **good cause** appears and as justice may require, the family division may waive the application of any rule, except where prohibited by law.

Rule 2.2 Application of New Hampshire Rules of Evidence

[back to top](#)

The New Hampshire Rules of Evidence do not apply to the actions listed above. However, the Court in its discretion may utilize the New Hampshire Rules of Evidence to enhance the predictable, orderly, fair, and reliable presentation of evidence.



State of New Hampshire Judicial Branch

REQUEST FOR PROPOSALS RFP 2022-IT-01

FOR

Digital Court Audio Recording

September 1, 2021

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The NHJB consists of the Supreme Court, Superior Court and Circuit Court. NHJB has 39 court locations across the state, with 119 courtrooms requiring audio recording capabilities.

IV. PROPOSED SCOPE OF WORK

A. Overview - Scope of Services

The successful vendor will be provide digital audio recording software licensing for 131 installations. Licensing must include Software Assurance, allowing the NHJB to utilize any future releases of said software without additional licensing costs, albeit a change in the number of installations. Telephone, email or web based ticketing, and remote computer support and troubleshooting must be part of the annual M&S agreement.

B. Business Requirements

1. Vendor must demonstrate expertise in the following areas:
 - a. Demonstrated expertise in the specific market of court audio recording for the purpose of official record, and a history of continuous improvement that leverages emerging technologies and courtroom innovations.
 - b. Demonstrated history of excellent customer service, and customer service with thorough training and expertise in supporting the product and court users of said product.
2. Vendor proposal must demonstrate an ability to provide the following:
 - a. Software must be compatible with Microsoft Windows 10 Operating System, and have a roadmap for Microsoft Windows 11 Operating System compatibility.
 - b. Software proposal must include a separate subscription option for cloud storage of recordings.
 - c. Software proposal must include capabilities for integration of transcription services to cloud storage through one or both of the following methods:
 1. API(preferred method)
 2. Account with role based permissions
 3. Transcription Request and Approval Process
 4. Cost Recovery Options from Transcription Service Provider to NHJB
 - d. Recorded audio data being transferred locally to the cloud and from the cloud to transcription service must be using industry standards and best practices ensuring the confidentiality, availability, and integrity of the data being transferred. i.e. TLS 1.3
 - e. Software must currently support Antex DMX4 and DMX8 series audio mixers.

- f. Software must support playback and exporting of existing court recordings in .TRM format
- g. Cloud storage must support configurable data retention policies based on:
 - 1. Case Type
 - 2. Recording Date
 - 3. Case Status
- h. Software must have the ability for courtroom Monitor/Clerk/Reporter to annotate and enter notes during the course of the proceeding being recorded. Such notes should be searchable and allow for the selection of specific moments in time of the recording to be played back.
- i. Software must be compatible with a touch screen “kiosk” mode which would allow for standalone use of the audio recording functions and features.

V. PROPOSAL PROCESS

A. Proposal Submission, Deadline, and Location Instructions

Proposals submitted in response to this RFP must be received by the NHJB, no later than the time and date specified in the Schedule of Events section, herein. Proposals may be submitted by U.S. Mail, Delivery Service, and/or E-mail. Proposals must be addressed to:

**New Hampshire Judicial Branch
Administrative Office of the Courts
Attn: Kelly Friberg
One Granite Place, Suite N400
Concord, NH 03301**

An electronic copy of proposals with all related documents is also required and shall be delivered to Kelly Friberg at: kfriberg@courts.state.nh.us.

Proposals must be clearly marked as follows:

**NEW HAMPSHIRE JUDICIAL BRANCH
RESPONSE TO RFP 2021-[INSERT NUMBER]
Digital Court Audio Recording**

Unless waived as a non-material deviation in accordance with Section IV, late submissions will not be accepted and will be returned to the proposers unopened. Delivery of the Proposals shall be at the Proposer's expense. The time of receipt shall be considered when a Proposal has been officially documented by the NHJB, in accordance with its established policies, as having been

REQUEST FOR PROPOSALS RFP 2022-IT-01
FOR
Digital Court Audio Recording

NHJB Answers to Vendor Questions

1. Does this RFP involve any hardware?

Answer: No

2. Section IV.B.i. sounds like a portable recording solution responding to the statement; "Software must be compatible with a touch screen "kiosk" mode which would allow for standalone use of the audio recording functions and features. "This implies that you have a hardware appliance such as FTR's Reporter Deck that you want the software to be compatible with, is this the case?

Answer: No

- a. If not reporter deck, what are the hardware specifications of the touch screen kiosk mode device?

Answer: An all-in-one Dell PC running Windows 10 with kiosk (Deep Freeze by Faronics) software installed. This is for courtrooms that do not have a courtroom monitor/court assistant/clerk to run the recordings, but instead only have a bailiff to start and stop recording.

- b. Aren't all of your courtrooms standalone?

Answer: Yes

3. Page 1, 1. Introduction: The title of this RFP is Digital Court Audio Recording. The first paragraph of this Introduction states "to solicit proposals to provide the NHJB with a digital audio recording software solution for the recording and storage of audio from proceedings that will be the official court record." This statement implies this is a software procurement for the purpose of digital audio recording. Based upon this statement we ask the following questions:

- a. Don't you currently have a digital audio recording software solution, FTR?

Answer: Yes

- b. Are you looking to replace FTR?

Answer: We are evaluating all options.

- c. Is your current solution inadequate?

Answer: Our current solution is incompatible with Windows 10. Current solution is not compliant with the NHJB's Information Security Policy, which states all systems must be currently supported by vendor and up to date within 30 days for critical security patches, and 90 days of non-critical security patches. Windows 7 was deprecated January 2020.

- d. Does your current solution lack certain functions that you require or are you not receiving the support from your current vendor?

Answer: Current solution lacks integration of cloud storage, configurable retention periods based on statute and/or court rules, and integration with third party transcription services that allow for a court approval process for transcription requests and cost recovery process for the court and transcription providers.

- e. Please tell us what new functions you want the software to perform that you currently cannot have with your existing system.

Answer: See responses 1., 2c., and 2d.

4. Page 1,1. Introduction, Paragraph 2: Paragraph 2 states that the vendors should provide the NHJB with a

software licensing proposal and goes on to state "The contract period will be for one annual licensing period, with an option for the NHJB to renew annually". This implies that you are seeking a SAAS proposal on an annual basis.

a. What is an "annual licensing period"?

Answer: One calendar year from beginning of initial agreement.

b. Are you referring to licensing the software for a year and not a perpetual licensing arrangement?

Answer: No, perpetual licensing agreement that includes Software Assurance with annual M&S giving the NHJB rights to every new release as long as the annual M&S agreement and payment is executed.

5. Page 2, Section IV. Proposed Scope of Work, 2.b. Please explain how this section applies to digital audio recording software. This appears to be another example of a SAAS, or services procurement as opposed to a software procurement, please explain.

Answer: Beyond the licensing of standalone software for the recording of court proceedings, we expect a subscription based service that is native/integrated with the installed software for the storage of recordings in the cloud. This does lend itself to the definition of SaaS.

6. Is the Court currently using cloud storage? No

7. Do you record both a primary and redundant backup recording?

Answer: Currently the primary recording resides on the PC doing the recording, recordings are copied to optical disc for backup.

a. If so, do you want both primary files and backup files backed up to Cloud storage?

Answer: We expect the initial recording to be local to the PC doing the recording, then copied to the cloud storage either by schedule or through low bandwidth background processes during the course of the day.

8. Does the Court want local storage of the record as well as cloud storage? What is the retention period for your record?

Answer: We expect the local copy to remain on the PC until space is required for additional recordings, and that a copy of all recordings will exist in the cloud storage and be confirmed prior to any overwriting of local recordings. Retention periods are dependent on case type. Periods of retention can range from 1 year after disposition to 10 years after appeal period has ended.

9. Cloud Storage costs are typically expressed as a cost per gigabyte per month or a price per terabyte per month or year. Please provide an estimate of the Court's gigabyte or terabyte storage requirements per month.

Answer: Unknown at this time. We would need help in evaluating those numbers from the selected vendor.

10. Please provide an estimate of the Court's retrieval frequency per-month and per gigabyte from the cloud data.

Answer: See response to 8.

11. Please detail the Court's bandwidth for uploading and downloading data to and from the cloud.

Answer: 3Gb fiber head with 1Gb fiber internet, 100Mb private fiber WAN to each court location <1ms latency, 1Gb LAN in each court <1ms latency.

12. Page 2, Section IV. 2. c. d., i. According to your website, transcriptions are currently being contracted by eScribers, are you planning on replacing this service with another?

Answer: No

13. What functions do you specifically want a digital audio software provider to handle with respect to transcripts contracted to a third party?
Answer: A mechanism for transcription request and approval process utilizing either electronic notification and response, or preferred web interface. A mechanism for automated cost recovery with auditing capability.
14. Does NHJB have a preferred cloud contractor and what is their preferred integration?
Answer: No, but the NHJB does utilize both Government Azure and Government AWS. Cloud Storage must be FEDRAMP certified, with a preference for CJIS compliance. Preferred integration RESTful API over TLS 1.3.
15. Page 7 Vendor Qualifications A., c., and d. These two sections refer to vendor qualifications relating to "interpretation services". Are you requesting that the vendors propose interpretation services?
Answer: No, this requirement was in error.
16. As a summary of our questions, this procurement appears more related to services as opposed to software licensing. There are cloud, transcription, and even interpretive services that appear to be part of this procurement. If this is the case, please state this and we will make our decision to respond based upon the true nature of the procurement.
Answer: This procurement is for licensing of digital audio courtroom proceedings recording software that will be part of the official court record. Approximately 131 seats (Windows 10 PCs) with Software Assurance and annual M&S agreement covering end user support for the above mentioned installations. With this procurement is the request of cloud storage for the recordings integrated in a manner to be automated and configured using the software. In conjunction with the cloud storage of recordings, a request and approval process for transcriptions and cost recovery. The goal is to no longer have court staff manually uploading audio recordings to transcription service provider, end the manual process of backing up recordings to CD, and to have an automated process for the court to receive its portion of funds collected by the transcription service.

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CHILD AND FAMILY SERVICES

**Testimony of Keith Kuenning, Advocacy Director, Waypoint
Before the New Hampshire House Children and Family Law Committee
January 17, 2023**

Good afternoon Mr. Chairman, Vice Chairman, and esteemed members of the House Children and Family Law Committee. My name is Keith Kuenning, Advocacy Director with Waypoint. Waypoint is a private, nonprofit agency that provides services to children and families throughout the state including parent education/family empowerment, child care, mental health counseling, family preservation, supervised visitation, foster care, and court-ordered and voluntary community-based in-home supports and services. Thank you for the opportunity to present written testimony to you today in opposition to **House Bill 218-FN, relative to court rules and transcripts in the judicial branch family division.**

HB 218-FN adds a new section to RSA chapter 490-D prohibiting a family court judge, magistrate, or marital master from waiving a family court rule except for rules related to fees. HB 218-FN further allows each party in a family court proceeding to create their own recording and written transcript of the court proceedings to compare with the official family court records. In an appeal, the appellate court must review the differences in recordings and associated transcripts and determine which recordings and transcripts are complete and adequate for use in the appellate procedure.

Family court hearings are often complex and dynamic. Removing a judge or magistrate's discretion to waive a family court rule could serve to complicate proceedings further by not allowing the judge or magistrate to treat each case individually. Each family court case present unique circumstances impacting children and families. There may be circumstances in which it benefits both parties to waive a family court rule. This bill removes all such ability. If the concern with the ability to waive rules is related to concerns for a court abusing its discretion, a party always has the ability to appeal such decision to the New Hampshire Supreme Court or to file a complaint with the New Hampshire Judicial Conduct Committee.

Further, HB 218-FN's provision allowing parties to create their own transcripts and submit those transcripts to the appellate court requiring the appellate court to determine which transcript is complete and adequate for use in the appellate procedure places an undue burden on the courts which may cause further delay in proceedings. Family courts are known to be backlogged and overburdened due to the number of cases brought in these courts each year. As a result, decisions impacting children and families can take a significant length of time. A month or two is a long period in a child's life during which the child may be in limbo in terms of custody. By requiring the Supreme Court to review each party's personal transcript and compare their transcripts with the official family court records, this will extend the finality of these decisions leaving children and families in uncertainty for longer periods of time. This could impact critical relationships with family depending upon the nature and circumstances of a particular case.

For these reasons, Waypoint urges the Committee not to pass **HB 218-FN, relative to court rules and transcripts in the judicial branch family division.** Thank you very much for taking my testimony. I would be happy to answer any questions. You can contact me at KuenningK@waypointnh.org.



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Concord, NH 03301
waypointnh.org

H.B. 218-FN
House Children and Family Law Committee
January 17, 2023

Evidence in Support of Testimony of Mr. Dana Albrecht

1. November 6, 2020 – excerpt (3 pages) of transcript, first version (133 pages)
2. November 12, 2020 – eScribers email to N.H. AOC (Kathleen M. Yee)
3. November 12, 2020 – eScribers invoice – \$795.50 (November 6, 2020 hearing)
4. November 13, 2020 – email from Judge David King to Master DalPra (4:22pm)
5. February 16, 2021 – JCC dismissal letter, copied to Judge David King
6. November 30, 2021 – N.H. Supreme Court receipt for transcript, first version
7. December 10, 2021 – N.H. Supreme Court order requesting second version
8. December 14, 2021 – N.H. Supreme Court receipt for transcript, second version
9. March 11, 2022 – JCC Executive Secretary¹ orders third version²
10. April 7, 2022 – eScribers invoice – \$950.00 (November 6, 2020 hearing)
11. April 7, 2022 – excerpt (7 pages) of transcript, third version (144 pages)
12. August 26, 2022 – partial deposition of Judge David King (redacted by NHJB)
13. October 31, 2022 – email to eScribers, requesting copy of third version
14. November 10, 2022 – N.H. Supreme Court order & invoices (\$12,680.52 total)
15. December 20, 2022 – N.H. Supreme Court receipt for transcript, third version

1 Mr. Robert Mittelholzer, Esq.

2 See JCC Timeline, *Exhibit 12*, JC-21-072-C



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Rule 1.29 Photographing, Recording and Broadcasting

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(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 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 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 seek 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 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 reasonably possible to all interested parties and to the Associated Press, which shall disseminate the notice to its members.

(e) No court or justice shall establish notice rules, requirements or procedures that are different than those established by this rule.

(f) At any hearing conducted pursuant to subsections (c) or (d) of this rule, the party or person seeking to prohibit or impose restrictions beyond the terms of this rule on the photographing, recording or broadcasting of a court proceeding that is open to the public shall bear the burden of demonstrating: (1) that the relief sought advances an overriding public interest that is likely to be prejudiced if the relief is not granted; (2) that the relief sought is no broader than necessary to protect that interest; and (3) that no reasonable less restrictive alternatives are available to protect the interest. Any order prohibiting or imposing restrictions beyond the terms of this rule upon the photographing, recording or broadcasting of a court proceeding that is open to the public shall be supported by particularized findings of fact that demonstrate the necessity of the court's action.

(g) The Court retains discretion to limit the number of cameras, recording devices and related equipment allowed in the courtroom at one time. In imposing such limitations, the Court may give preference to requests to photograph, record or broadcast made by a representative of an established media organization that disseminates information concerning court proceedings to the public. The Court also may require representatives of the media to arrange pool coverage.

(h) It is the responsibility of representatives of media organizations desiring to photograph, record or broadcast a court proceeding to contact the clerk of court in advance of a proceeding to ascertain if pool coverage will be required. If the Court has determined that pool coverage will be required, it is the sole responsibility of such media representatives, with assistance as needed from the clerk or his or her designee, to determine which media organization will provide the coverage feed. Disputes about pool coverage will not ordinarily be resolved by the court, and the court may deny media organizations' requests to photograph, record or broadcast a proceeding if pool agreements cannot be reached. It also is the responsibility of said

person to make arrangements with the clerk of court or his or her designee sufficiently in advance of the proceeding so that the set up of any need equipment in the courtroom, including equipment for pool coverage, can be completed without delaying the proceeding. The court shall allow reasonable time prior to a proceeding for the set up of such equipment.

(i) The court shall make all documents and exhibits filed with the court, and not sealed, available for inspection by members of the public in a reasonably timely fashion, it being recognized that the court's need to make use of documents and exhibits for official purposes must take precedence over their availability for public inspection. The court may elect to make one "public" copy of an exhibit available in the clerk's office.

(j) The exact location of all recording, photographing and broadcasting equipment within the courtroom shall be determined by the Court. Once established, movement of such equipment within the courtroom is prohibited without the express prior approval of the presiding justice. The court may prohibit the use of any equipment which requires the laying of cords or wires that pose a safety hazard or impair easy ingress and egress from the courtroom. All equipment used must operate with minimal noise so as not to disrupt the proceedings.

(k) Unless otherwise ordered by the Court, the following standing orders shall apply to all recording, photographing or broadcasting of proceedings within any courtroom:

(1) No flash or other artificial lighting devices shall be used.

(2) Set up and dismantling of equipment in a disruptive manner while court is in session is prohibited.

(3) No recording, photographing or broadcasting equipment may be moved into, out of, or within the courtroom while court is in session.

(4) Recording, photographing or broadcasting equipment must remain a reasonable distance from the parties, counsel tables, alleged victims a their families and witnesses, unless such person(s) voluntarily approach the position where such equipment is located. No such equipment shall be used or set up in a location that creates a risk of picking up confidential communications between lawyer and client or conferences held at the bench among the presiding justice and counsel or the parties.

(5) All persons using recording, photographing or broadcasting equipment must abide by the directions of court officers at all times.

(6) Interviews within the courtroom are not permitted before or after a proceeding.

(7) A person who has been granted permission to record, photograph or broadcast a court proceeding shall not engage in any activity that distracts the participants or impairs the dignity of the proceedings.

Comment

With respect to subsection (c) of this rule, it is contemplated that such requests will be deemed timely if they are filed enough in advance of the proceeding that the presiding justice has an opportunity to read and consider the request, to orally notify all interested parties of its existence, and conduct a brief hearing in the event that any interested party objects to the request. Given the strong presumption under New Hampshire law that photographing, recording and/or broadcasting court proceedings that are open to the public is allowable, this subsection is not intended to impose lengthy or onerous advance notice requirements; instead, it recognizes that frequently such requests will be filed only shortly before the proceeding question is to begin.

Rule 1.30 Access to Confidential Records -- Fees and Notice

[back to](#)

Any person or entity not otherwise entitled to access may file a motion or petition to gain access to:

A. A financial affidavit filed pursuant to Family Division Rule 2.16 and kept confidential under RSA 458:15-b, I, or RSA 461-A:3.

B. Any other sealed or confidential court record. See Petition of Keene Sentinel, 136 N.H. 121 (1992).

Filing Fee: There shall be no filing fee for such a motion or petition.

Notice: In open cases, the person filing such a motion shall provide the parties to the proceeding with notice of the motion by first class mail to the last mail addresses on file with the Clerk. In closed cases, the Court shall order that the petitioner notify the parties of the petition to grant access by certified mail to the last known address of each party, return receipt requested, restricted delivery, signed by the addressee only, unless the Court expressly determines that another method of service is necessary in the circumstances.

Rule 1.31 Appeals to the Supreme Court

[back to](#)

A. When a question of law is to be transferred after a decision on the merits, all appeals shall be deemed waived and final judgment shall be entered on the thirty-first (31st) day from the date on the Clerk's written notice that the Court has made the decision on the merits, unless the party aggrieved enters a notice of appeal in the Supreme Court within thirty days from the date on the Clerk's written notice of the Court's decision that aggrieved party, pursuant to Supreme Court Rule 7, and mails the number of copies provided for by the rules of the Supreme Court to its Clerk. The Court shall not grant any requests for extensions of time to file an appeal document in the Supreme Court or requests for late entry of an appeal document in the Supreme Court; such requests shall be filed with the Supreme Court. See Supreme Court Rule 21(6).

B. Whenever any question of law is to be transferred by interlocutory appeal from a ruling or by interlocutory transfer without ruling, counsel shall prepare and file with the Clerk of the family division the interlocutory appeal statement or interlocutory transfer statement pursuant to Supreme Court Rule 8 and Supreme Court Rule 9, and after the Court has signed the statement, counsel shall mail the number of copies provided for by the rules of the Supreme Court to its Clerk.

Rule 1.32 Dismissal of Cases Pending Without Action

[back to](#)

With the exception of a case which has been accepted for appeal by the New Hampshire Supreme Court, any non-criminal matter which has been pending without action for two calendar years from the date of the last court action may be dismissed by the court. Thirty days prior to dismissal the court shall send a notice of the pending dismissal to the last known address of all parties and counsel of record. A case may be considered "pending without action" in the following circumstances:



OPEN MENU

Home > Rules of the Circuit Court of the State of New Hampshire -- Family Division

Rules of the Circuit Court of the State of New Hampshire -- Family Division

Search by Phrase or Keyword:	Jump to Specific Number
<input type="text" value="Enter phrase or keyword..."/>	<input type="text" value="Please select..."/>
REFINE RESULTS >	

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Rule 1.1 Scope and Application

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These general provisions apply to all family division case types, unless otherwise stated. All references to "judge" include "marital master" unless otherwise stated. References in court rules to the judicial branch family division shall be deemed to include the circuit court – family division; references to the district court shall be deemed to include the circuit court – district division; and references to the probate court shall be deemed to include the circuit court – probate division.

Rule 1.2 Waiver of Rules

[back to](#)

As good cause appears and as justice may require, the family division may waive the application of any rule, except where prohibited by law.

Rule 1.3 Fees

[back to](#)

- A. The appropriate fee must accompany all filings. All fees shall be consolidated into a single payment, when possible.
- B. 18.22% of the entry fee paid in each petition and cross-petition in marital cases (\$41.00) shall be deposited into the mediation and arbitrat fund to be used to pay for mediation where both parties are indigent.
- C. (1) Original Entry of all Marital Matters, Parenting Petitions (including Order of Notice and Guardian ad Litem Fee) and Foreign Decrees \$225.00
- (2) Cross Petition in all original entry Marital Matters and Parenting Petitions \$225.00
- (3) Petition to Change Court Order in all Marital Matters and Parenting Petitions
 - (a) With full agreement \$100.00
 - (b) Without full agreement \$225.00
- D. (1) Divorce Certificate (VSR) only \$10.00
- (2) Divorce Certificate, Certified Copy of Decree and if applicable, Agreement, QDRO, USO, and other Decree-related documents \$40.00
- E. Petition for Ex Parte Attachment; Ex Parte Petition for Writ of Trustee Process \$40.00
- F. Reissued Orders of Notice \$25.00
- G. Writ of Execution \$40.00
- H. Petition for Termination of Parental Rights \$155.00
- I. Petition for Guardian Minor Person \$85.00
- J. Petition Change of Name (includes one certificate) \$85.00
- K. Petition for Adoption, includes one certificate (no entry fee when accompanied by a Petition for termination) \$125.00
- L. Motion for Successor Guardian of Person \$50.00





☰ OPEN MENU

[Home](#) > [Rules of The Supreme Court of the State of New Hampshire](#) > [Rule 15. Transcripts.](#)

Rule 15. Transcripts.

(1) The parties shall attempt to enter into stipulations, such as an agreed statement of facts, that will reduce the size of transcripts or avoid them completely. If such a stipulation is entered into, an original and 8 copies thereof must be filed with the clerk's office if it is not included in the notice of appeal.

(2) (a) Mandatory appeals. The moving party shall have completed the notice of appeal form which includes the transcript information, including the dates of the proceedings to be transcribed, the length of the proceedings, and the deposit required. A transcript of the parts of the proceedings necessary for appeal and not already on file in the trial court shall be prepared. The supreme court clerk's office shall issue a scheduling order notifying the moving party that within 15 days from the date on the written notice, the moving party must pay the deposit to the transcriber designated by the court to prepare the transcript or to the transcriber's agent. If payment is not received by the date specified, the appeal may be deemed waived and the case dismissed. Upon timely receiving the required deposit, the transcriber shall proceed with the transcription. If the required deposit is not timely received, the transcriber shall immediately so notify the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may be considered a moving party, and in cases of multiple appeals (including cross-appeals), the clerk, within the clerk's discretion, may assess transcription costs as justice requires.

(b) Other appeals from trial court decisions on the merits. The moving party shall have completed the notice of appeal form which includes the transcript information, including the dates of the proceedings to be transcribed, the length of the proceedings, and the deposit required. If the appeal is accepted by the court for briefing, the supreme court clerk's office shall issue a scheduling order notifying the moving party that within 15 days from the date on the written notice, the moving party must pay the deposit to the transcriber designated by the court to prepare the transcript or to the transcriber's agent. If payment is not received by the transcriber by the date specified, the appeal may be deemed waived and the case dismissed. Upon timely receiving the required deposit, the transcriber shall proceed with the transcription. If the required deposit is not timely received, the transcriber shall immediately so notify the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may be considered a moving party, and in cases of multiple appeals (including cross-appeals), the clerk, within the clerk's discretion, may assess transcription costs as justice requires.

(3) If the moving party intends to argue in the supreme court that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the moving party shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless otherwise ordered by the supreme court, the transcript shall contain all the oral proceedings except opening statements, medical testimony, arguments, and charge.

(4) Unless the parties agree, or the court otherwise orders, the transcriber shall produce an electronic version of the transcript for the court, which shall be deemed the official transcript, as well as a paper copy of the transcript. The transcriber shall also produce an electronic copy of the transcript for each party to the case requiring a transcript. The transcript shall be completed as early as possible within 45 days after receiving the recording of the proceedings from the trial court clerk. Requests for extensions of time in which to prepare a transcript shall not be favored, but the transcriber may request that the supreme court grant an extension of time. Such a request shall give the reasons for the need for an extension.

(5) The supreme court may order that the preparation of a transcript in a case be given immediate attention.

Comment

It is a long-standing rule that parties may not have judicial review of matters not raised in the forum of trial. Absent a transcript of the proceedings below, the supreme court will generally assume that the evidence was sufficient to support the result reached by the trial court. It is the burden of the appealing party to provide the supreme court with a record sufficient to decide the issues on appeal, as well as to demonstrate that those issues were properly raised before the trial court. In deciding whether a transcript of the trial court's proceedings is necessary, the appealing party should keep in mind that the appealing party is responsible for providing the supreme court with a sufficient record to decide the issues on appeal. If the appealing party fails to provide a sufficient record, the appeal may be dismissed or the supreme court may not review an issue that the appealing party has raised. See *Bean v. Red Oak Prop. Mgmt.*, 151 N.H. 248 (2004).



H.B. 218-FN
House Children and Family Law Committee
January 17, 2023

Evidence in Support of Testimony of Mr. Dana Albrecht

1. November 6, 2020 – excerpt (3 pages) of transcript, first version (133 pages)
2. November 12, 2020 – eScribers email to N.H. AOC (Kathleen M. Yee)
3. November 12, 2020 – eScribers invoice – \$795.50 (November 6, 2020 hearing)
4. November 13, 2020 – email from Judge David King to Master DalPra (4:22pm)
5. February 16, 2021 – JCC dismissal letter, copied to Judge David King
6. November 30, 2021 – N.H. Supreme Court receipt for transcript, first version
7. December 10, 2021 – N.H. Supreme Court order requesting second version
8. December 14, 2021 – N.H. Supreme Court receipt for transcript, second version
9. March 11, 2022 – JCC Executive Secretary¹ orders third version²
10. April 7, 2022 – eScribers invoice – \$950.00 (November 6, 2020 hearing)
11. April 7, 2022 – excerpt (7 pages) of transcript, third version (144 pages)
12. August 26, 2022 – partial deposition of Judge David King (redacted by NHJB)
13. October 31, 2022 – email to eScribers, requesting copy of third version
14. November 10, 2022 – N.H. Supreme Court order & invoices (\$12,680.52 total)
15. December 20, 2022 – N.H. Supreme Court receipt for transcript, third version

1 Mr. Robert Mittelholzer, Esq.

2 See JCC Timeline, *Exhibit 12*, JC-21-072-C

STATE OF NEW HAMPSHIRE

9TH CIRCUIT COURT - FAMILY DIVISION - NASHUA

IN THE MATTER OF:) Family Division Case No.
) 659-2016-DM-00288
 DANA ALBRECHT,)
)
)
) Petitioner,)
) Nashua, New Hampshire
 and) November 6, 2020
) 11:37 a.m.
 KATHERINE ALBRECHT,)
)
)
) Respondent.)
)

HEARING ON MOTIONS
 BEFORE THE HONORABLE BRUCE DALPRA
 MARITAL MASTER OF THE CIRCUIT COURT - FAMILY DIVISION
AMENDED (Errata)

APPEARANCES (All present by video or telephone):

For the Petitioner: Joseph Caulfield, Esq.
 CAULFIELD LAW AND MEDIATION
 OFFICE
 126 Perham Corner Rd
 Lyndeborough, NH 03082

For the Respondent: Michael J. Fontaine, Esq.
 WELTS, WHITE & FONTAINE, P.C.
 P.O. Box 507
 Nashua, NH 03061

Also Present: Kathleen Sternenberg
 GAL

Audio Operator: Electronically Recorded
 Not Monitored

TRANSCRIPTION COMPANY: eScribers, LLC
 7227 N. 16th Street, Suite 207
 Phoenix, AZ 85020
 (800) 257-0885
 www.escribers.net

Proceedings recorded by electronic sound recording; transcript produced by court-approved transcription service.



CERTIFICATE

I, Erin K. Perkins, a court-approved proofreader, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

TRANSCRIPTIONIST(S): Karen Raile, CDLT-105
Erin Perkins, CET-601

Erin Perkins
Digitally signed by Erin Perkins
DN: cn=Erin Perkins, o=eScribers, ou=Production, email=production@escribers.net, c=US
Date: 2020.11.13 13:03:55 -05'00'

ERIN K. PERKINS, CET-601
Proofreader

November 12, 2020



ERRATA SHEET

Name: ITMO Dana Albrecht and Katherine Albrecht

Job Reference No. NHJB-12284

Case Number: 659-2016-DM-00288

Judge: Bruce DalPra

Hearing Date: 11/6/20

PAGE	LINE	TRANSCRIPT SHOWS	CHANGE TO	REASON	VERIFIED
6	24	Marinette High	Maranatha High	Spelling	KD
8	1	Brock Cooper	Rob Cooper	Spelling	KD
15	11	cousin Liv	cousin Liz	Spelling	KD
15	12	Valerie	Ellery	Spelling	KD
17	13	Fairmont	Claremont	Spelling	KD
17	18	Carey Edwards (phonetic)	Carey Edwards	Spelling	KD
17	19	Alan Gellon	Alan Yellin	Spelling	KD
20	2	Dr. Hanine	Dr. Hanif	Spelling	KD
37	12	Carolyn Berger	Cherylynne Berger	Spelling	KD
65	19	(indiscernible)	Introcaso		KD
66	2	(indiscernible)	Introcaso		KD
98	1, 3	George Thuy	George Tsai	Spelling	KD
104	3	Mayhill	Mayfield	Spelling	KD
110	9	Veronica Cortez	Veronica Cross	Spelling	KD

KD - Kelly DesLauriers, eScribers Regional Production Manager - East Coast

NH Judicial Branch Administrative Offices
Attention: Kathleen Yee
1 Granite Place
Suite N400
Concord, NH 03301
1026 (internal extension)
Cell 603 540-0174 – currently working remotely



From: Michele Lilley [mailto:michele.lilley@escribers.net]
Sent: Thursday, November 12, 2020 12:24 PM
To: Kathleen M. Yee
Subject: PLEAE READ RE NHJB-12284
Importance: High

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Kathy:

I thought you should be aware, per our transcriber regarding the above order:

So everyone is on Zoom/telephonic for this hearing, other than the judge. The mic is right next to the judge and I can hear everything. He talks to his clerk and himself a lot and makes some pretty bad remarks about the parties and the commentary the parties make.

For instance, he whispers to himself, right in the mic, "who gives a fuck" when the witness is answering a question, or calls them all a bunch of morons, and so much. It actually creates it to where I can't hear what the witness is saying because he's talking into the mic, I think, completely unaware of what he's doing.

~~Of course we are not going to transcribe that however, the ordering party has also ordered the audio.~~

This is the order that was missing the audio that I emailed about today. The client already has most of the audio which I sent a couple of days ago. She was the one that let me know there was audio missing. I was just about to send her the rest when production let me know the above.

I can't not send the audio to her but thought you should know.

Regards,



[schedule a reporter](#)
[order a transcript](#)

Michele Lilley, CET
Lead Client Relations Representative

602-263-0102 | direct
602-263-0885 x130 | office
800-257-0885 | toll free
866-954-9068 | fax

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From: Michele Lilley [mailto:michele.lilley@escribers.net]
Sent: Thursday, November 12, 2020 5:23 PM
To: Kathleen M. Yee
Subject: RE: PLEAE READ RE NHJB-12284

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Kathy:

Here are a couple of examples from the transcriber:

Here are a few examples of time stamps where you can clearly hear the Court:

"Who gives a fuck?" - **12:28:16

"Of course not, they're a bunch of morons." - **1:45:59

The first one is really hard to hear so don't know if Ms. Albrecht will even hear it in her audio. The second example is pretty clear.



[schedule a reporter](#)
[order a transcript](#)

Michele Lilley, CET
Lead Client Relations Representative

602-263-0102 | direct
602-263-0885 x130 | office
800-257-0885 x130 | toll free
866-954-9068 | fax

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From: Kathleen M. Yee <KYee@courts.state.nh.us>
Sent: Thursday, November 12, 2020 1:38 PM
To: Michele Lilley <michele.lilley@escribers.net>
Subject: RE: PLEAE READ RE NHJB-12284

I have listened to the audio and I can hear him laughing quietly and mumbling, but I can't tell what he is saying. I tried playing around with listening to different channels and still couldn't understand him.

Do you know what channels she was listening to or where in the audio she is referring to?

It could just be my hearing though.

Thanks.

Kathleen Yee



Integrity and accuracy are between the lines of every eScribers transcript

INVOICE

eScribers, LLC
7227 North 16th Street, Suite 207
Phoenix, Arizona 85020
(800) 257 0885
Tax ID # 20-365-6767
DUNS # 96-431-8369

Date: Nov 12, 2020

Invoice #: 365000

Delivery Type: 3 Day

To:
Dana Albrecht
131 Daniel Webster Hwy, #235
Nashua
NH 03060

Requested by: Dana Albrecht
Assignment No: NHJB-12284
Case Name: ITMO Dana Albrecht and Katherine Albrecht
Case Number: 659-2016-DM-00288
Hearing Date(s): 11/06/2020

Charge Description	Quantity	Each	Total
Transcription	131	\$5.50	\$720.50
Media Rate	1	\$25.00	\$25.00
ASCII	1	\$25.00	\$25.00
Word index	1	\$25.00	\$25.00
Invoice Total			\$795.50

Receipts	Type	Amount	Date	Total
Credit Card - Deposit	Payment	\$1113.50	Nov 06, 2020	
Credit Card - CC- [REDACTED] 4131	Refund	\$-318.00	Dec 17, 2020	
Amount Now Due				\$0.00

Payable to: eScribers, LLC. Thank you for your business
Pay online through our secure website: escribers.net/payment
Refunds are processed within 30 days.

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e-mail | escribers-billing@escribers.net

New York Office
address | 352 7th Avenue, Suite 604
New York, NY 10001
phone (973) 406-2250 | fax (973) 954-5619

From: Hon. David D. King <DKing@courts.state.nh.us>
Sent: Tuesday, July 26, 2022 5:19 PM
To: Richard W. Head
Subject: FW: Albrecht hearing November 6, 2020
Attachments: Nashua CC CR5_20201106-1227_01d6b43829be0cfc.trm; Nashua CC CR5_20201106-1344_01d6b443031dc438.trm



From: Hon. David D. King
Sent: Friday, November 13, 2020 4:22 PM
To: Master Bruce F. Dalpra <BDalPra@courts.state.nh.us>
Subject: Albrecht hearing November 6, 2020

Bruce:

I am sorry to have to be writing this email but I'm sure you will understand that I have an obligation under the Code to deal with these situations. On November 6, 2020 you had what I believe was a telephonic hearing in what is obviously a very difficult matter, Albrecht and Albrecht. One of the parties requested a copy of the audio recordings from the hearing, which was provided, and subsequently ordered a transcript.

When the transcriptionist from escribers was preparing the transcript, she brought to her supervisor's attention comments that "the judge" made during the proceedings. The supervisor in turn reached out to court administration. I am attaching two examples that were sent to my attention, both email excerpts from escribers staff as well as snippets of the actual audio. The audio is difficult, but not impossible, to hear on our equipment but apparently very clear on the more sophisticated equipment used by escribers. Obviously I do not know anything about this case, other than the fact that it has a very large number of docket entries, which in and of itself is an indication that it involves difficult issues, and probably difficult parties. For that reason it isn't clear whether your comments indicate a bias against one of the parties or are just comments made in frustration. I think we can both agree that they do not demonstrate the patience or dignity expected of judicial officers under Rule 2.8.

I am hoping that we can speak about this next week after you have a chance to review what I have attached. (The 2 notes pasted below are from the emails received from escribers.)

David

David D. King
Administrative Judge
New Hampshire Circuit Court
1 Granite Place, Suite N400
Concord, N.H. 03301
Telephone (603) 271-6418

I thought you should be aware, per our transcriber regarding the above order:

So everyone is on Zoom/telephonic for this hearing, other than the judge. The mic is right next to the judge and I can hear everything. He talks to his clerk and himself a lot and makes some pretty bad remarks about the parties and the commentary the parties make.

For instance, he whispers to himself, right in the mic, "who gives a fuck" when the witness is answering a question, or calls them all a bunch of morons, and so much. It actually creates it to where I can't hear what the witness is saying because he's talking into the mic, I think, completely unaware of what he's doing.

Here are a few examples of time stamps where you can clearly hear the Court:

"Who gives a fuck?" - **12:28:16

"Of course not, they're a bunch of morons." - **1:45:59

|

STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMITTEE

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Robert T. Mittelholzer, Esq.
Executive Secretary
132 Chapel Street
Portsmouth, New Hampshire 03801

Phone: (603) 427-9295
Fax: (603) 427-9297
Email: rmittelholzer@nhjcc.com

February 16, 2021

Marital Master Bruce F. DalPra
NH Circuit Court Administrative Offices
One Granite Place, Suite 400 North
Concord, NH 03301

Re: JC-20-062-G

Master DalPra:

Enclosed herewith please find a copy of your self-report which was most recently reviewed by the Judicial Conduct Committee at its meeting of February 12, 2021.

Following discussion, the Judicial Conduct Committee voted to dismiss this report for the lack of any showing of judicial misconduct with no reasonable likelihood of a finding of judicial misconduct. *

Very truly yours,

/s/ *Robert T. Mittelholzer*

Robert T. Mittelholzer

RTM
Enc.

cc: The Honorable David D. King

* Judge Leary did not participate in the discussion of this matter.

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2021-0192, Katherine Albrecht v. Dana Albrecht, the court on December 10, 2021, issued the following order:

The transcript of the November 6, 2020 hearing held in the parties' domestic relations matter (docket no. 659-2016-DM-00288) does not include the "vulgar expression" that Master DalPra uttered during Dana Albrecht's testimony; nor does it include the "completely inappropriate" sentence that Master DalPra uttered later during Katherine Albrecht's testimony. According to Master DalPra's November 19, 2020 letter to the New Hampshire Judicial Conduct Committee, those two comments "were overheard by an eScriber transcriptionist."

On or before December 20, 2021, eScribers shall prepare an amended or additional errata sheet to the transcript of the November 6, 2020 hearing so as to include and identify (with page/line) those two comments.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

**Timothy A. Gudas,
Clerk**

Distribution:

9th N.H. Circuit Court - Nashua Family Division, 659-2019-DV-00341

Transcript Center

Michael J. Fontaine, Esquire

Israel F. Piedra, Esquire

Mr. Dana Albrecht

eScribers

Transcript Recorder, Supreme Court

File



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2021-0192



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STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMITTEE

JC-21-072-C

In RE: Master Bruce F. DalPra



JCC TIMELINE

- November 6, 2020 - telephone hearing in the matter of Albrecht v. Albrecht, No. 659-2016-DM00288
- November 12, 2020 - email correspondence initiated by Michele Lilley from eScribers transcription service to AOC (Yee) concerning whispered comments by judge in Albrecht hearing.
- November 13, 2020 - email from Judge David King to Master Bruce DalPra about his whispered comments
- November 18, 2020 - telephone conversation between Judge King and Master DalPra about his comments, self-report to JCC
- November 19, 2020 - Master DalPra self-report to JCC concerning his whispered comments in Albrecht hearing
- December 11, 2020 - JCC considers DalPra self-report, listens to audio of hearing, unable to hearing second DalPra comment
- January 20, 2021 - Master DalPra issues report and recommendation of November 6, 2020 Albrecht Hearing
- January 27, 2021 - Master DalPra presides over another hearing in the Albrecht matter. This hearing is to extend Domestic Violence Order against Dana Albrecht. He appeals the order in this hearing to the New Hampshire Supreme Court using information from Master DalPra's self-report to JCC to support his appeal.
- February 12, 2021 - JCC virtual meeting, Master DalPra joins and responds to JCC questions.
- February 16, 2021 - JCC advises Master DalPra of its dismissal of his self-report of November 19, 2020
- July 21, 2021 - Dana Albrecht requests copies of all publically available records of JCC relating to Judge Introcaso, Master DalPra, et al (Carbon, Derby) S. Ct. Rule 40 (16)
- JCC records to support Albrecht brief to Supreme Court*
- August 30, 2021 - Dana Albrecht files appeal with Supreme Court, 12/21/20 Order extending DV Order for another year (Curran, J) DalPra? uses DalPra "who the fuck cares" comment.

- November 10, 2021 - Supreme Court (Sup Ct) opinion-remanded to CC to determine whether DalPra was Disqualified from hearing DM matter.
- November 29, 2021 - DalPra Order – no basis for *disqualification*, approved by Curran, J.
- December 16, 2021 - Sup. Ct. Order – transcript of 11/6/20 hearing lack “vulgar expression” and “completely inappropriate” sentence but heard by transcriptionist eScribers – amend transcript
- March 11, 2022 - JCC Ex. Sec. requests complete unabridged transcript noting all sounds and comments with locus of such comments.



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Case Name: In the Matter of Dana Albrecht and Katherine Albrecht
Case Number: 659-2016-DM-00288
Hearing Date(s): 11/06/2020

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STATE OF NEW HAMPSHIRE

9TH CIRCUIT COURT - FAMILY DIVISION - NASHUA

IN THE MATTER OF:) Family Division Case No.
) 659-2016-DM-00288
 DANA ALBRECHT,)
)
) Petitioner,)
) Nashua, New Hampshire
 and) November 6, 2020
) 11:37 a.m.
 KATHERINE ALBRECHT,)
)
) Respondent.)
 _____)

HEARING ON MOTIONS
 BEFORE THE HONORABLE BRUCE DALPRA
 MARITAL MASTER OF THE CIRCUIT COURT - FAMILY DIVISION

REVISED - UNABRIDGED FINAL WITH TIMESTAMPS

APPEARANCES (All present by video or telephone):

For the Petitioner: Joseph Caulfield, Esq.
 CAULFIELD LAW AND MEDIATION
 OFFICE
 126 Perham Corner Rd
 Lyndeborough, NH 03082

For the Respondent: Michael J. Fontaine, Esq.
 WELTS, WHITE & FONTAINE, P.C.
 P.O. Box 507
 Nashua, NH 03061

Also Present: Kathleen Sternenberg
 GAL

Audio Operator: Electronically Recorded
 Not Monitored

TRANSCRIPTION COMPANY: eScribers, LLC
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 Phoenix, AZ 85020
 (800) 257-0885
 www.escribers.net

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1 for Christmas 2018. If we --

2 Q Do you have any photographs of that?

3 A Yes. One moment, please. I would direct the Judge to
4 -- Exhibit would be -- there's two sets of photographs.

5 Exhibit 47 is the first batch taken from 12/23 through 12/27.

6 And Exhibit 48 is just an email from Dr. Albrecht's is in the
7 middle chronologically, just to be chronological. And then
8 the next set of photographs is Exhibit 49, which were taken on
9 the 31st, where I'm opening the last presents they gave me,
10 and we're altogether at the airport. And Grace is hanging out
11 watching TV at my dad's house. And that's the last I've ever
12 been able to see them.

13 And again, that's when Peter also came back with me
14 and moved to New Hampshire after that. So he's been okay for
15 those two years, but it's the other kids. And there's
16 pictures of the dinner there, if anybody cares, but the point
17 is, is I'm always the one that made it.

18 I heard from Caleb that last year, they did get to go
19 out and eat at a super nice place, so I think that's what --
20 I'm glad they got to go out to eat at a super nice place. At
21 the same time, that's not the traditional homecooked meal that
22 I always make --

23 THE COURT: *[Whispered] Who gives a fuck?*

24 A -- that they were used to. So it's just sad for
25 me. Again, just a basic, they probably miss the traditional



1 Q Well, my notes say that Atty. Fontaine asked you about
2 the relationship with Caleb deteriorating since Christmas
3 2018, and I see that I have an asterisk --

Commented [DF17]: 1:14:23

4 A Yes. Yes. That was the weekend -- so I have shown
5 these texts to get some advice from my therapist because I'm
6 concerned he's mentally ill.

7 THE COURT: *[Laughs]*

8 A So October 5th, from a different number I'm not
9 familiar, he asked me, how long does it take to hack into a
10 black phone, do you know? I need to know how often I need to
11 replace it. I have no idea why he thinks he needs to replace
12 his phones. He says he's got to throw his phone out soon.

13 THE COURT: *Hopeless. Heartless.*

14 UNIDENTIFIED SPEAKER: *No, he did.*

15 THE COURT: *He was concerned; he said he was*
16 *hopeless. (Indiscernible).*

Commented [DF18]: 1:15:17

17 A I can read this in-depth, his own words, but they're
18 quite incoherent. So long, rambling emails.

19 BY MR. CAULFIELD:

20 Q That was after this incident? Mr. Albrecht, that was
21 after the incident that Atty. Fontaine asked you about?

22 A This is most recently, if we go to the incident at
23 church, that's more relevant because he's much saner at that
24 point where he just apologizes for not getting in touch with
25 me.



1 Honor.

2 THE COURT: Are your clients back? Ms. Albrecht?

3 Katherine Albrecht, are you back on the line?

4 Dana Albrecht, are you back on the line?

5 THE PETITIONER: I'm here, Your Honor.

6 THE COURT: Very well; we'll wait a few more

7 minutes.

8 MR. CAULFIELD: (Indiscernible) now, Judge.

9 THE COURT: [Whispered] She's probably having a hot
10 dog. [Laughter]

11 So Alex Corey is back.

12 UNIDENTIFIED SPEAKER: Yup.

13 THE COURT: I wonder if they're going to do anything
14 with the other guy with a thing like the guy from New
15 Hampshire. Fold (phonetic)?

16 UNIDENTIFIED SPEAKER: Oh, it's not -- what's his
17 name? The guy that was the manager this year who was the
18 bench coach, he's not coming back.

19 THE COURT: No.

20 UNIDENTIFIED SPEAKER: Did they -- the first base
21 coach and third base coach, was those new coaches?

22 THE COURT: They're back.

23 UNIDENTIFIED SPEAKER: Were they the ones that
24 worked on this (indiscernible) previously?

25 THE COURT: Yeah, they were. I think they're both

Commented [DF23]: 1:33:59



1 back. Febles and the other guy, I think they're both back.

2 UNIDENTIFIED SPEAKER: I'll be curious to see what
3 they do to improve the team, if they even try.

4 THE COURT: I don't know. I don't -- I don't mind
5 John Henry as an owner, but I don't like Werner at all.

6 UNIDENTIFIED SPEAKER: Oh, yeah.

7 THE COURT: He's too --

8 UNIDENTIFIED SPEAKER: What do you think of this new
9 GM they have?

10 THE COURT: It's hard -- it's hard to say over the
11 first --

12 UNIDENTIFIED SPEAKER: Yeah, because of the --

13 THE COURT: -- first year with what went on.

14 UNIDENTIFIED SPEAKER: -- the way the end of the
15 season was.

16 THE COURT: I mean, they -- they basically told him
17 to trade Betts (phonetic), and I don't think Betts was going
18 to stay anyway. Didn't sound like he wanted to be in the --
19 the Boston.

20 UNIDENTIFIED SPEAKER: Ken Nuke (phonetic) can
21 pitch.

22 *[Laughter]*

23 THE COURT: All right.

24 I must have these exhibits somewhere. Forgot to
25 check them.



1 A No.

2 Q Have they indicated any desire to have any contact
3 with him?

4 A No.

5 Q Have you continued, on occasion, to encourage them to
6 reach out to him?

7 A Yes.

8 Q And what has their response been?

9 A Their response has consistently been no.

10 Q Do you believe that they're mature minors?

11 A Yes.

12 Q How do they do in school?

13 A They have very good grades.

14 Q Have they had any problems with their conduct in
15 school or outside of school?

16 A Never, never.

17 Q Do they make wise, mature decisions in their daily
18 lives relative to, for example, schoolwork?

19 THE COURT: *[Whispered] Of course not; they're a*
20 *bunch of morons.*

21 A Yes.

22 BY MR. CAULFIELD:

23 Q Helping around the house?

24 A Yes.

25 Q Do they have chores?



CERTIFICATE

I, Dena Farbman, a court-approved proofreader, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

Karen Raile, CDLT-105, Transcriptionist
Erin Perkins, CET-601, Proofreader

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DENA FARBMAN, CET-629
Proofreader/Quality Control Manager

April 6, 2022

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The deposition took place at the Office of the Judicial Conduct Committee,
Concord, New Hampshire

August 26, 2022, 9:59 a.m.

DEPOSITION OF THE HONORABLE DAVID KING

*

MASTER BRUCE DALPRA

*

V.

*

STATE OF NEW HAMPSHIRE

*

DOCKET IC-21-072-C

THE STATE OF NEW HAMPSHIRE
Judicial Conduct Committee



IN ATTENDANCE

FOR THE JUDICIAL COUNCIL:

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THE STATE OF NEW HAMPSHIRE
Judicial Conduct Committee

STATE OF NEW HAMPSHIRE *

*

V. *

DOCKET JC-21-072-C

*

MASTER BRUCE DALPRA *

*

DEPOSITION OF THE HONORABLE DAVID KING

August 26, 2022, 9:59 a.m.

This deposition excerpt is relevant to the issues in this matter. The balance of the deposition transcript is not relevant to the issues and thus has been redacted by agreement of counsel.

1

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15 Q How about this: When you are deciding what to do vis-
16 à-vis Bruce DalPra and sending this email, did you
17 have in your mind, guiding your actions in this
18 specific case, Rule 2.15?

19 A Yes, I did.

20 Q Okay. And did you have in mind the difference between
21 2.15(A) and 2.15(C)?

22 A Yes.

23 Q Okay. And at the time that you sent this email, in
24 your mind, did you believe that it rose to the level

1 of a 2.15(A) mandatory report?

2 A I would say at the time I made the call, I hadn't
3 decided that. I mean, I needed to gather some more
4 information. I needed to talk to Master DalPra, find
5 out what happened. I was going on pretty limited
6 information at that point. So I would - You're asking
7 me at a specific point in time. I would say at that
8 time, I didn't know if I had a 2.15(A) or (C), or none
9 of the above.

10 Q Okay. And at some point, you did talk to Master
11 DalPra, correct?

12 A I did.

13 Q And did that conversation clarify what obligations you
14 had in this specific case vis-à-vis Rule 2.15?

15 A Yes.

16 Q Okay. And so, in this case, - this leads me to my
17 next set of questions - did you believe that 2.15(A)
18 or 2.15(C) required you to provide this information to
19 the Judicial Conduct Committee?

20 A So I, after speaking to Master DalPra and reviewing
21 the rule, concluded that "A" was not the applicable
22 section. I did not have a belief, and don't have a
23 belief, as I sit here today, that the rule had been
24 violated raises a substantial question regarding his

1 honesty. He was pretty forthright with me about what
2 had occurred. His trustworthiness, I had no reason
3 not to trust him at that point. And when I think of
4 fitness as a judge, I think that's a pretty high bar
5 to meet. And I didn't, at that time, have a concern
6 about his fitness to serve as a judge. I had already
7 decided under "C," however, that this was something
8 that, even though it was a set of facts that I had
9 never seen before in my 30+ years as a judge, I felt
10 there was an obligation to let the Judicial Conduct
11 Committee know about it.

12 Q Did you tell the Judicial Conduct Committee?

13 A Did I tell the Judicial Conduct Committee what?

14 Q About what you had found regarding the transcript in
15 the Albrecht case?

16 A Yes.

17 Q Okay. Did you provide this email to the Judicial
18 Conduct Committee?

19 A No.

20 Q Okay.

21 A And let me just be clear. When I say "Judicial
22 Conduct Committee," I had a conversation with Robert
23 Mittelholzer after I spoke with Master DalPra about
24 this incident. So I didn't have any communication

1 with the committee itself. I didn't send them
2 anything. I had a phone conversation with Robert
3 Mittelholzer.

4 Q Did you - STRIKE THAT. Were you aware of the fact
5 that Master DalPra had decided to self-report?

6 A I was aware that Master DalPra was going to self-
7 report. I had a conversation with him on Wednesday,
8 November 18th. I had sent him the email on Friday. I
9 think he was either - he either had a writing day that
10 day or he was on vacation. I had tried to call him on
11 his extension, which is typically how I try to reach a
12 judge. I don't like to call the clerk's office and,
13 you know, "The administrative judge is calling.
14 What's going on?" So I'm usually pretty low key about
15 these things. I was not able to get him. I tried a
16 couple of times during the day on Friday. So I sent
17 the email that's been marked as Exhibit 1. Didn't
18 hear back from him, I think until Tuesday, the 17th.
19 He said he had left his laptop at work and he'd been
20 working from home - circumstances that he didn't see
21 my email. So I think we spoke on Tuesday, or we
22 exchanged emails on Tuesday, and we agreed to speak on
23 Wednesday, the 18th at 12:30 during a break in his
24 cases.

1 Q Okay. Two questions about what you just said. For
2 people who are unaware, what is a writing day for a
3 judge?

4 A Rare. But it's a day when the judge is scheduled to
5 not have any scheduled cases so that they can catch up
6 on writing orders for cases that they've already
7 heard.

8 Q And then second, is it uncommon for judges to work
9 outside the courtroom on a writing day?

10 A Not during COVID-19, it wasn't.

11 Q And for the record, this took place in November of
12 2020, which was during the pandemic?

13 A Correct.

14 Q Okay. Did anything about the delay between when you
15 sent the email and when Master DalPra got back to you
16 indicate that he was trying to be deceptive or
17 concealing? Did you have any reason to believe that?

18 A No.

19 Q Okay. To this day, do you know whether or not the
20 committee has seen this email?

21 A I have no idea.

22 Q Okay. To this day, are you aware of whether or not
23 the committee has accessed and listened to either of
24 the two audio files contained in this email?

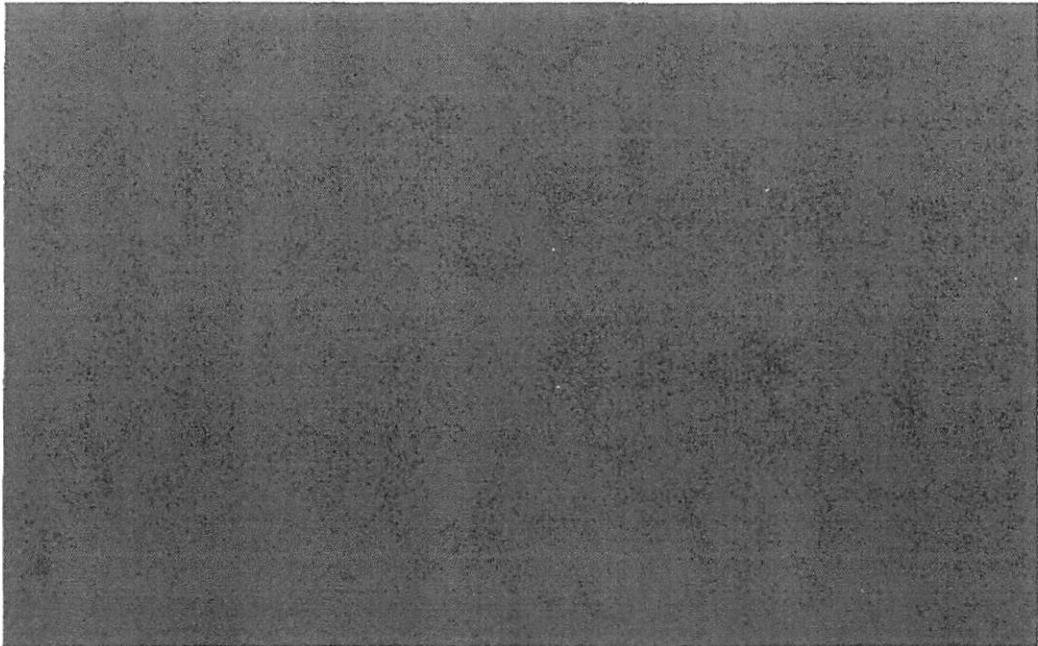
1 A I don't. I do know that in December of 2020, I
2 provided those to Robert Mittelhozer. It took me a
3 couple of tries because I sent them the first time in
4 a - probably use the wrong word here - but format that
5 he couldn't open. And so Kathy Yee was kind enough to
6 help me re-send them in a different format so that he
7 was able to open them.

8 Q Okay. And the same goes for the - the same question
9 for the two snippets. To your knowledge, do you know
10 if they've seen these snippets as like set apart from
11 the rest of the transcript in the way that you did in
12 this email?

13 A I do not.

14 Q Okay.

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Corrections

Page No. 9, Line No. 15

Correction: "Cosign" should be "cosigned"

Page No. 11, Line No. 3

Correction: "as" should be "has"

Page No. , Line No.

Correction:

Page No. , Line No.

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Correction:

[Handwritten Signature]

Deponent

STATE OF NEW HAMPSHIRE
COUNTY OF Merrimack

Subscribed and sworn to before me this 27 day of
September 2022.

[Handwritten Signature]

~~JUSTICE OF THE PEACE/NOTARY PUBLIC~~

My Commission ~~EXPIRES~~ ERICKA W. COLE, Notary Public

State of New Hampshire

My Commission Expires October 3, 2023

Subject: COPY of UNABRIDGED transcript - November 6, 2020 hearing, ITMO Albrecht v. Albrecht, No. 659-2016-DM-00288

From: Dana Albrecht <dana.albrecht@hushmail.com>

Date: 10/31/22, 14:03

To: Michele Lilley <michele.lilley@escribers.net>

CC: New Hampshire Orders <sales@escribers.net>, Customer Service <CustomerService@escribers.net>, Zachary Wolf <Zachary.C.Wolf@doj.nh.gov>, John Formella <john.m.formella@doj.nh.gov>, James Boffetti <james.boffetti@doj.nh.gov>, "Geoffrey W.R. Ward" <Geoffrey.W.Ward@doj.nh.gov>, Timothy Sullivan <timothy.sullivan@doj.nh.gov>, Anna Brewer-Croteau <Anna.Brewer-Croteau@doj.nh.gov>, "Dunn, Robert" <dunnr@nashuapd.com>, "Richard W. Head" <rhead@courts.state.nh.us>, Mary Ann Dempsey <MDempsey@courts.state.nh.us>, "Hon. David D. King" <DKing@courts.state.nh.us>, Timothy Gudas <tgudas@courts.state.nh.us>, Lin Willis <LWillis@courts.state.nh.us>, "James S. Scully Jr." <James.F.Scully@nh.gov>, Philip Waystack <phil@waystackfrizzell.com>, Robert Mittelholzer <rmittelholzer@nhjcc.com>, 'Diana Dowd-Werry' <ddowd-werry@nhjcc.com>, Mark Hayward <mhayward@unionleader.com>, "Sununu.Press@nh.gov" <Sununu.Press@nh.gov>, Dana Albrecht <dana.albrecht@hushmail.com>

Good afternoon Michele,

When I telephoned eScribers, on Friday (10/28/22), to order a COPY of the "REVISED - UNABRIDGED FINAL WITH TIMESTAMPS" version of the transcript, from my own hearing, that took place on November 6, 2020, I was told I needed the permission of the New Hampshire Judicial Branch.

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Please see attached.

Thanks,

-Dana

On 10/27/22 1:59 PM, Dana Albrecht wrote:

May I please order a COPY of the "Unabridged - Revised Final (Transcript) with Timestamps (of November 6, 2020 hearing)" for this hearing?

Please see attached.

Thank you!

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Case Number: 659-2016-DM-00288

Date of Hearing: 11/06/2020

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THE STATE OF NEW HAMPSHIRE

SUPREME COURT

ORDER

JD-2022-0001, In the Matter of Bruce F. DalPra

On October 5, 2022, the Judicial Conduct Committee (JCC) filed a summary report of its proceedings, findings, and recommendations in JC-21-072-C, In re: Bruce F. DalPra, along with a certified copy of the record of its proceedings.

According to the JCC's summary report, former marital master Bruce F. DalPra (DalPra), who retired from his position earlier this year, admitted that he violated a number of provisions of the Code of Judicial Conduct (Supreme Court Rule 38), as alleged in the JCC's Statement of Formal Charges and as modified by the Stipulation and Agreement signed by DalPra and the JCC's counsel. The JCC's record includes a copy of the Stipulation and Agreement, in which DalPra admitted violations of several Code provisions; acknowledged that he understood that the JCC would enter findings that he had violated those provisions; and waived his right to a de novo hearing on the charges. DalPra also acknowledged that he is responsible for reimbursing the Administrative Office of the Courts (AOC) for the attorney's fees, transcript fees, and other expenses that the JCC incurred to investigate and prosecute the matter. A subsequently executed amendment to the Stipulation and Agreement fixed the reimbursement amount at \$12,680.52.

The JCC reviewed the Stipulation and Agreement and entered findings, by clear and convincing evidence, that DalPra violated the following provisions of the Code of Judicial Conduct:

Canon 1, Rule 1.2, which provides: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

Canon 2, Rule 2.11, which provides in part: "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned."

Canon 2, Rule 2.16(A), which provides: "A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."

Canon 2, Rule 2.8(B), which provides, in relevant part: "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers,

court staff, court officials, and others with whom the judge deals in an official capacity”

In the summary report of its findings, the JCC noted that DalPra had retired before the report was submitted. The summary report stated that because DalPra had taken this action, the JCC made no additional recommendations for “appropriate” sanctions.

In accordance with Rule 40(12) and (13), when the JCC determines that a “judge” — a term that includes a marital master, see Sup. Ct. R. 40(2); see also Sup. Ct. R. 38 (“Terminology” section) — has violated the Code of Judicial Conduct and determines that the violations warrant formal disciplinary action by this court, the judge may request a de novo hearing, after which the court will schedule briefing and oral argument. In this case, DalPra has waived his right to a de novo hearing, and he notified the court, through his counsel, that he does not seek the opportunity to file a brief or present oral argument.

The court determines that the JCC’s findings as to the violations of the Code of Judicial Conduct are supported by the JCC’s record. See Rule 40(13). In light of DalPra’s retirement from his position as a marital master, the court concludes that no additional disciplinary action is required.

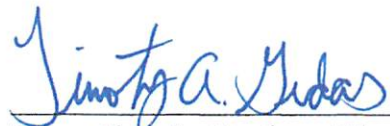
Pursuant to Rule 40(13-A) and the terms of the Stipulation and Agreement, as amended, DalPra is ordered to reimburse the AOC in the amount of \$12,680.52 for the attorney’s fees, transcript fees, and other expenses that the JCC incurred to investigate and prosecute the matter. Payment shall be made on or before December 19, 2022.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

So ordered.

DATE: November 10, 2022

ATTEST:


Timothy A. Gudas, Clerk

Distribution:
Judicial Conduct Committee, JC-21-072-C
Philip R. Waystack, Jr., Esq.
Anthony F. Sculimbrene, Esq.
File

WAYSTACK FRIZZELL

P.O. Box 137
Colebrook NH 03576

(603) 237-8322
Tax ID# 02-0405672

State of New Hampshire
Judicial Conduct Committee
132 Chapel Street
Portsmouth, NH 03801

PAGE 1
BILLING DATE: 09/20/22
ACC'T NO.: PW-ST4674-22

RE: Marital Master Bruce DalPra

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	AMOUNT
04/15/22	Download and save documents and files, open new file	RG	1.20	90.00
04/18/22	Print / review documents for file; Prepare chronological index of documents	RG	2.10	157.50
04/21/22	Continue printing documents	RG	0.20	15.00
04/22/22	Revise index and compile documents into binder	RG	0.80	60.00
05/04/22	Email documents to Attorney Waystack for review	RG	0.30	22.50
05/06/22	Email additional documents to Attorney Waystack	RG	0.20	15.00
05/06/22	Conference with Committee (virtual)	PW	0.40	80.00
05/17/22	Prepare Statement of Formal Charges	RG	1.00	75.00
05/17/22	Review and make edits to previous draft	PW	2.40	480.00
05/18/22	Review Statement of Formal Charges, revise accordingly	RG	0.30	22.50
05/18/22	Review and edit draft of Statement of Charges	PW	0.50	100.00
05/19/22	Accept track changes on Statement of Formal Charges; Prepare notice of hearing	RG	1.00	75.00
05/19/22	Work on file	PW	0.70	140.00
06/10/22	Attend JCC meeting, work on file	PW	1.60	320.00
06/13/22	Work on file	RG	2.50	187.50
06/13/22	Email Statement of Charges, work on file	PW	0.60	120.00
06/14/22	Review committee email messages; Review transcript, Code of Judicial Conduct, made edits to documents	PW	3.10	620.00
06/15/22	Revised Statement of Formal Charges according to edits, reformat and review	RG	1.70	127.50
06/15/22	Multiple emails concerning Statement of Charges	PW	1.60	320.00
06/16/22	Work on file	PW	1.70	340.00

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Judicial Conduct Committee
132 Chapel Street
Portsmouth, NH 03801

PAGE 2
BILLING DATE: 09/20/22
ACC'T NO.: PW-ST4674-22

06/16/22	Finalize Statement of Charges, Notice of Hearing and letter to M. DalPra	RG	0.80	60.00
06/16/22	Follow-up emails	PW	0.40	80.00
06/20/22	Brief telephone conference	PW/O	0.20	0.00
06/23/22	Scan and email request for discovery to Attorney Waystack	RG	0.20	15.00
06/23/22	Follow up email; Review letter requesting discovery of unabridged, complete transcript	PW	0.70	140.00
06/24/22	Prepare letter	RG	0.30	22.50
06/24/22	Email to paralegal to prepare and mail transcript	PW	0.30	60.00
06/28/22	Review message from Attorney, call him, discuss his appearance, discovery, need for further response, etc.	PW	0.60	120.00
07/12/22	Download and print response letter	RG	0.10	7.50
07/12/22	Brief email re: counsel's letter requesting discovery	PW	0.50	100.00
07/14/22	Substantive email to Attorney, addressing discovery, witnesses, depositions; Telephone call re: discovery requests (email and deposition)	PW	1.10	220.00
07/15/22	Review email	RG	0.10	7.50
07/15/22	Review multiple emails	PW	0.60	120.00
07/18/22	Review binder and scan and copy documents	RG	2.00	150.00
07/19/22	Review documents for privileged information, revise index, Bates-stamp documents	RG	3.00	225.00
07/19/22	Review index of discovery for privileged documents; Telephone conference to discuss privileged matters; Review specific documents; Telephone call (mess.); Email exchange	PW	1.20	240.00
07/20/22	Continue working and revising indicies, send link and indices via email to opposing attorney	RG	2.80	210.00
07/20/22	Telephone call; Conference with paralegal to email updated discovery; Conference with paralegal to launch link and indicies to Attorney	PW	1.80	360.00
07/26/22	Review opposing attorney's email; Review emails	RG	0.40	30.00

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Judicial Conduct Committee
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PAGE 3
BILLING DATE: 09/20/22
ACCT NO.: PW-ST4674-22

07/26/22	Review 2 email messages, respond; Email to Attorneys; Telephone conference with Attorney re: discovery	PW	1.40	280.00
07/27/22	Review Attorney email; Send email to Attorney discussing his various discovery requests	PW	0.50	100.00
08/02/22	Short email to Attorneys re: discovery follow-up; Telephone call with Attorney; Email to Attorney re: discovery requests	PW	1.20	240.00
08/03/22	Prepare Subpoenas and send to parties	RG	1.00	75.00
08/03/22	Email to Attorney re: subpoena; Email response to Attorney; Second email to Attorney; Review and edit subpoena; Email with subpoena	PW	1.10	220.00
08/03/22	Review email, respond, forward subpoena to Attorney	PW	0.60	120.00
08/05/22	Email to Attorney acknowledging production of discovery	PW/O	0.20	0.00
08/05/22	Substantive email to Attorney re: discovery / emails, deposition date subpoenas, dates from him for deposition, discuss further discovery, emails, audio clips, review response	PW	0.50	100.00
08/10/22	Telephone conference; Telephone call with Attorney; Draft letter; Telephone call; Email exchange with Attorney	PW	1.30	260.00
08/11/22	Telephone call; Prepare subpoena for all emails	RG	1.60	120.00
08/11/22	Review email about scope of deposition; Telephone conference with Attorney; Telephone call re: status of discovery, plea discussion; Review statement of charges re: timing; Review and edit subpoena; Review comprehensive timeline; Email discovery index and privilege log; Telephone conference with counsel re: deposition; Follow-up email to Attorney; Follow-up email to Attorney	PW	4.10	820.00
08/12/22	Review file for Attorney Waystack's notes re: status re: discovery	RG	0.50	37.50

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PAGE 4

BILLING DATE: 09/20/22

ACC'T NO.: PW-ST4674-22

08/12/22	Prepare subpoena; Email exchanges; Email for signature; Second email; Email signed subpoena	PW	1.10	220.00
08/15/22	Review Attorney email; Telephone call; Further email exchange	PW	0.60	120.00
08/15/22	Download and print signed subpoena; Review email correspondence	RG	0.30	22.50
08/16/22	Telephone call re: hearing transcript, transcript generally, status of investigation costs, charges; Telephone call to update status	PW	0.40	80.00
08/17/22	Review and organize documents for Attorney Waystack during RG's absence	RG	0.40	30.00
08/18/22	Draft stipulation for admission of final transcript, review and edit, add captions, further edits; Telephone call re: status; Telephone call; Email stipulation to opposing attorney; Review response	PW	1.60	320.00
08/19/22	Email exchange with opposing attorney re: discovery	PW/O	0.20	0.00
08/22/22	Review and respond to opposing attorney's email re: discovery; Email to Attorney re: deposition	PW	0.40	80.00
08/23/22	Telephone call with Attorney re: follow-up on deposition; Telephone call re: brief discovery status report	PW	0.60	120.00
08/26/22	Travel from Whitefield to Concord and return	PW	3.00	600.00
08/26/22	Attend deposition; Brief conference with Attorneys	PW	0.80	160.00
08/29/22	Review, respond to Attorney email; Telephone call; Work on selecting exhibits for hearing	PW	1.40	280.00
08/31/22	Review Attorney email re: resolution; Email and telephone call; Review Rules of Code; Email to Attorney	PW	0.90	180.00
09/02/22	Email to Attorney re: narrow the issues to be tried; Telephone conference with Attorney	PW	0.55	110.00
09/06/22	Send executed transcript stipulation to opposing attorney	PW	0.20	40.00
09/06/22	Review exhibits, prepare exhibit list, scan fully executed stipulation	RG	1.80	135.00

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Judicial Conduct Committee
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Portsmouth, NH 03801

PAGE 5

BILLING DATE: 09/20/22

ACC'T NO.: PW-ST4674-22

09/07/22	Email to Attorney re: deposition and discuss potential exhibits for testimony; Email to opposing attorney re: errors in deposition; Email to Attorney re: status of settlement discussions and trial	PW	0.80	160.00
09/08/22	Multiple emails and telephone discussions with opposing attorney and JCC representatives	PW	0.80	160.00
09/08/22	Review matter with Attorney Waystack; Prepare and review timeline with Attorney Waystack; Review documents for exhibit preparation; Prepare emails to parties; Download, print and review deposition transcript	RG	1.40	105.00
09/09/22	Email to opposing attorney re: agreement in principle; Draft and send stipulation and agreement to opposing attorney	PW	1.20	240.00
09/09/22	Telephone call to cancel stenographer for hearing; Draft stipulation	RG	1.80	135.00
09/12/22	Review and respond to several versions of edits to stipulation	PW	0.90	180.00
09/12/22	Review proposed edits to Agreement and revise Stipulation and Agreement accordingly; Review additional proposed edits and revise Stipulation according to additional edits and resend to parties for review; Review exhibits to prepare for the hearing	RG	2.10	157.50
09/13/22	Review email correspondence, print signature page, email; Telephone calls	RG	0.60	45.00
09/14/22	Review email correspondence from Attorney	RG	0.10	7.50
09/14/22	Telephone call	PW/O	1.60	0.00
Total of New Services:			80.55	11,595.00

DATE	EXPENSE	AMOUNT
06/16/22	Postage	8.76
06/16/22	Photocopies: 20 @ .20	4.00
06/24/22	Postage	3.56

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PAGE 6
BILLING DATE: 09/20/22
ACCT NO.: PW-ST4674-22

06/24/22	Photocopies: 72 @ .20	14.40
08/17/22	Photocopies: 2 @ .20	0.40
08/26/22	Travel from Whitefield to Concord and return	104.40
Total of New Expenses:		135.52

ACCOUNT SUMMARY

PREVIOUS BALANCE:	\$0.00
NEW SERVICES:	\$11,595.00
NEW EXPENSES:	\$135.52
NEW PAYMENTS:	\$0.00
TOT. CURRENT PERIOD:	\$11,730.52
CURRENT BALANCE:	\$11,730.52

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New Hampshire Judicial Conduct Committee
132 Chapel Street
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NH 03801

Requested by: Robert Mittelholzer
Assignment No: NHJB-15309
Case Name: In the Matter of Dana Albrecht and Katherine Albrecht
Case Number: 659-2016-DM-00288
Hearing Date(s): 11/06/2020

Charge Description	Quantity	Each	Total
Transcription (R)	1	\$950.00	\$950.00
Invoice Total			\$950.00

Receipts	Type	Amount	Date	Total
Credit Card - Deposit	Payment	\$950.00	Mar 24, 2022	
Amount Now Due				\$0.00

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Bill to:

QTY. Ordered	Description	No. of boxes	Qty. per box	Qty. Delivered
659-2106-DM-00288, 2022-0517				
1	659-2106-DM-00288-20201106 In the Matter of Dana Albrecht and Katherine Albrecht Pages 144			1
	REC'D NH SUPREME COURT DEC 20 '22 PM4:21			

Signature: _____

J. Sanders

Date: _____

12-20-22

TESTIMONY OF PAULA WERME, ESQ. (RETIRED) ON HB218

I designed and executed in 2022 a 2½ month court audit in Rockingham County. I looked at well over 100 very voluminous court cases, and scanned with a high speed scanner, and read, probably over 10,000 pages of court orders, possibly much more. In reading those cases and orders, I came to a lot of conclusions about how the Family Court system works in the context of custody cases involving domestic violence. I know why legislators are more than aware that they get more complaints about the Family Division than any other NH governmental agency. First, let me state that the system works pretty well for litigants that don't have domestic violence or child abuse as an issue in a custody determinations, despite the wording of the statute that is unconstitutional.

The courts themselves were the architects of their own loss of legitimacy. Article 73-A gives them the right to pass rules that have the force and effect of law. Through a series of moves, they pushed through a parenting bill – more than one, because the problems preceded the 2005 overhaul of the parenting statute – designed to facilitate corruption and traumatize mostly women and children. The judges themselves pick the witnesses (the Guardians ad Litem and court appointed “evaluators.”) As a result, I found more than one Motion by a Guardian ad Litem to exclude testimony by a parental witness – someone that had done a psychological evaluation of a child or the child's own therapist. I have heard of judges throwing these witnesses out of the courtroom, or excluding them from the hearing altogether – and refusing to hear fact based witnesses of the parties. When they know there is actual evidence of abuse, they proceed directly to reunification “therapy” without a trial. I never saw in my audit any other type of “therapy” ordered. It is not “therapy” because it is unethical for psychologists to engage in it, and is not covered by insurance. That is because the overarching agenda in the NH Family Division is based on the factually flawed “Statement of Purpose – RSA 461-A:2:

461-A:2 Statement of Purpose. –

I. Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to:

- (a) Support frequent and continuing contact between each child and both parents.
- (b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.
- (c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, **unless there is evidence of domestic violence, child abuse, or neglect.**
- (d) Grant parents and courts the widest discretion in developing a parenting plan.
- (e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.

II. This chapter shall be construed so as to promote the policy stated in this section.

Source. 2005, 273:1, eff. Oct. 1, 2005.

The courts ignore the last half of the I(c) – the part I bolded - and the problem cases are creating the very expensive and wasteful and traumatizing cases in the Complex Case Docket, with the additional result that women and children are needlessly impoverished. The cases are very much not limited to the complex case docket either. They go on for years – sometimes for the entirety of the children's minority. Ann Marie Moynihan, the PhD whose thesis was entitled “Structural Violence in the NH Family Courts: An Autoethnographic Exploration,” case went on from 2002-2017. She

defended her thesis in 2018, but not before she was at serious risk of actual homelessness from the protracted litigation.

Years and reams of psychological research come to the conclusion that domestic violence and child abuse is not only traumatizing to children and mothers, it affects the physical and mental health of mothers and children for decades afterward. It shortens life spans. That the courts ignore this wording regarding domestic violence and child abuse and force 50/50 parenting in these cases is shameful. In the words of a very long time Guardian ad Litem – stated directly to me, “Abuse doesn’t matter. It’s what the judge wants.” I have appended a copy of a the first page of court printed parenting plan to the end of this testimony. The courts are going out of their way to ignore evidence of domestic violence and abuse – going so far as to keep evidence out of the court record when it has been brought to their attention that it exists by throwing witnesses out of the court without permitting them to testify.

NH FD Rule 1.25 D states:

D. Expert Witnesses.

(1) Within thirty (30) days of a request by the opposing party, or in accordance with an order of the Court, a party shall be required to supply a Disclosure of Expert Witness(es) as defined under Rule 702 of the Rules of Evidence, which document shall:

(a) identify each person, including any party, whom the party expects to call as an expert witness at trial;

(b) provide a brief summary of the expert's education and experience relevant to the expert's area of expertise;

(c) state the subject matter on which the expert is expected to testify; and

(d) state a summary of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

The party shall attach to the disclosure a copy of any expert report relating to such expert.

(2) A party may discover facts known or opinions held by an expert, who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (i) the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions 1.25 D (1) and 1.25 D (2) of this rule, and (ii) with respect and with respect to discovery obtained under subdivision 1.25 (D) (2), the Court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Again, throwing out party witnesses is unconstitutionally incompatible with the concept of due process. In the same case where the GAL is the one that put the child’s terror of her father on the record, A direct quote from a Judge Pendleton order:

girl. She said to me, "He scares me. I don't want to see him," and I know that that's really hard for [REDACTED] to hear. But she's very adamant about that. I don't think we can move

process as a result of Ms. [REDACTED] actions. The Court learned that the minor child has already met with Dr. [REDACTED] on 3 occasions without any contact or input between Dr. [REDACTED] and Mr. [REDACTED] or the GAL. Two of the visits were defined by Ms. [REDACTED] as evaluative sessions, while the first was an introductory session.

The Court is very troubled by this undertaking, and unlikely to consider any evaluation produced under the circumstances as objective. In the interim no further sessions are to occur with Dr. [REDACTED]. Ms. [REDACTED] is given 10 days to provide anything she provided Dr. [REDACTED] to the Guardian *ad Litem* and to Mr. [REDACTED]. She is also required to provide the GAL and Mr. [REDACTED] a copy of Dr. [REDACTED]'s curricular vitae. The Guardian *ad Litem* is also authorized by this Order to contact Dr. [REDACTED] to determine exactly what Dr. [REDACTED] was contracted for. Ms. [REDACTED] is required to cooperate in this process.

Again – loss of legitimacy. There are a few things going on in this order. First, the judge tried to order the discovery that was the responsibility of the parties to request. Second, he never questioned whether it may or may not be a medically recommended evaluation - he simply assumed it was not - so he may or may not have been practicing medicine without a license by ordering the evaluation to end; (I do know the answer, you don't get to know.) and third – he entirely ignored Rule 1.25 D regarding expert witnesses. It just didn't exist for him. He ordered up privileged information as if the concept of privilege did not exist. Finally, he brazenly and unapologetically violated the litigant's 14th A rights. The judge eventually ruled in favor of the GAL's Motion in Limine to exclude the evaluation results. There was a note in the same case in the GAL file concerning the court chosen evaluator's bias toward assuming parental alienation. Judicially chosen witnesses inevitably lead to corruption – and this has been going on in NH for well over a generation.

Judges have been so long abusing their power to waive or simply ignore court rules, so the only possible fix is to take away their power to do so.

My court audit found at least two more cases of judges excluding psychological witnesses chosen by litigants, and sadly, a motion by an attorney, no less, that basically stated "Pretty please, can we submit the psychological evaluation on the mother that we had done instead of the court evaluators report?" When an attorney is begging the court to exercise his client's 14th A right, you know the system is broken.

The Rules of Evidence were dispensed with at some point – again – by the judicial branch using their Article 73-A powers. The court appointed "expert evaluators" don't appear in court for cross examination, but submit written reports. I don't know the reasons for that. Rule 1.2 was passed. Rule 1.2 states: "As good cause appears and as justice may require, the family division may waive the application of any rule, except where prohibited by law." The courts are not putting on the record when they are ignoring rules – nor giving any reason that relates to "as justice may require" for doing so.

The family court system is basically a free-for-all without rule of law. A LOT more judicial discretion has to be removed that proposed in this bill – but it is a start.

Just one example of the ridiculous case law that came out of dispensing with the Rules of Evidence is the case of Miller v. Todd, 161 N.H. 630 (N.H. 2011). The Supreme Court ruled that parental alienation is cause to throw out the best interest of the child and switch custody from “alienator” to the non-custodial parent. Problem: Alienation is not defined under NH law – it’s more like pornography, I.e “We know it when we see it.” Actually, there is a soft definition of “parental alienation” in the custody statute. RSA 461-A:6 states, in relevant part that among the factors judges should be taking into consideration is “

(f) The support of each parent for the child's contact with the other parent as shown by allowing and promoting such contact, including whether contact is likely to result in harm to the child or to a parent. (g) The support of each parent for the child's relationship with the other parent, including whether contact is likely to result in harm to the child or to a parent.”

I’m sure you realize that promoting and allowing contact with an abusive parent or teaching a child that child abuse or domestic violence are wrong, that they have a right to be safe, while technically violating (f) and (g) is not parental alienation of any sort. It is good parenting – teaching your child the correct values. I found almost universally that the NH Family Division does not see it this way. In one custody case, a judge was entirely uninterested in a written report of a sexual abuse evaluation done by Dartmouth Hitchcock at the request of DCYF. He didn’t let it into the court record. He excluded relevant and material evidence on the issue of custody.

What is more, the National Council of Juvenile and Family Court Judges, backed by years of peer-reviewed journal articles in journals like “Child Custody” and “Journal of Child Trauma” universally agree that the theory of parental alienation is junk science. We now have settled case law in NH that says a judge can throw out the best interest of a child in cases of parental alienation, but no case that analyses the admissibility of testimony on parental alienation based on a “Daubert hearing” which is a hearing to determine the scientific validity of a theory. Again, this goes to legitimacy. From the 2008 “Judicial Guide to Child Safety in Custody Cases,” this is what the National Council of Juvenile and Family Court judges say regarding parental alienation:

“C. [§3.3] A Word of Caution about Parental Alienation³⁴

Under relevant evidentiary standards, the court should not accept testimony regarding parental alienation syndrome, or “PAS.” The theory positing the existence of PAS has been discredited by the scientific community. ³⁵ In *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999), the Supreme Court ruled that even expert testimony based in the “soft sciences” must meet the standard set in the *Daubert* case. ³⁶ *Daubert*, in which the court re-examined the standard it had

earlier articulated in the Frye 37 case, requires application of a multi-factor test, including peer review, publication, testability, rate of error, and general acceptance. PAS does not pass this test. Any testimony that a party to a custody case suffers from the syndrome or “parental alienation” should therefore be ruled inadmissible and stricken from the evaluation report under both the standard established in Daubert and the earlier Frye standard.”

In my court audit, I never saw a judicial analysis of whether contact is likely to result in harm to a child or parent. If they were there, they were in sealed orders. And the judges seal a LOT of orders. They protect the reputations of fathers by sealing orders that involve child abuse and domestic violence perpetrators. Joshua Savyon lost his life because Judge Kinghorn forced supervised visitation in a domestic violence case where there was a crystal clear threat to both mother and child. He may as well have killed the child himself.

The courts are universally referring cases to “evaluators” who routinely find “parental alienation.” In cases where the parents have no money for such evaluations, the judges routinely and without any statutory authority order “reports” from DCYF concerning parenting, sometimes “joining” them to the case – again – without statutory authority. Sometimes the DCYF “reports” in the case file are not disclosed to the parents – which is a horrible 14th A violation. Think “star chamber.” I never saw one court order that analyzed the effect of abuse or domestic violence on a child to justify a custody order. Think about that. IF they are making such findings, they are sealing the orders to protect the abusers. It is shameful. There were a lot of cases where custody changed multiple times – and alienation findings were not similarly sealed.

FD Rule 1.2 states: “As good cause appears and as justice may require, the family division may waive the application of any rule, except where prohibited by law.”

The watch word in the Family Division is “judicial discretion.” Much of the current language of the custody (“parenting”) statute is worded in terms of what the judge “may” do – not what s/he must do. e.g. the judge “may” not order mediation in cases of abuse or domestic violence but they are free to do so, and they almost universally order mediation after findings of abuse or domestic violence. Never mind that RSA 173-B prohibits court ordered mediation in cases involving domestic violence.¹ I found that sometimes they do it in the same order.

They usually order mediation prior to the preliminary hearing – which precedes discovery, before they can assess the presence of abusive behavior in a relationship. Mediation before discovery is tantamount to statutorily mandated violation of 14th A rights. Mediation should never precede the

¹ From RSA 173-B:5: “Court-ordered and court-referred mediation of cases involving domestic violence shall be prohibited.” The courts are applying this part of the law only to active DV orders. After an order expires, they are universally ordering mediation for the purpose of moving toward 50/50 custody.

completion of discovery in any sort of case. Again – despite the fact that almost every single divorce and custody case starts out with an unconstitutional order for mediation without discovery – the system actually works pretty well for the vast majority of cases. It doesn't work well at all for women who are battered or children who are abused.

With respect to the right to tape court proceedings by participants:

The legislature helped create this mess. I don't recall the year the legislature cut the court budgets so dramatically, but with respect to this bill, at some point, independent court monitors were eliminated, and the judges now control the recording equipment in the court rooms. As a result, there are quiet complaints that started up that things that happened in the hearings were being removed from the audio recordings. I don't have more than one case of hard evidence of this first hand, but I have plenty of examples based on second-hand reports. Gaps were discovered by litigants that purchased transcripts. They went back and listened to audio recordings, finding gaps in the audio as well. I enthusiastically support the wording of this part of the bill. Despite the "judicial branch's concerns," it would eliminate a lot of litigant concern over altered audio recordings. Their concern that the NH Supreme Court cases would be delayed is spurious. The Supreme court bounces the vast majority of family court mandatory appeals on technicalities. I have an opinion about outrageousness of the trial court's actions and the probability that an appeal will be bounced on a technicality. You can guess it. I intend to do more research on that later this year. All you have to do is to compare what the judicial branch said about the number of appeals pending at any one time to the number of Family Division opinions issued each year. There is a very huge gap in the numbers. Without doing the math, I would guess upwards of 90%?

Finally, I am attaching a complete copy of the 2008 National Council of Juvenile and Family Court Judge's publication "Judicial Guide to Child Safety in Custody Cases" to this testimony. I found that pretty much any and everything recommended in this guide is pretty much being ignored in the NH Family Division.

In conclusion – I support this bill.

Respectfully submitted,

Paula Werme, Esq. (retired)

HB218 relative to court rules and transcripts in the judicial branch family division.

Honorable Members of the House of Representatives Committee on Children and Family Law,

The ability of litigants to seek reconsideration or appeal depends on possession of a transcript of the hearing in question. Obtaining these transcripts can cost over \$1000.00 adding to the financial burden of the families. Furthermore, the Attorney for the Court, Richard Head admitted last year that the jurist has a foot pedal to stop recording. This often results in the loss of material to transcribe during critical portions of the events.

The ability of the litigants to make independent recordings of the hearings is critical to the maintenance of due process, and justice in the Family Court. Since the Family Court handles about 70% of the total Court docket, the performance and perception of the Family Court becomes the perception public perception of the Judiciary.

Hon. Daniel C. Itse

Tyranny is government in defiance of reality.

(603) 702-0381

Daniel Richardson

A person should always enjoy freedom to memorialize an his involvement in legal proceedings. It is sad that there is even a need to fix it since it should never have been in question.

JR Hoell

Please pass this bill.

Matthew Routhier

Rules are necessary for a fair and impartial review of a case. Without rules there is chaos. Allowing each party to produce their own recordings and transcripts should be allowed to hold all individuals accountable and maintain transparency in the family court.

HB 218-FN - AS INTRODUCED

2023 SESSION

23-0547

04/05

HOUSE BILL **218-FN**

AN ACT relative to court rules and transcripts in the judicial branch family division.

SPONSORS: Rep. Bernardy, Rock. 36; Rep. O. Ford, Rock. 3; Rep. Stapleton, Sull. 6; Rep. Cannon, Straf. 12; Rep. Love, Rock. 13; Rep. Weyler, Rock. 14; Rep. Post, Hills. 42; Rep. Moffett, Merr. 4

COMMITTEE: Children and Family Law

ANALYSIS

This bill prohibits the waiver of family court rules, except for fees, and allows a party to a family court proceeding to create their own recording or transcript of the proceedings.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
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 Twenty Three

AN ACT relative to court rules and transcripts in the judicial branch family division.

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

1 1 New Section; Judicial Branch Family Division; Judicial Waiver of Family Division Rules.
2 Amend RSA 490-D by inserting after section 3 the following new section:

3 490-D:3-a Judicial Waiver of Family Division Rules. The judge, magistrate, or marital master
4 in any family court proceeding shall not waive a family court rule except for rules related to fees.

5 2 New Section; Judicial Branch Family Division; Proceedings; Written Transcripts. Amend RSA
6 490-D by inserting after section 490-D:15 the following new section:

7 490-D:16 Proceedings; Written Transcripts. Each party in a family court proceeding under the
8 jurisdiction of this chapter shall have the right to create their own recording and written transcript
9 of the court proceedings for comparison with the official family court record. Each party's recording
10 or transcript shall be accompanied by a document that identifies the places where the party's
11 recording or transcript differs from the official recording or transcript. Each written transcript shall
12 include all information necessary to provide references by time stamp and shall be admissible in an
13 appeal where the proceeding is relevant. The appellate court shall review the differences in
14 recordings and associated transcripts and determine which recordings and transcripts are complete
15 and adequate for use in the appellate procedure.

16 3 Effective Date. This act shall take effect January 1, 2024.

**HB 218-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to court rules and transcripts in the judicial branch family division.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill prohibits the waiver of a family court rule, except for fees, and allows a party to a family court proceeding to create their own recording or transcript of the proceedings.

The Judicial Branch indicates this bill would result in an indeterminable increase in state expenditures. The Branch does not have information on how the inability to waive any rule would affect the number and length of court proceedings. The bill would also allow parties in Family Division proceedings to create their own recording and transcript of the court proceeding. The recording or transcript would be subject to review by the Supreme Court for differences in recordings and associated transcripts to determine which are complete and adequate for use in the appellate procedure. The Branch reports there are generally between 180-200 appeals from Family Division filed in the Supreme Court. It is unknown how many appeals would include requests for review of recordings to determine any differences between the official transcript and the recording. Any such requests would result in additional court resources to perform the comparison and a delay in the Court’s proceedings.

AGENCIES CONTACTED:

Judicial Branch