

SPECIAL COMMITTEE OF THE LEGISLATURE ON FAMILY COURT

Tuesday, May 16, 2023

Testimony of Catherine Shanelaris, Esq.

Shanelaris & Schirch, PLLC

35 East Pearl Street

Nashua, NH 03060

603-594-8300

Good morning Chairman Pearson and distinguished committee members.

My name is Catherine Shanelaris. I was contacted by the NH Bar Association to testify about my experience as a family law practitioner and as a member of the NHBA's family law section.

I very much appreciate the opportunity to talk with you today.

I have been a practicing family law attorney for just about 30 years. I'm here to provide you with my perspective and understanding as a practitioner working in the court system for a long time.

Just by way of some background:

I am one of the founders and partners in my firm, Shanelaris & Schirch, in Nashua. Our firm has been operating for 23 years and we practice only family law which includes, divorce, child support matters, guardianship for minor and parenting cases.

Prior to my work at my firm, I was the chief staff attorney at the NH Dept. of HHS, Division of Child Support Services.

I am a governor at large for the NHBA Board of Governors.

I am just finishing my term as a director on the board of directors for 603 Legal Aid, which is the legal services organization that provides legal representation, advice and education to qualifying low income people in a variety of legal matters. Prior to 603 Legal Aid, one of its predecessor organizations was the Pro Bono Referral Program to which I was a board member for nearly 20 years.

I have been appointed by the NH Supreme Court as a commissioner on the Access to Justice Commission and been a commissioner since 2007.

I have experience in both being in court and working with families as a family law attorney as well as with being involved with some of the stakeholder legal organizations, to hopefully provide you some information and resources that may be of assistance.

I know one of the purposes of this special committee is to investigate irregularities in the family law process at the circuit court including delays, denial of process and other procedural issues.

It seems that some of the complaints are around the court rules and rules of evidence.

Some issues for self-represented litigants may involve the application of the rules, especially how those rules are applied to the types of case or facts of the case.

For example, Circuit court family division Rule 1.28 regarding making an offer of proof in the court room. Offer of proof is a representation by an attorney or individual representing him or herself while making a presentation to the court. See Court Rule 1.28 attached.

Rule 2.19 regarding temporary hearings. See Court Rule attached.

Rules of evidence do not have a technically strict application in family case or that the rules are applied on a limited bases. Some cases, like domestic violence, have an actual rule that states that the Rules of evidence don't apply.

NH Supreme cases going back decades holding that the rules of evidence don't have a strict application. 1950.

Despite that, the family division follows two rules rather strenuously - relevance and hearsay. RULE 1.28 Offers of proof.

Examples - PD records, hospital records or other professional records. Different than a letter written by a family member or teacher or text messages or Facebook pages.

I have not personally seen the courts avoid following the court rules. It is my experience that the court applies the court rules very evenly to both attorneys and self represented individuals.

Rules of evidence application very factual to the case.

For good reason that the court has to be able to weigh the evidence as the finder of fact and give it appropriate weight to the situation for example to make a ruling in the best interest of a child or to a victim of DV.

RSA 461-A:6 lists a variety of things the court can consider when deciding what is in child's best interest. For example photographs, who took them, what purpose do they serve.

There have been a weighted case study by the NH Supreme Court that showed the need for 32 more court clerical staff and 18 more judges in all of the circuit courts, including family division.

In 2022, there were over 15,600 cases filed in the Family Division of the circuit court. Over 7000 (587/month on average) of those cases were divorce/parenting cases and over 3800 (321/month) in domestic violence cases.

1. My experience on delays is the lack of enough judges and equally important the lack of court clerk staff to process those cases. Because of my length of time in working in the courts, I have seen the court day go from starting the day at 9:00 am, taking an 1.5 hours for lunch and returning at 1:30 pm to now the courts starting to hear cases at 8:00 am. The judges will often work through their lunch to hear case and I know many judges that work consistently on nights and weekends to get their orders done as they don't have enough designated writing time to hear cases because they are hearing back to back cases all day.

As important then is the clerk's office being able to process those orders and get them out. Clerk's office down 30 percent after COVID.

While I don't intend to be an expert in any way on how the court processes orders, for example that any time a domestic violence case petition is filed by a victim, the judges have to fit those cases into their already scheduled days full of hearings. The clerks office also has to stop working on other cases to process the petition, issues orders to notify the defendant, contact the sheriff's office to serve the petition and notify the National Crime Information Center and NH state registries. There are deadlines for hearing the cases and issuing orders. And they are cases just by example that have to fit into the judge's and clerks already scheduled days. Domestic violence cases are scheduled in 30 days or if Defendant requests, must be scheduled in 5 days.

Divorce, parenting and child support cases, once filed have notices that need to be served and hearing scheduled. It is a great deal of work for the clerk's office along with processing all the orders for existing cases.

I have been in court when we are working to schedule a final hearing for example and many of those case are being scheduled at the end of the year. It's a long time for a litigant to wait, but often there are no dates available for months.

Having judges and court staff to manage and process the family cases is a priority.

On the NH Judicial Branch website there are a number of helpful reports and data that this committee could review. The reports are broken down by courts and often case types and are a really helpful resource.

I know chairman Pearson you wanted to keep this committee positive and there's so many things that members of the public can do to educate themselves about the process and what they need to do to be prepared.

There are a lot of barriers to access to justice, but there are also a great deal of underutilized resources by.

2. I want to discuss that many resources are available to help self-represented individuals navigate the process.

Court website:

Self-Help leads to forms, videos (what to expect at court, filing a DV, divorce, first appearance), how to checklists, court rules, statutes, the law library, lawyer referral services and legal aid, most importantly all forms. See checklist.

The Court rules are very informative and chronological how to deal with a case from start to finish. There are a lot of deadlines that self-reps need to be aware of.

The court rules discuss what forms are needed for a particular type of hearing. For example what to bring to a pretrial conference.

While there are multiple sections of the law that pertain to domestic relations, the three main statutes are RSA 461-A - parenting, RSA 458 - divorce and RSA 458-C child support. It is difficult to read those statutes and then apply them to the court process for a person representing him or herself.

Which is why court rules are so critical.

Bar Association Website:

Bar Association programs, referral services, court rules and laws, asking a legal question through the Free Legal Answers program and Lawline, publications and law related educational programs.

Free legal answers initiative with the ABA. Totally free, totally underutilized.

Lawline: Second Wednesday of each month from 6-8 pm.

3. I am not here to speak on behalf of the A2J Commission but some of their information and initiatives are working to help expand how self-represented individuals can receive help and access the court system.

For example, pilot project court navigators. One in Nashua and another that travel. Provide how to assistance to members of the public in filing cases and answer questions about their cases.

A2J has 5 current task forces – regarding fines and fees (including rules for the waiver of filing fees), attorney access, disability access, language access and self representation.

Currently the commission is working on American Rescue Plan Act (ARPA) Funding 2021 (\$1,191,610) designated for six Commission priorities:

Simplification and Translation of Court Forms;
Expand the Court Legal Navigator Program;
Alternative Dispute Resolution;
Legal Navigator Portal;
Virtual Court Center;
And Data collection to measure the impacts of the projects.

A2J currently beginning work on community navigators who will be trained individuals who volunteer to assist self reps in the court system.

Develop a Pilot program with public libraries to provide presentations on legal topics, training the trainers to help train librarians to assist self represented individuals navigate the court system.

So many people go to their local library for help and ask the librarians for assistance.

Report Jan. 2021 conducted a report of civil legal needs in NH.

Annual reports.

So many projects and initiatives impossible to discuss here. The Committee can read the annual reports of the A2J Commission on the judicial branch website under resources.

Nearly 80 percent of all family law cases have at least one self-represented litigant involved. The law in the domestic relations is complex. QDRO's.

A lot of stakeholders are working very hard to assist self reps and there is so much information available, I have only skimmed the tip of the iceberg.

Happy to answer any questions.

Rule 1.28 Offers of Proof

[back to top](#)

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

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

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

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

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

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

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

Rule 2.19 Temporary Hearing

[back to top](#)

A. Subject to the rules regarding mediation, the Court may schedule a temporary hearing if one is requested by either party. The notice of this hearing shall indicate the amount of time allotted for the hearing, generally thirty (30) minutes. Temporary hearings shall be conducted by offers of proof. Parties shall comply with the provisions of Family Division Rule 1.28 pertaining to Offers of Proof.

B. Motions for extended or evidentiary temporary hearings shall be heard at the time specified in the notice of hearing, unless ruled upon in advance by the Court.

C. If a temporary hearing is scheduled, a scheduling conference shall generally also be held at the same date and time. In the event a temporary agreement is reached, the parties must still appear for the scheduling conference.

D. Seven (7) days prior to the temporary hearing, the parties shall file and exchange financial affidavits and proposed temporary decrees; and if minor children are involved, agreed upon and proposed parenting plans, uniform support orders, and child support worksheets.

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

Family Division - New Case Filings Calendar Year 2022

Case Category	Family	Family	Family	Family	Criminal	Family	Family	Family	Family	
Case Type Group	Adoption/ Surrender	Domestic Matters	Domestic Violence	Guardianship of Minor	Juvenile	Juvenile	Marriage Waiver	Name Change	Termination of Parental Rights	Total
1st Circuit - Family Division - Berlin	18	101	73	26	15	71			14	318
1st Circuit - Family Division - Colebrook	4	32	29	14	6	20			2	107
1st Circuit - Family Division - Lancaster	3	75	49	18	10	34			10	199
2nd Circuit - Family Division - Haverhill	1	45	33	13	2	11			7	112
2nd Circuit - Family Division - Lebanon	14	138	103	25	29	27			3	339
2nd Circuit - Family Division - Littleton	15	73	60	10	3	45			14	220
2nd Circuit - Family Division - Plymouth	5	110	123	22	29	23			4	316
3rd Circuit - Family Division - Conway	6	93	64	21	6	27			9	226
3rd Circuit - Family Division - Ossipee	16	139	95	34	17	18			3	322
4th Circuit - Family Division - Laconia	23	386	254	85	55	122			39	964
5th Circuit - Family Division - Claremont	15	196	140	35	12	65			18	481
5th Circuit - Family Division - Newport	16	127	76	18	7	44			7	295
6th Circuit - Family Division - Concord	41	378	192	61	86	112			70	940
6th Circuit - Family Division - Franklin	12	250	157	42	37	80			22	600
6th Circuit - Family Division - Hillsborough	16	129	83	16	10	23			14	291
6th Circuit - Family Division - Hooksett	10	110	89	26	21	17			21	294
7th Circuit - Family Division - Dover	17	316	172	51	19	76			24	675
7th Circuit - Family Division - Rochester	43	449	268	69	85	100			28	1,042
8th Circuit - Family Division - Jaffrey	12	156	61	19	35	49			10	342
8th Circuit - Family Division - Keene	25	403	146	75	16	106			16	787
9th Circuit - Family Division - Goffstown	7	141	76	15	37	34			13	323
9th Circuit - Family Division - Manchester	83	829	509	138	180	259			111	2,109
9th Circuit - Family Division - Merrimack	8	228	75	22	19	8			6	366
9th Circuit - Family Division - Milford	6	155	61	16	36	12			4	290
9th Circuit - Family Division - Nashua	37	670	306	79	66	125	1		55	1,339
10th Circuit - Family Division - Brentwood	4	292	112	17	16	6			8	455
10th Circuit - Family Division - Candia	12	163	58	7	17	11			6	274
10th Circuit - Family Division - Derry	5	336	165	26	62	13			6	613
10th Circuit - Family Division - Hampton	2	131	65	20	20	8			2	248
10th Circuit - Family Division - Portsmouth	10	110	53	13	26	27			9	248
10th Circuit - Family Division - Salem	3	293	113	22	47	16			5	499
Total	489	7,054	3,860	1,055	1,026	1,589	1	0	560	15,634

Data from *Circuit Court Case Filings and Dispositions* CourTools report run 2/7/2023
 New case filings do not include cases that were reopened after an original entry of judgment

Court Service Center

New Hampshire Circuit Court

HOW TO FILE FOR DIVORCE OR LEGAL SEPARATION WITH MINOR CHILDREN

General information:

- Jurisdiction: One of the following must apply to file for divorce in New Hampshire:
1. Both parties live in New Hampshire,
 2. The petitioner (the spouse starting the divorce action) has lived in New Hampshire for one year, or
 3. The petitioner lives in New Hampshire and their spouse can be served with divorce papers in New Hampshire.

Forms listed below are needed to start this action:

- Joint Petition for Divorce (NHJB-2058-F)
- Individual Petition for Divorce (NHJB-2057-F)
- Joint Petition for Legal Separation (NHJB-2060-F)
- Individual Petition for Legal Separation (NHJB-2059-F)
- Personal Data Sheet (NHJB-2077-F)

How much will this cost?

- \$252.00

What will happen next:

- A letter will be sent to the Respondent notifying him/her that they have 10 days to go to the court and pick up their copy of the Divorce or Legal Separation Petitions. (Does not apply to Joint Petitions.)
- If Respondent does not go to the court and pick-up the paperwork the court will then send the Petitioner the paperwork along with instructions to have the Respondent served by certified mail or by Sheriff service.
- After a joint petition is filed, or after service of an individual petition, you will be scheduled for a First Appearance session. At this session, a judge or master will explain the court process and highlight important things to think about involving your children.
- Child Impact Seminar information will be sent to the parties and is encouraged that the parties sign up or have taken the class prior to First Appearance. More information on this seminar is on www.courts.state.nh.us/fdpp

Forms that will be needed to finalize your divorce or legal separation:

- Certificate of completion of the Child Impact Seminar
- Parenting Plan (NHJB-2064-F)
- Financial Affidavits completed by each party (NHJB-2065-F)
- Vital Statistics Form must be completed for divorce, legal separation, civil union dissolution or annulment to be final.
- Final Decree on Divorce or Legal Separation (NHJB-2071-F)
- Uniform Support Order (NHJB-2066-FP)
- Uniform Alimony Order (NHJB-3058-F) (If applicable)
- Child Support Guidelines Worksheet (NHJB-2101-FP)
- Agreement and Parenting Plan Order Designating School District (NHJB-2763-F) (If applicable)

Forms and Instructions are available at any NH Circuit Court

Additional information can be found at:

www.courts.state.nh.us/fdpp

461-A:6 Determination of Parental Rights and Responsibilities; Best Interest. –

I. In determining parental rights and responsibilities, the court shall be guided by the best interests of the child, and shall consider the following factors:

- (a) The relationship of the child with each parent and the ability of each parent to provide the child with nurture, love, affection, and guidance.
- (b) The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
- (c) The child's developmental needs and the ability of each parent to meet them, both in the present and in the future.
- (d) The quality of the child's adjustment to the child's school and community and the potential effect of any change.
- (e) The ability and disposition of each parent to foster a positive relationship and frequent and continuing physical, written, and telephonic contact with the other parent, including whether contact is likely to result in harm to the child or to a parent.
- (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.
- (h) The relationship of the child with any other person who may significantly affect the child.
- (i) The ability of the parents to communicate, cooperate with each other, and make joint decisions concerning the children, including whether contact is likely to result in harm to the child or to a parent.
- (j) Any evidence of abuse, as defined in RSA 173-B:1, I or RSA 169-C:3, II, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.
- (k) If a parent is incarcerated, the reason for and the length of the incarceration, and any unique issues that arise as a result of incarceration.
- (l) The policy of the state regarding the determination of parental rights and responsibilities described in RSA 461-A:2.
- (m) Any other additional factors the court deems relevant.

I-a. If the court concludes that frequent and continuing contact between each child and both parents is not in the best interest of the child, the court shall make findings supporting its order.

II. If the court finds by clear and convincing evidence that a minor child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature minor child as to the determination of parental rights and responsibilities. Under these circumstances, the court shall also give due consideration to other factors which may have affected the minor child's preference, including whether the minor child's preference was based on undesirable or improper influences.

III. In determining parental rights and responsibilities under this section, including residential responsibility, the court shall not apply a preference for one parent over the other because of the sex of the child, the sex of a parent, or the financial resources of a parent.