"All Sail and No Anchor"[1]

Interlocutory Appeals in New Hampshire

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Taking an interlocutory appeal is tempting. It seems that there ought to be a way to answer an unanswered question of law before attorney and client are put through the emotional and financial costs of trial. An interlocutory appeal may seem especially tempting when the unanswered question is whether the law allows liability at all[3] or whether critical evidence will be admitted.[4]

Resist the temptation; the New Hampshire Supreme Court rejects many interlocutory appeals.[5] This article gives some background on the Court's attitude toward interlocutory appeals, and sets forth the conditions when it might hear yours.

I. Definition

An interlocutory order of the lower court is one that is not a final decision on the merits.[6] Appellate review of such an order is an interlocutory appeal."[7]

There are two types of interlocutory appeals[8] -- an appeal from an interlocutory order upon which the lower court entered a ruling,[9] and a transfer of an interlocutory question upon which the lower court did not rule.[10] But because neither the substantive nor procedural law governing them differ greatly, this article refers to them interchangeably as interlocutory appeals.[11]

It is not always clear whether a lower court order is final or interlocutory.[12] In such cases the Court may order one or both parties to submit a memorandum showing why the case should not be considered one or the other.[13] The procedure for filing an interlocutory appeal differs substantially from the procedure for filing a standard appeal from a final decision on the merits,[14] so care should be taken to determine whether an appeal is interlocutory or not.

II. History and Why the Court Does Not Like Interlocutory Appeals

For most of New Hampshire's judicial history, the law court (and later the Supreme Court) was happy to rule on questions of law for which the facts had not been decided, even belittling the idea that it was considered irregular in other states.

> "It has been the practice here, as far back as the memory of any member of the bar can go, when important questions of law were involved in a controversy the decision of which might shorten the trial of the facts, to settle such questions first. . . . The theory that questions of law could be finally determined only . . . after final judgment has been so long abandoned as to be practically unknown to practitioners at this bar. The convenience and advantages of the . . . system appear from its statement. It is as well known in practice as it is useful in doing justice. But it is said that the procedure is peculiar to this jurisdiction."[15]

Nonetheless, the Court tried somewhat to limit scope of the practice.[16]

Starting in the early 1970s the Court's caseload vastly expanded.[17] The Court then began to express a distaste for interlocutory appeals and began to actively discourage them, at least in criminal cases.[18] The Supreme Court Rules, promulgated in 1979, formalized the Court's current policy of encouraging litigants to wait until their cases are tried to finality before taking an appeal.[19]

The Court has given a number of reasons for discouraging interlocutory appeals, including their "piecemeal" nature,[20] the ability of lower courts to change their interlocutory orders,[21] the fact that all the evidence in the case is not yet presented,[22] the diversion of time and energy of both the Court and the bar from other matters,[23] unnecessary delay in litigation,[24] and

the New Hampshire Constitution.[25] In a 1977 appeal from a District Court misdemeanor criminal case in which a *de novo* Superior Court trial was available, the Supreme Court provided what is probably its most compelling reason for discouraging interlocutory appeals:

> "The impact on this court's caseload and workload resulting from the increasing prevalence of [interlocutory] transfers by district and municipal courts has induced this court to declare through the instant case the standards for such transfers to this court.
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> . . .
>
> "The caseload of this court doubled from 1970 to 1975 alone. . . . [T]ransfers of questions of law to the supreme court in advance of trial in the district and municipal courts and of trial in the superior court under our de novo appeal system where motions may be renewed are a misapplication of judicial resources.
>
> "Issues raised at district and municipal courts may or may not be raised at superior court and, of course, after the initial trial, should the defendant be found not guilty at either level, no appeal to this court would even be necessary.
>
> "Accordingly, . . . there should be no further transfers of interlocutory matters . . . from district or municipal courts . . . except in the discretion of the district or municipal court in exceptional circumstances.[26]

A year later the Court extended this reasoning to civil cases and to cases in which there is no *de novo* appeal:

> "We encourage superior court judges to look less favorably upon parties' requests for interlocutory appeals in civil cases . . . and to exercise their appropriate function by rendering a final verdict before allowing the parties to bring their exceptions to us. Such a policy better applies judicial resources."[27]

In refusing to take an interlocutory appeal from an administrative agency decision, the Court said:

> "All across our State and nation, lawyers daily are faced with important legal questions which they would prefer to have definitively answered by an appellate court. Our constitutional republic, however, confines the judiciary to deciding cases and not to serving as a 'super law firm,' no matter how high the stakes or how important the question. Were we to accept this transfer, the power of the judiciary would be expanded beyond anything heretofore known in America. The hydraulic pressure of a hard case cannot compel us to expand our limited authority under the constitution. The judiciary's ship is not meant to be all sail and no anchor."[28]

The Court has thus come full circle and has unequivocally told lawyers and judges of its antipathy toward interlocutory appeals in virtually all cases.

III. The Conditions Under Which the Court Accepts Interlocutory Appeals

Getting an interlocutory appeal before the Supreme Court is a two-step process: first the lower court must be persuaded that the case deserves to be transferred,[29] and then the Supreme Court must be persuaded that it should accept the transfer.[30] Because the standards in both courts are the same, the two steps need not be considered separately. Where this article discusses the Supreme Court's discretion to accept or decline a case, the reasoning applies equally to the lower court's discretion to approve or reject a transfer.

To be accepted for interlocutory appeal, the appellant must make two allegations. First, the appellant must allege that a "substantial basis exists for a difference of opinion on the question."[31] While most cases on appeal necessarily pose some basis for a difference of opinion, the Court requires a "substantial" basis for an interlocutory appeal. No case is known in which the Court has commented on this requirement, but few cases the Court has decided on interlocutory appeal are clear cut or appear easily resolved. For example, the Court heard on interlocutory appeal

whether sellers of candy, chips, and snacks sold in vending machines must pay New Hampshire's meals tax when grocery stores selling the same items do not.[32]

Second, the Supreme Court will take interlocutory appeals only in "exceptional cases" or under "exceptional circumstances."[33] Even so, the New Hampshire Supreme Court will more willingly hear interlocutory appeals than will the federal appeals courts, which labor under jurisdictional restrictions contained in the federal constitution.[34]

What is "exceptional" has never been explicitly defined, but a good recent example was a case where the question was whether a claim based on "repressed memory" of long-ago sexual abuse can survive the statute of limitations.[35] Similarly, the Court heard on interlocutory appeal the question whether uninjured parents who witness their child's injury can recover for emotional distress.[36] Although the court did not comment on why it took the appeals on an interlocutory basis, they had the requisite novelty and importance.

Clearly not appropriate for interlocutory appeal are cases in which the

> "questions transferred do not appear to relate to an issue now in litigation between the parties. Rather [the questions] appear to be asking advice as to future litigation. [In such a] case, we would be compelled to refuse to answer the questions as we are not authorized to give advisory opinions to private litigants."[37]

The Court will not take an interlocutory appeal when the law requires a factual balancing and the facts to be balanced are not yet in the record.[38]

While the Court almost never explains why it takes an interlocutory appeal,[39] there are five types of cases which the Court has indicated by rule or decision are "exceptional" and may therefore be appropriate for an interlocutory appeal.

A. Expediting Litigation

The Supreme Court may accept an interlocutory appeal when it "may materially advance the termination or clarify further proceedings of the litigation."[40] Of course virtually any interlocutory appeal could expedite a case to some degree, but for the Court to take it, the appeal must hurry it to an extraordinary or exceptional degree.[41]

Thus, for example, the Court took an interlocutory appeal to determine whether second cousins of an intestate decedent could take as "heirs" to defeat escheat where second cousins were not specified in the intestate distribution statute.[42] The Court also took an interlocutory appeal in a case which ended in a mistrial where it was apparent that the same issues would present themselves in the second trial.[43]

The Supreme Court has often heard interlocutory appeals in cases which raise new theories of liability,[44] such as the liability of police officers to third parties,[45] jailors to prisoners,[46] partners to creditors,[47] and real estate brokers to home buyers[48] and clients.[49] The Court may also take cases which give it an opportunity to change, alter, or clarify[50] existing actions. For instance, the Court heard an interlocutory case in which it ruled on the continued viability of the common law "doctrine of necessaries," in which the controlling cases were decided in the mid-19th century and which is grounded on married woman being the property of their husbands.[51] The Court may also hear interlocutory cases raising new defenses.[52]

The Court has at times taken interlocutory cases when it has already issued an opinion and the same case later presents related or additional issues.[53]

The fact that an interlocutory appeal will save the litigants time and money on the litigation itself is not exceptional enough for the Court to hear the case.[54]

B. Preventing Substantial and Irreparable Injury

The Court may hear an interlocutory appeal if it will "protect a party from substantial and irreparable injury"[55] or "where the error alleged in the particular case demands attention to prevent injustice."[56]

The Supreme Court will accept an interlocutory appeal when going forward is itself a violation of an important or constitutional right, such as double jeopardy,[57] competence to stand trial,[58] certification of a juvenile to stand trial as an adult,[59] imposition of a suspended sentence,[60] application of a statute of limitations,[61] or application of *res judicata*.[62]

The Court will also hear an interlocutory appeal if the injury alleged cannot be undone by a mere appeal, such as disclosure of allegedly private information,[63] requiring sex offenders to register with local authorities,[64] whether a case should have been declared a mistrial,[65] the loss of a significant business opportunity,[66] when enforcement of a zoning ordinance would entail destruction of property,[67] retrospective application of laws,[68] whether a case receives a trial by

jury,[69] or the right to not have assets attached.[70]

In criminal cases, the Court has often heard cases in which a lower court ruling on the availability or admissibility of evidence is tantamount to disposition of the case.[71] Similarly, the Court may hear an interlocutory appeal in civil cases when a trial court decision on the availability or admissibility of evidence is dispositive of liability or of the ability to state a claim.[72]

Other cases in which the Court has found potential injury sufficient to hear an interlocutory appeal have been whether a statute disallowing recovery of a utility's costs is constitutional in the context of an emergency rate proceeding, [73] whether preventing the reconstruction of a building was a taking when its burned condition was evidence in a criminal case,[74] whether an indictment should have been quashed for being untimely,[75] and enforcement of a non-competition covenant.[76]

There are no doubt other classes of injury which the Court might address by interlocutory appeal. But the irreparable injury associated with losing a case will not move the Court to accept it as the Court recognizes that "[w]hatever course is taken, inconvenience or injury may result to one party or the other."[77]

C. General Importance to the Administration of Justice

The Court may accept an interlocutory appeal if it "present[s] the opportunity to decide, modify or clarify an issue of general importance in the administration of justice."[78] To limit the potential scope of this ground for appeal, the Court requires that the case be compelling, that it present "the *need* to secure settlement of important questions of law," "the *need* to secure settlement of questions of public interest," a "*strong* public interest to be served by resolving the questions presented,"[79] or that it present a "new or important question."[80] For instance, the Supreme Court heard an interlocutory appeal to resolve the clash of two statutes, where the lower court was in the unenviable position of violating either the one or the other.[81]

The Court may take an interlocutory appeal when "the questions raised in th[e] litigation are important and novel issues in New Hampshire, and will have an impact on the procedures used by"[82] large or important groups of people or institutions. Thus the Court has heard on interlocutory appeal cases which raise issues having a broad impact on the operation of state government, such as sovereign immunities,[83] and the procedural requirements for the termination of a state contract.[84] Similarly, the Court has heard interlocutory cases raising issues that affect local governments, such as municipal immunity,[85] the authority of towns to contract with private companies for municipal services,[86] the authority of towns to collect fines in small claims court,[87] and how towns determine road classifications.[88] The Court has heard interlocutory cases raising various taxation issues such as the constitutionality of the business profits tax,[89] whether sellers of agricultural land must pay it,[90] and whether snacks are taxed under the state meals tax.[91] Similarly, the Court has heard interlocutory cases regarding the operation of local property taxes such as the authority of a town to tax allegedly state property,[92] whether non-profit low-income housing is exempt from property taxes,[93] and procedures towns must use in conducting a tax sale.[94]

The Court has taken interlocutory appeals when the issues may have a broad effect on the operation of churches,[95] hospitals,[96] non-profits,[97] or an important institution,[98] or are likely to affect many people.[99] Similarly, the Court has taken interlocutory appeals when the issues raised are likely to effect many legal proceedings such as standing to sue,[100] state law preemption of local ordinances,[101] federal preemption of local or state law,[102] jurisdiction of New Hampshire courts generally,[103] jurisdiction of the superior courts,[104] jurisdiction of the district courts,[105] jurisdiction of the probate courts,[106] the authority of other tribunals,[107] issues likely to effect juvenile proceedings,[108] and the procedural requirements for temporary injunctions.[109]

The Court has frequently taken interlocutory cases raising issues likely to effect many criminal proceedings, such as the facial unconstitutionality of a criminal statute,[110] the authority of police,[111] competence to stand trial or to plead guilty,[112] operation of the habitual offender statute,[113] application of the Interstate Agreement on Detainers in New Hampshire courts,[114] and the operation of a witness immunity statute.[115]

Finally, the Court will hear interlocutory cases that raise questions about the proper functioning of government, such as whether overriding a gubernatorial veto by the House of Representatives requires a two-thirds vote of the entire House or merely a two-thirds vote of those present,[116] or whether the governor can create an agency without legislative authority.[117]

No matter how important the question, however, the Court will be compelled to decline a case

if the facts on the record are insufficient for decision.[118]

D. Uniformity of Decision

The Supreme Court may accept an appeal if the case presents "the need to secure uniformity of decision."[119] While there are no known interlocutory uniformity-of-decision opinions, at least one litigant has tried to create one. In a civil case alleging long-ago sexual abuse, the appellant claimed that the Superior Court in various counties had issued inconsistent rulings on the issue of the application of the statute of limitations. The Court declined the appeal on other grounds.[120]

E. Supreme Court's Supervisory Authority

The Supreme Court may accept an interlocutory appeal if the case presents "the need for the exercise of the Supreme Court's supervisory authority."[121]

"This court has the inherent power to take reasonable and expeditious action in the suspension or removal of members of the bar for the protection of the community."[122] Thus, the Court heard on interlocutory review allegations of attorney conflict of interest,[123] a case in which an attorney had been involved in the matter for so long that he had allegedly become a witness and was therefore disqualified from continuing to represent a party,[124] and rulings on various motions filed in defense of a disbarred attorney before the Professional Conduct Committee.[125] Similarly, the Court heard an interlocutory appeal of an allegation that a party had failed to inform another party of an appeal concerning the same property.[126]

Pursuant to its supervisory authority the Supreme Court heard on interlocutory appeal a case concerning the operation of a district court rule[127] and an allegation that the superior court had exceeded its jurisdiction.[128] Similarly, an interlocutory appeal was accepted concerning the disqualification of a judge.[129]

Although no longer relevant given the State's statutory authority to appeal adverse decisions in criminal cases,[130] the Supreme Court formerly heard such cases on writs of certiorari based on its authority "to exercise general superintendence of all courts within the state."[131]

IV. Forums from Which an Interlocutory Appeal May Be Taken

New Hampshire law allows a party to take an interlocutory appeal from any court in the state.[132]

One may not transfer an interlocutory question from an administrative agency without specific statutory authority.[133] When there is such authority, the question must arise from an adversary proceeding, and not amount to a request for an advisory opinion.[134] Agencies from which an interlocutory appeal may be taken include the Board of Tax and Land Appeals,[135] the Department of Revenue Administration,[136] and the Public Utilities Commission.[137]

If no statutory avenue of interlocutory appeal exists, one may apply to the Supreme Court for a writ of certiorari,[138] but the Supreme Court will limit its review to whether the agency acted "illegally in respect to jurisdiction, authority or observance of law."[139]

V. Procedure

The procedure for applying for an interlocutory appeal, while not well explained in the rules, is straight forward and is the same from all courts.[140] The procedure is the same whether one is applying[141] for an interlocutory appeal of a ruling, or an interlocutory transfer without ruling.[142]

The moving party[143] must file in the lower court a Interlocutory Appeal Statement (or Interlocutory Transfer Statement). The Statement must contain[144] a statement of facts,[145] an unambiguous statement of the question,[146] a statement of the reasons the Court should grant interlocutory review,[147] and the basis on which there exists a substantial difference of opinion on the question.[148] It should also contain a list of counsel for all parties and a list of the exhibits necessary for the Supreme Court to decide the case. The Statement's caption should identify it as being filed in the lower court, not the Supreme Court.

To be successfully transferred, the Statement must be approved and signed by the lower court.[149] Thus, the Statement should be written to persuade the lower court that the case ought to be transferred, and to persuade the Supreme Court to accept it. The Statement ought to end with a date line and signature line for the lower court preceded by language such as: "Interlocutory transfer approved." Along with the Statement good practice dictates the filing of a Motion to Allow Interlocutory Appeal (or Transfer) in the lower court.[150] Alternatively, the Statement can be in the form of a motion and end with a clause requesting the presiding judge to sign the request for interlocutory

transfer. An opponent probably has 10 days to object.[151] It is unlikely that a court will hold a hearing on the Motion, but it is not unheard of.[152]

The lower courts' rules require that the Statement be filed with the lower court "seasonably,"[153] which is nowhere defined.[154] "Seasonably" probably means that the Statement must be filed before a party relies on it not being filed, or before the lower court takes some further action based on the presumed validity of the interlocutory order. As a matter of caution, it probably ought to be filed within 30 days of the lower court's order, as that is the standard time for Supreme Court review.[155]

Once the Statement is signed by the lower court, it must be filed in the Supreme Court within 10 days of the lower court's approval.[156] As in any appeal, the Statement must be accompanied by an appendix containing the relevant orders and findings, documents pertinent to the case, and copies of statutes and other sources of law.[157]

Failure to get a lower court's consent to transfer an interlocutory question to the Supreme Court will be fatal.[158] An attempt to circumvent the interlocutory procedure by applying for a writ of certiorari to compel a lower court to transfer a question to the Supreme Court will not be successful.[159] But when a lower court will not consent and a substantial injustice will attach, the Supreme Court may grant a writ of certiorari to hear the interlocutory appeal.[160]

Taking an interlocutory appeal generally divests the lower court of jurisdiction over the case. Older cases hold that while on appeal, however, a lower court may "pass[] on collateral, subsidiary or independent matters affecting the case."[161] Moreover, the lower court is authorized, or even required, to "preserve the status quo."[162] Thus, taking an interlocutory appeal probably halts pre-trial litigation, and if an early or speedy trial is important, an interlocutory appeal may not be advantageous.

VI. Conclusion

An interlocutory appeal or transfer may be successful when the case is "exceptional" and when it fits into one or more of the categories listed above. Otherwise it may be a waste of an attorney's time and a client's money.

Endnotes

1.*Petition of Public Service Co. of New Hampshire*, 125 N.H. 595, 598 (1984).

2.Thanks are extended to Attorneys Daniel Crean and Betsy Cazden for their helpful comments and criticisms in writing this article.

3.*See e.g.*, *Goss v. City of Manchester*, 140 N.H. 449 (1995) (municipal immunity); *Bronstein v. GZA Geoenvironmental, Inc.,* 140 NH 253 (1995) (whether environmental surveyor has duty to purchaser of property); *Wenners v. Great State Beverages, Inc.*, 140 N.H. 100 (1995) (whether federal law preempts state wrongful termination action). *See* section III.A., *infra*.

4.*See e.g.*, *State v. Cavaliere*, 140 N.H. 108 (1995) (whether defendant may introduce expert testimony regarding defendant's alleged dissimilarity to generic sex offender profile). *See* section III.B., *infra*.

5.Accurate statistics are difficult to compile, but it appears that as a percentage, about twice as many interlocutory appeals as standard appeals are rejected by the Court. This conclusion was reached by comparing 1994 caseload statistics provided by the Court in materials distributed as part of the Bar Association's 1996 Appellate Advocacy CLE, with an informal survey of all 1994-docket cases using the word "interlocutory" in the Court's case tracking system. 1994 was the most recent year for which all appealed cases reached disposition. The Court's case tracking system was not designed for such statistical purposes making statistical use of them inherently unreliable; in addition, only one year was compared.

6.SUP. CT. R. 3; SUP. CT. R. 7(1) ("The definition of 'decision on the merits' in rule 3 includes decisions on motions made after an order, verdict, opinion, decree or sentence."). *See also Redlon v. Franklin Square Corp.*, 91 N.H. 502, 503 (1941) ("Discretionary or interlocutory orders of the Superior Court do not result in an adjudication of the rights of the parties until the case goes to final judgment. The Superior court has the power to correct its own errors in the finding of facts, even as to the merits, where it has been imposed upon, at any time before judgment.").

7.SUP. CT. R. 3, 8, 9. *See Germain v. Germain*, 137 N.H. 82, 84 (1993) ("when a trial court issues an order that does not conclude the proceedings before it, for example, by deciding some but not all issues in the proceedings or by entering judgment with respect to some but not all parties to the action, we consider any appeal from such an order to be interlocutory"). Before the promulgation of the Supreme Court's current rules in 1979, the term "interlocutory appeal" was not widely used. *See* George Pappagianis, *A Primer on Practice and Procedure in the Supreme court of New Hampshire*, 17 N.H.B.J. 172 (1976).

8.Other forms of pre-finality appellate review formerly existing in New Hampshire have been abolished. SUP. CT. R. 4.

9.SUP. CT. R. 8 ("Interlocutory Appeal from Ruling").

10.SUP. CT. R. 9 ("Interlocutory Transfer Without Ruling").

11.For much of New Hampshire history, the procedures were quite different. *See Glover v. Baker*, 76 NH 261 (1911). The current Rules, which contain two separate provisions for interlocutory appeals, may reflect the existence of the former procedure.

12. *See e.g.*, *Germain v. Germain*, 137 N.H. 82 (1993) (lower court had bifurcated case; Supreme Court heard appeal of part that had reached final judgment); *but see Jenkins v. G2S Constructors*, 140 N.H. 219 (1995) (Supreme Court not hear allegedly bifurcated case because two portions not severable). *See also Buckman v. Buckman*, 4 N.H. 319 (1828) (order staying a proceeding is final for purposes of appeal, and not interlocutory); *Richardson v. Chevrefils*, 131 N.H. 227, 231 (1988) (while normally an appeal from grant or denial of summary judgment is interlocutory, when summary judgment rules on immunity from suit, it is considered a final ruling on the merits).

13. *See e.g., Germain v. Germain*, 137 N.H. 82 (1993). *See also Singh v. Therrien Management Corp.*, 140 N.H. 355 (1995) (court documents reveal case filed as interlocutory but treated as standard appeal as case was appeal from grant of summary judgment); *J.M container Crop. v. Salvation Disposal & Construction Co.*, N.H. Sup. Ct. Case No. 95-714 (court documents reveal case filed pursuant to Rule 7, but Court ordered memorandums on whether the case was an improperly filed interlocutory appeal; case later deemed interlocutory and declined).

14. *See*, SUP. CT. R. 7. The most important difference is that a taking a standard appeal from a final decision does not need the approval of the lower court. *See* section V., *infra*.

15. *Glover v. Baker*, 76 NH 261, 262-63 (1911).

16. *Alexander v. Pierce*, 10 N.H. 494 (1840) (law court will not enforce an agreement for rendition of judgment when case not tried to conclusion on the merits).

17. Sixteenth Biennial Report of the Judicial Council, 100 (1976).

18. *State v. Fifield*, 110 N.H. 282 (1970); *Jewett v. Siegmund*, 110 N.H. 203 (1970). *State v. Varney*, 117 NH 163, 164 (1977).

19. SUP. CT. R. 8 (interlocutory appeal from ruling); SUP. CT. R. 9 (interlocutory transfer without ruling).

20. *Appeal of Courville*, 139 N.H. 119, 124 (1994).

21. *See Redlon v. Franklin Square Corp.*, 91 N.H. 502, 503 (1941); *see also State v. Wilkinson*, 136 N.H. 170 (1992); *State v. Poirer*, 136 N.H. 477 (1992).

22. *Jewett v. Siegmund*, 110 N.H. 203, 206 (1970).

23. *State v. Miller*, 117 N.H. 67 (1977).

24. *State v. Miller*, 117 N.H. 67 (1977).

25. The Supreme Court rules were promulgated in 1979 after Part II, Article 73-a was added to the New Hampshire Constitution, which gave the Supreme Court explicit authority to make rules for the various courts of the state. *State v. LaFrance*, 124 N.H. 171 (1983). The pre-amendment and pre-rules cases make clear that the Supreme Court had discretion to decline interlocutory appeals without the amendment or the rules. Nonetheless, *State v. Cooper*, 127 N.H. 119 (1985), cites the constitutional amendment as justification for the Court's power.

26. *State v. Doyle*, 117 N.H. 789, 789-91 (1977) (internal citations omitted). *See also State v. Cooper*, 127 N.H. 119, 126 (1985). In *Doyle* the Court cited a Bar Journal article for its caseload statistics; in *Cooper* it provided no cite, apparently using internally-generated figures. In neither case did any party's brief raise caseload concerns. *See also State v. Varney*, 117 NH 163, 164 (1977) ("The transferring of

questions . . . on interlocutory matters should not be encouraged."

27. *Paine v. Town of Conway*, 118 N.H. 883, 884 (1978).

28. *Petition of Public Serv. Co. of N.H.*, 125 N.H. 595, 598 (1984).

29. *State v. Doyle*, 117 N.H. 789 (1977) (District Court discretion to decline interlocutory transfers); *Paine v. Town of Conway*, 118 N.H. 883, 884 (1978) (Superior Court discretion to decline interlocutory transfers).

30. SUP. CT. R. 8, 9.

31. SUP. CT. R. 8, 9.

32. *Cagan's, Inc. v. Dep't of Rev. Admin.*, 126 N.H. 239 (1985).

33. *Guyette v. C & K Development Co.*, 122 N.H. 913, 918 (1982) (exceptional cases); *Paine v. Town of Conway*, 118 N.H. at 884 (exceptional circumstances); *State v. Doyle*, 117 N.H. at 791 (exceptional circumstances).

34. *United Public Workers v. Mitchell*, 330 U.S. 75, 89 (1947) ("federal courts established pursuant to Article III of the [U.S.] Constitution do not render advisory opinions").

35. *McCollum v. D'Arcy*, 138 N.H. 285 (1994).

36. *Corso v. Merrill*, 119 N.H. 647 (1979).

37. *Clark v. Clark*, 116 N.H. 255, 256 (1976).

38. *Manchester Airport Authority v. Romano*, 120 N.H. 166 (1980) (constitutionality of takings).

39. Even when the Court gives considerable attention to whether it should hear a particular case, it may not say why it decided to. *See e.g., Linlee Enterprises, Inc. v. State*, 122 N.H. 455 (1982).

40. SUP. CT. R. 8(1)(c).

41. *Guyette v. C & K Development Co.*, 122 N.H. at 918. In *Dover School Committee v. Euler & Littlefield*, 121 N.H. 757, 757 (1981), it appears that the Court accepted the interlocutory appeal only to later realize that it should not have. The Court said, "while it now appears that this is a matter that might have been declined under our Rule 8, we will nevertheless briefly refer to the facts and issues involved in the case in an effort to contribute to the more orderly and expeditious consideration of this case upon remand to the trial court."

42. *In re Estate of Brunel*, 135 N.H. 83 (1991).

43. *Mitchell v. Dover*, 98 N.H. 285, 287 (1953) (Court found it "expedient" to rule on interlocutory questions); *see also Young v. Abalene Pest Control Serv's, Inc.*, 122 N.H. 287 (1982).

44. *Williams v. O'Brien*, 140 N.H. 595 (1995); *Coltey v. New England Telephone*, 135 N.H. 223 (1991) (whether self-insured employer must provide uninsured motorist coverage to employee); *Elliott v. Public Serv. Co. of N.H.*, 128 N.H. 676 (1986) (whether employer of independent contractor may be liable to employee of independent contractor); *Smith v. Cote*, 128 N.H. 231 (1986) (whether plaintiff can maintain

wrongful birth and wrongful life actions); *Mclaughlin v. Sullivan*, 123 N.H. 335 (1983) (whether attorney may be held liable for suicide of client); *Wallace v. Wallace*, 120 N.H. 675 (1980) (whether death action may be maintained on behalf of aborted non-viable fetus); *Burke v. Fireman's Fund Ins. Co.*, 120 N.H. 365 (1980) (whether one may maintain an action against deceased defendant's insurer directly); *Howard v. Dorr Woolen Company*, 120 N.H. 295 (1980) (whether discharge for age or sickness constitutes unlawful discharge); *Corso v. Merrill*, 119 N.H. 647 (1979) (whether uninjured parents who witnessed injury of child can recover for emotional distress).

45. *Doucette v. Town of Bristol*, 138 N.H. 205 (1993).

46. *Murdock v. City of Keene*, 137 N.H. 70 (1993).

47. *Storch Engineers v. D&k Land Developers*, 134 N.H. 414 (1991).

48. *Kantor v. the Norwood Group*, 127 N.H. 831 (1986).

49. *Crowley v. Global Realty, Inc.*, 124 N.H. 814 (1984).

50. *Thompson v. Forest*, 136 N.H. 215 (1992); *Tyler v. Fuller,* 132 N.H. 690 (1990); *Orcutt v. Town of Richmond*, 128 N.H. 552 (1986); *Case v. Case*, 121 N.H. 649 (1981) (burden of proof in case of first impression).

51. *Cheshire Medical Center v. Holbrook*, 140 N.H. 187 (1995).

52. *State v. Briand,* 130 N.H. 650 (1988) (battered woman's defense to murder); *Nashua Trust Co. v. Weisman*, 122 N.H. 397 (1982) (affirmative negligence).

53. *Bergeron v. Travelers Ins. Co.*, 125 N.H. 107 (1984); *Appeal of Comm. to Save the Upper Androscoggin*, 124 N.H. 17 (1983).

54. *Dixon v. State*, 105 N.H. 123 (1963); *Exeter & Hampton Elec. Co. v. Public Utilities Commission*, 108 N.H. 358, 360 (1967). *But see Bronstein v. GZA Geoenvironmental, Inc.,* 140 NH 253 (1995) (savings mentioned in appeal document but decision does not mention it).

55. SUP. CT. R. 8(1)(c).

56. *State v. Cooper*, 127 N.H. at 126.

57. *State v. Janvrin*, 121 N.H. 370, 371 (1981) ("we note that an interlocutory appeal before retrial is proper in this kind of case, for otherwise the defendant could be subjected to the very thing the double jeopardy clauses are designed to guard against, retrial of the same offense"); *State v. King*, 131 N.H. 173, 176 (1988) ("We note, as a preliminary matter, that an interlocutory transfer is proper at this juncture, where the defendant otherwise would be subject to a retrial and thence, he asserts, to double jeopardy."); *State v. Guenzel*, 140 N.H. 685 (1996); *State v. Cassady*, 140 N.H. 46 (1995); *State v. Goodnow*, 140 N.H. 38 (1995); *State v. Montella*, 135 N.H. 698 (1992); *State v. Bertrand*, 133 N.H. 843 (1991); *State v. McNally*, 122 N.H. 892 (1982); *State v. Siel*, 122 N.H. 254 (1982).

58. *State v. Champagne*, 127 N.H. 266 (1985).

59. *In re Eduardo L.*, 136 N.H. 678 (1993); *State v. Smith*, 124 N.H. 260 (1983); *In re Vernon E.*, 121 N.H. 838 (1981).

60. *State v. Owen*, 80 NH 426 (1922).

61. *Roberts v. General Motors Corp.*, 140 N.H. 723 (1996); *Glines v. Bruk*, 140 N.H. 180 (1995); *McCollum v. D'Arcy*, 138 N.H. 285 (1994) (whether recovery of repressed memory tolls statute of limitations); *French v. R. S. Audley, Inc.*, 123 N.H. 476 (1983).

62. *Hallisey v. Deca Corp.*, 140 N.H. 443 (1995); *Waters v. Hedberg*, 126 N.H. 546 (1985); *Barton v. Barton*, 125 N.H. 433 (1984).

63. *State v. Drewry*, 139 N.H. 678 (1995); *Ross v. Gadwah*, 131 N.H. 391 (1988); *State v. Heath*, 129 N.H. 102 (1986) (whether statute bars deposing young witnesses); *State v. Jenkins*, 128 N.H. 672 (1986); *State v. Harper*, 126 N.H. 815 (1985); *State v. Flynn*, 123 N.H. 457 (1983); *State v. Miskell*, 122 N.H. 842 (1982) (whether testimony of prosecutrix may be compelled under rape shield law); *State v. Purrington*, 122 N.H. 458 (1982); *State v. Siel*, 122 N.H. 254 (1982) (news reporters privilege); *Downing v. Monitor Publishing Co., Inc.*, 120 N.H. 383 (1980).

64. *State v. Costello*, 138 N.H. 587 (1994).

65. *Chadwick v. Pine Hill*, 137 N.H. 515 (1993).

66. *Bronstein v. GZA GeoEnvironmental, Inc.*, 140 NH 253 (1995).

67. *Loundsbury v. City of Keene*, 122 N.H. 1006 (1982).

68. *State v. Johnson*, 134 N.H. 570 (1991); *Psychiatric Inst. Of America v. Mediplex*, 130 N.H. 125 (1987); *Burrage v. N.H. Police Standards Council*, 127 N.H. 742 (1986); *State v. Ballou*, 125 N.H. 304 (1984); *Labarre v. Daneault*, 123 N.H. 267 (1983); *State v. Sampson*, 120 N.H. 251 (1980).

69. *Newell v. N.H. Div. Of Welfare*, 131 N.H. 88 (1988); *V.S.H. Realty, Inc. v. City of Manchester*, 123 N.H. 505 (1983).

70. *O'Neil v. Carlson*, 135 N.H. 459 (1992) (*ex parte* attachment).

71. *State v. Cassady*, 140 N.H. 46 (1995); *State v. Sterndale*, 139 N.H. 445 (1995); *State v. Hayes*, 138 N.H. 410 (1994); *State v. Meaney*, 134 N.H. 741 (1991); *State v. Johnson*, 134 N.H. 498 (1991); *State v. Caplin*, 134 N.H. 302 (1991); *State v. Dedrick*, 132 N.H. 218 (1989); *State v. Jenkins*, 128 N.H. 672 (1986); *State v. Jaroma*, 128 N.H. 423 (1986); *State v. Greene*, 128 N.H. 317 (1986); *State v. Westover*, 127 N.H. 130 (1985); *State v. Whiting*, 127 N.H. 110 (1985); *State v. Harper*, 126 N.H. 815 (1985); *State v. Doyle*, 126 N.H. 153 (1985); *State v. Goding*, 126 N.H. 50 (1985); *State v. Baldwin*, 124 N.H. 770 (1984); *State v. Sidebotham*, 124 N.H. 682 (1984); *State v. Martel*, 124 N.H. 544 (1984); *State v. Palamia*, 124 N.H. 333 (1983); *State v. Tapply*, 124 N.H. 318 (1983); *State v. Harlow*, 123 N.H. 547 (1983); *State v. Levesque*, 123 N.H. 52 (1983); *State v. Theodosopoulos*, 119 N.H. 573 (1979); *State ex rel. Hanover v. Hanover Dist. Ct.*, 114 N.H. 198 (1974) (appeal by writ of certiorari).

72. *Downing v. Monitor Publishing Co.*, 120 N.H. 383 (1980) (duty of newspaper to divulge source of information without which plaintiff could not obtain evidence necessary to meet burden of proof for libel he claimed); *Reynolds v. Burgess Sulphite Fibre Co.*, 71 N.H. 332 (1902) (interlocutory appeal of trial court decision to not allow discovery without which the case could not go forward).

73. *Petition of Public Serv. Co. of N.H.,* 130 N.H. 265 (1988).

74. *Soucy v. State*, 127 N.H. 451 (1985).

75. *State v. Hughes*, 135 N.H. 413 (1992).

76. *Centorr-Vacuum Industries v. Lavoie*, 135 N.H. 651 (1992).

77. *Town of Tilton v. Boston & Maine Railroad*, 99 N.H. 503, 504 (1955); *see also Douglas v. Fulis*, 138 N.H. 740 (1994) (where the first and second counts of the plaintiff's complaint survived motion for summary judgment, but trial court dismissed third claim, Court ruled on third claim in interlocutory appeal).

78. SUP. CT. R. 8(1)(c).

79. *State v. Cooper*, 127 N.H. at 127 (emphasis added) (quotations to Tennessee law omitted). *Cooper* challenged the Court's authority to decline appeals. While the case was filed pursuant to Rule 7, the Court broadly addressed its procedure for determining which cases it will hear.

80. *State v. Varney*, 117 NH 163, 164 (1977).

81. *State v. Philbrick*, 127 N.H. 353 (1985).

82. *White v. Lee*, 124 N.H. 69, 73 (1983).

83. *Shargal v. N.H. Board Psychologists,* 135 N.H. 242 (1992) (immunity of pseudo-state agency); *Sheehan v. Liquor Comm.*, 126 N.H. 473 (1985) (constitutionality of state sovereign immunity statute).

84. *Riblet Tramway Co. v. Stickney*, 129 N.H. 140 (1987).

85. *Goss v. Manchester*, 140 N.H. 449 (1995); *Trull v. Conway*, 140 N.H. 579 (1995); *Bergeron &a. v. Manchester &a.*, 140 N.H. 417 (1995); *Schoff v. Somersworth*, 137 N.H. 583 (1993).

86. *Dover Professional Fire Officers Assoc. v. City of Dover*, 124 N.H. 165 (1983).

87. *City of Portsmouth v. Karosis*, 126 N.H. 717 (1985).

88. *Glick v. Town of Ossipee,* 130 N.H. 643 (1988).

89. *Johnson & Porter Realty Co v. Comm'r of Rev. Admin.*, 122 N.H. 696 (1982).

90. *Jacobs v. Price*, 125 N.H. 196 (1984).

91. *Cagan's, Inc. v. Dep't of Rev. Admin.*, 126 N.H. 239 (1985).

92. *Town of Franconia v. Granite State Concessions*, 122 N.H. 684 (1982).

93. *Senior Citizens Housing v. City of Claremont,* 122 N.H. 1104 (1982).

94. *White v. Lee*, 124 N.H. 69, 73 (1983) (Court heard case on interlocutory basis "[b]ecause the questions raised . . . will have an impact on the procedures used by any municipality in conducting a tax sale").

95. *Sant Bani Ashram Inc. v. N.H. Dep't of Empl. Security*, 121 N.H. 74 (1981) (whether church employees exempt from unemployment compensation).

96. *Carson v. Maurer*, 120 N.H. 925 (1980) (constitutionality of medical malpractice limitation statute); *Catholic Med. Center v. Elliot Hospital,* 130 N.H. 448 (1988) (what services hospitals may provide without certificate of need).

97. *Boy's Club of Nashua, Inc. v. Attorney General*, 122 N.H. 325 (1982) (whether non-profit raffle can award real estate).

98. *Appeal of Public Serv. Co. of N.H.*, 125 N.H. 46 (1984) (operation of statute barring recovery of construction costs); *New Eng. Tel. Co. v. State*, 95 N.H. 515 (1949) (injunction barring establishment of temporary rates).

99. *Brannigan v. Usitalo*, 134 N.H. 50 (1991) (constitutionality of tort damage limitation statute); *Private Truck Council of America v. State*, 128 N.H. 466 (1986) (potential tax refunds due to many people); *Mackinnon v. Hanover*, 124 N.H. 456 (1984) (interpretation of clause in many homeowners insurance policies); *Rullo v. Rullo*, 121 N.H. 299 (1981) (whether criminal conviction establishes civil liability).

100. *Jenkins v. G2S Constructors, Inc.,* 140 N.H. 219 (1995); *Arlington Trust Co. v. Estate of Wood*, 123 N.H. 765 (1983); *Silver Brothers, Inc. v. Wallin*, 122 N.H. 1138 (1982).

101. *Town of Goffstown v. Thibeault*, 129 N.H. 454 (1987); *Town of Plainfield v. Sanville*, 125 N.H. 825 (1984); *Wasserman v. City of Lebanon*, 124 N.H. 538 (1984); *Harriman v. City of Lebanon*, 122 N.H. 477 (1982); *Eddy Plaza Assoc's v. City of Concord*, 122 N.H. 416 (1982); *Town of Salisbury v. New England Power Co.*, 121 N.H. 983 (1981); *Public Serv. Co. v. Town of Hampton*, 120 N.H. 68 (1980).

102. *Wenners v. Great State Beverages, Inc.*, 140 N.H. 100 (1995); *Town of Salisbury v. New England Power Co.*, 121 N.H. 983 (1981); *Sharon Steel Corp. v. Whaland*, 121 N.H. 609 (1981).

103. *Vazifdar v. Vazifdar* 130 N.H. 694 (1988) (jurisdiction of New Hampshire courts over foreign marriage and divorces); *Tavoularis v. Womer*, 123 N.H. 423 (1983) (jurisdiction of New Hampshire courts over non-resident defendants); *Mattleman v. Bandler*, 123 N.H. 368 (1983) (jurisdiction of New Hampshire courts to modify other-states' custody orders).

104. *State v. Corson*, 134 N.H. 430 (1991) (to hear appeals from district court); *Asadorian v. Asadorian*, 127 N.H. 388 (1985) (over other-state divorce defendants); *State v. Smith*, 124 N.H. 509 (1984) (over juveniles for motor vehicle violations); *Travelers Indemnity Co. v. Abreem Corp.*, 122 N.H. 583 (1982) (quasi in rem jurisdiction); *State v. Southern N.H. Builders Assoc.*, 121 N.H. 852 (1981) (to reinstate an indictment it had previously quashed); *Hutchings v. Lee*, 119 N.H. 85 (1979) (*in personam* jurisdiction under long-arm statute).

105. *Kiluk v. Potter, Administrator*, 133 N.H. 67 (1990) (to issue sentence for more than one year); *State v. Gagne*, 129 N.H. 93 (1986) (to order psychological evaluation); *State v. Smith*, 124 N.H. 260 (1983) (over 19-year old).

106. *Ellsworth v. Heath*, 140 N.H. 833 (1996) (over custody disputes between unwed parents when no guardianship issues exist); *In re Estate of O'Dwyer,* 135 N.H. 323 (1992) (breadth of subject-matter jurisdiction); In *re Penny N.*, 120 N.H. 269 (1980) (regarding sterilization of incompetent minor); *In re Fay G.*, 120 N.H. 153 (1980) (to compel mother to undergo psychiatric examination in termination of parental rights proceeding).

107. *Brooks v. Padula*, 125 N.H. 668 (1984) (authority of masters); *Feuerstein v. Gilmore d/b/a Reprographics*, 127 N.H. 715 (1986) (authority of administrative appeal board to hear issues not raised at prior hearing); *Fournier v. State*, 121 N.H. 283 (1981) (whether administrative appeal tribunal may rely on grounds not present in lower tribunal decision); *Ryan v. Perini Power Constructors, Inc.*, 126 N.H. 171 (1985) (time for appeal from ruling of Department of Labor).

108. *In re Cindy G.*, 124 N.H. 51 (1983) (*de novo* review of juvenile cases); *In re John M. and David C.*, 122 N.H. 1120 (1982) (who bears cost of children placed in delinquency or neglect proceedings); *In re Raymond K.*, 120 N.H. 456 (1980) (whether juvenile speedy trial statute applies to *de novo* appeals in superior court); *In re Russell C.*, 120 N.H. 260 (1980) (speedy trial rights in juvenile proceedings).

109. *Town of Exeter v. Britton*, 115 N.H. 209 (1975).

110. *State v. Degrenier*, 120 N.H. 919 (1980); *State v. Lambert*, 119 N.H. 881 (1979).

111. *State v. Fields*, 119 N.H. 249 (1979) (whether non-arresting officer can swear out misdemeanor complaint); *State v. Greene*, 120 N.H. 663 (1980) (authority of police to make arrests outside their jurisdiction).

112. *State v. Champagne*, 127 N.H. 266 (1985).

113. *State v. Batchelder*, 125 N.H. 694 (1984) (whether habitual offender status automatically terminates); *State v. Lemire*, 125 N.H. 461 (1984).

114. *State v. McGann*, 126 N.H. 316 (1985).

115. *State v. Howland*, 125 N.H. 497 (1984).

116. *Warburton v. Thomas*, 136 N.H. 383 (1992).

117. *Monier v. Gallen*, 120 N.H. 333 (1980).

118. *Manchester Airport Authority v. Romano*, 120 N.H. 166 (1980) (law required balancing test and record not contain sufficient facts).

119. *State v. Cooper*, 127 N.H. at 127.

120. *Grover v. Roman Catholic Bishop of Manchester*, N.H. Sup. Ct. Case No. 94-550 (disposed by order, 9/28/95).

121. *State v. Cooper*, 127 N.H. at 127.

122. *State v. Merski*, 121 N.H. 901, 908 (1981).

123. *Boyle's Case*, 136 N.H. 21 (1992).

124. *McElroy v. Gaffney*, 129 N.H. 382 (1987).

125. *State v. Merski*, 121 N.H. 901 (1981).

126. *Murphy v. McQuade Realty, Inc.*, 122 N.H. 314 (1982).

127. *State v. Bardsley*, 125 N.H. 696 (1984)
(regarding DIST/MUNI CT. R.2.14).

128. *State v. N.H. Retail Grocers Ass'n.*, 115 N.H. 623 (1975).

129. *State v. Aubert*, 118 N.H. 739 (1978).

130. RSA 606:10.

131. *State ex rel. Hanover v. Hanover Dist. Ct.*, 114 N.H. 198 (1974). *But cf., State v. Nocella*, 124 N.H. 163 (1983).

132. RSA 599 (appeal from Superior Court); RSA 491:17 (transfer of questions of law from Superior Court); RSA 502:23 (appeal from District and Municipal Courts); RSA 502:24 (transfer of questions of law from District and Municipal Courts). Questions of law may be transferred from the Probate Court, RSA 547:30, but the issue was long in doubt. *Green v. Foster*, 104 N.H. 287 (1962); *In re Estate of Gay*, 97 NH 102 (1951). Interlocutory appeals from the new Family Court Division probably follow Superior Court rules. *See* FAM. CT. R. 7.

133. *Winn v. Jordan*, 101 NH 65 (1957).

134. *Petition of Public Serv. Co. of N.H.*, 125 N.H. 595 (1984).

135. RSA 77:35.

136. RSA 78-A:2, III.

137. RSA 365:20; *Petition of Public Serv. Co. of N.H.*, 125 NH 595 (1984).

138. *Connell's New & Used Care, Inc., v. State*, 117 N.H. 531 (1977); *N.H.-Vt. Physician Serv. v. Durkin*, 113 N.H. 295 (1973); RSA 490:4.

139. *Connell's New & Used Care, Inc., v. State*, 117 N.H. 531 (1977).

140. SUPER. CT. R. 79; DIST./MUNI. CT. R. 1.11.B.; PROB. CT. R. 16; PROB. CT. R. 43B. The Family Court probably follows Superior Court procedure. FAM. CT. R. 7. *See also* SUP. CT. R. 8, 9.

141. In cases reported before the promulgation of the Supreme Court Rules in 1979, it appears that courts routinely transferred questions to the Supreme Court *sua sponte*. However, Supreme Court Rule 4 probably abrogated lower courts' authority to transfer questions without being asked by a party, and there are no known recent interlocutory cases in which a lower court has transferred a question without a request.

142. *Compare* SUP. CT. R. 8 *with* SUP. CT. R. 9.

143. SUP. CT. R. 3 (defining moving party in the interlocutory context).

144. SUP. CT. R. 8, 9.

145.The Court may take a case on stipulated facts, but when the facts are so tentative so that it is not clear that the case presents the questions transferred, the Court will decline ruling on the questions and remand for findings. *In re Terry*, 129 N.H. 111 (1986).

146.If there are any ambiguities, the Court will construe the question presented as narrowly as possible. *Shargal v. State of New Hampshire Board of Examiners of Psychologists*, 135 N.H. 242, 245 (1992). This stands in contrast to the Court's more lenient general practice of construing questions to include all subsidiary questions. SUP. CT. R. 16(3)(b).

147.SUP. CT. R. 8(1)(c); SUP. CT. R. 9(1)(c). *See* section III, *supra*, for an explanation of accepted reasons.

148.Sup. Ct. R. 8, 9. *See* section III., *supra*.

149.SUP. CT. R. 8, 9. If the appeal is from an administrative agency, the Statement presumably must be signed by each member of the board or commission. *See Petition of Pub. Serv. Co. of N.H.*, 125 N.H. 595 (1984) (Court documents reveal two PUC Commissioners signed the document while third dissented). There are no known agency rules regarding the procedures for taking an interlocutory appeal, but it may be worth checking rules for the agency from which an appeal is taken.

150.SUPER. CT. R. 55; DIST/MUNI CT. R. 1.8; PROB. CT. R. 8. The Family Court probably follows Superior Court procedure. FAM. CT. R. 7.

151.SUPER. CT. R. 58, 59-A(1); DIST./MUNI. CT. R. 1.8(D); PROB. CT. R. 8. The Family Court probably follows Superior Court procedure. FAM. CT. R. 7.

152.Though rare, the Supreme Court has held hearings on whether to accept an interlocutory transfer. *See e.g., Petition of Pub. Serv. Co. of N.H.*, 125 N.H. 595 (1984). An October 3, 1984 order in the Court file says: "The Court will hear oral argument . . . on the question whether the Court should accept the transfer from the Public Utilities Commission." A hearing was held, and the published opinion explains the Court's reasons for declining to accept the appeal. *Id.*

153.SUPER. CT. R. 79; DIST./MUNI. CT. R. 1.11.B.; PROB. CT. R. 16 ; PROB. CT. R. 43B. The Family Court probably follows Superior Court procedure. FAM. CT. R. 7.

154.RSA 382-A:1-204 (UCC) defines "seasonably" as "within a reasonable time."

155.SUP. CT. R. 7.

156.SUP. CT. R. 8(3); SUP. CT. R. 9(3).

157.SUP. CT. R. 8(2); SUP. CT. R. 9(2); SUP. CT. R. 26(5).

158.*But see*, *Guyette v. C&K Development Co.*, 122 NH 913 (1982) (as oral arguments had already been heard, Supreme Court waived signature requirement).

159.*George v. Commercial Credit Corp.*, 105 N.H. 269 (1964) (certiorari not issued to require superior court to transfer, prior to trial, legal questions of first impression).

160.*State v. NH Retail Grocers' Asso.*, 115 N.H. 623 (1975); *State v. Elbert*, 121 N.H. 43 (1981).

161.*Rautenberg v. Munnis*, 107 N.H. 446, 448 (1966).

162.*Id.*; *See e.g.*, *Calderwood v. Calderwood*, 115 N.H. 550 (1975).