

State of New Hampshire
Supreme Court

NO. 06-____

IN THE MATTER OF
MARY LOU (NOWE) FLAYHAN
and
RONALD J. NOWE

NOTICE OF MANDATORY APPEAL OF MARY LOU FLAYHAN
Pursuant to Supreme Court Rule 7(1)(A)

By: Joshua L. Gordon, Esq.
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State of New Hampshire Supreme Court

NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court, district court, probate court or family division court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; or (7) a landlord/tenant action or a possessory action filed under RSA chapter 540.

1. COMPLETE CASE TITLE AND DOCKET NUMBERS IN TRIAL COURT

Matter of Mary Lou (Nowe) Flayhan and Ronald J. Nowe
No. 2001-M-0290

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

Brentwood Family Division (*Pamela D. Kelley*, Master; *Peter G. Hurd, J.*)

3A. NAME & ADDRESS OF APPEALING PARTY

Mary Lou Flayhan
1523 Wilkes Ave.
Biloxi, Miss. 39530

3B. NAME, FIRM, ADDRESS & TELEPHONE
NUMBER OF APPELLANT'S COUNSEL

Joshua L. Gordon
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26 S. Main St., #175
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4A. NAME & ADDRESS OF OPPOSING PARTY

Ronald J. Nowe
PO Box 327
Epping, NH 03042

4B. NAME, FIRM, ADDRESS, & TELEPHONE
NUMBER OF OPPOSING COUNSEL

Kathleen Sullivan-DiFruscia, Esq.
DiFruscia Law Office
302 Broadway
Methuen, MA 01844
(978) 687-1777

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

Edward T. Clancy, Esq. (for the appellant in the trial court)
4 Fourth Street
Dover, NH 03820

Stanley J. Mullaney, Esq. (formerly for the appellant in the trial court)
Mullaney & Richardson PA
1 Wakefield St. Suite 309
Rochester, NH 03867

6. DATE OF CLERK'S NOTICE OF DECISION
OR SENTENCING

Clerk's Notice of Final Order:
Jan. 10, 2005 & Jan. 25, 2006

DATE OF CLERK'S NOTICE OF DECISION
ON POST-TRIAL MOTION

March 27, 2006

7. CRIMINAL CASES: DEFENDANT'S
SENTENCE AND BAIL STATUS

n/a

8. APPELLATE DEFENDER REQUESTED?

No.

9. IS ANY PART OF CASE CONFIDENTIAL? IDENTIFY WHICH PART AND CITE AUTHORITY

There is no known basis for confidentiality.

10. IF ANY PARTY IS A CORPORATION, NAMES OF PARENTS, SUBSIDIARIES & AFFILIATES

n/a

11. DO YOU KNOW ANY REASON WHY ONE OR MORE SUPREME COURT JUSTICE WOULD BE DISQUALIFIED FROM THIS CASE?

There is no known basis for recusal.

IF YES, FILE MOTION FOR RECUSAL, SUPREME COURT RULE 21A

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY?

Yes.

IF YES, COMPLETE TRANSCRIPT ORDER FORM

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.
- I. Did the court lack jurisdiction over the parties when they had already been divorced for over two years and were no longer husband and wife, but rather in the relation of debtor & creditor, tortfeasor & damaged, or no relation at all, when the court reopened the case for the purpose of considering post-decree conduct, and then re-arranged its property allocations?
 - II. Was the court's findings on valuation of personal property unsubstantiated when Mr. Nowe proffered no evidence of value, and testimony revealed it was worth little?
 - III. Did the court err in allocating real property when it was not in dispute, and when it was not owned by the party assumed by the court?
 - IV. Did the court err in awarding attorneys fees when the attorneys fees rule allows them for specific pleadings and not generally for the pendency of a case, when the court used fees as punishment for post-divorce conduct, when Mr. Nowe was in contempt, when lacking veracity is not a basis for an award of fees, and when the case was pending before the Supreme Court?

14. CERTIFICATIONS

I hereby certify that, upon information and belief, every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

Joshua L. Gordon, Esq.

I hereby certify that on or before the date below copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

April 25, 2006

Joshua L. Gordon, Esq.

ATTACHMENTS

(1)	DECREE ON PENDING MOTIONS (Jan. 10, 2005)	7
(2)	DECREE ON REHEARING OF PROPERTY DIVISION) (Jan. 25, 2006)	10
(3)	NOTICE OF DECISION (denying motion to reconsider) (Mar. 27, 2006)	18

TRANSCRIPT ORDER FORM

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Superior Court Administrative Rule 3-1), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the trial court. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.

LIST EACH PORTION OF CASE PROCEEDINGS TO BE TRANSCRIBED						
Date of Proceeding	Type of Proceeding	Length of Proceeding	Name of Judge(s)	Steno/Recorded	Previously Prepared?*	Deposit
11/9/05	Hearing	1 day	<i>Kelley, M.</i>	Recorded	no	\$900
1/6/06	Hearing	½ day	<i>Kelley, M.</i>	Recorded	no	450
DO NOT SEND DEPOSIT AT THIS TIME						TOTAL DEPOSIT: \$1,350

SCHEDULE OF DEPOSITS

Length of Proceeding

Deposit Amount

Hearing or trial of one hour or less
 Hearing or trial up to ½ day
 Hearing or trial of more than ½ day
 Previously prepared portions

\$ 175
 \$ 450
 \$ 900/day
 Number of pages x \$.50 per page per copy if additional copies are needed

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you may be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

* For portions of the transcript that have been previously prepared, indicate number of copies that were prepared.