

**RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE
-- DISTRICT DIVISION**

CRIMINAL RULES

Rule 2.7. Payment of fines.

(A) Fines imposed by the court shall be due and payable on the date the sentence is imposed. Where a defendant indicates an inability to pay forthwith, the defendant shall complete an affidavit of resources, under oath, prior to leaving the courthouse. The court will then determine whether the defendant has the financial ability to pay the fine.

(B) The determination of a defendant's financial ability to pay the fine shall be made by comparing the defendant's assets and incomes with the amount of the fine. The defendant's assets shall include all real and personal property owned in any manner by the defendant, unless exempt from execution, levy, attachment, garnishment, or other legal process under any state or federal law. The defendant's income shall include all income, whether earned or not, from any source, unless exempt from execution, levy, attachment, garnishment, or other legal process under any state or federal law, and shall be reduced only by the amount of expenses which are reasonably necessary for the maintenance of the defendant and his dependents and by the amount of defendant's anticipated or current obligation to repay the Office of Cost Containment for the cost of appointed counsel.

(C) In any case where the court finds that the defendant is unable to pay the fine either on the date the sentence is imposed or later, the court may: (i) defer or suspend payment of all or part of the fine or order periodic payment; or (ii) allow the defendant to perform community service, pursuant to a plan submitted to and approved by the court. In any such deferral or order of periodic payment, the court shall, pursuant to RSA 490:26-a, II-a, include a \$25.00 fee to be added to the fine. Every hour of verified community service shall be applied against the fine at the rate of \$15.00 an hour. A community service plan

approved under this paragraph shall take into account the defendant's circumstances including but not limited to age, disability, health, employment, and access to child-care and transportation.

(D) Conduct which the court finds is a willful failure to pay a fine or to perform community service as ordered may be punishable as criminal contempt of court and only through the provisions of RSA 618:9. "Willful failure to pay" means a defendant has intentionally chosen not to pay the fine when he has had the ability to do so.

(E) No defendant shall be incarcerated for nonpayment of a fine unless counsel has been appointed or the defendant executes a valid waiver of counsel, and the Court, having conducted an ability-to-pay hearing, concludes that the defendant willfully failed to pay the fine or perform community service.

(F) In any case where the court is considering the issuance of an order of commitment for willful nonpayment of a fine, it may also consider whether an order of periodic payments is appropriate under the circumstances as well as the appropriateness of the options set forth in paragraph (C) above. The court shall also make written findings of the facts upon which the court has made its determination that the defendant has willfully failed to pay the fine or perform community service as ordered.

(G) When the court appoints counsel to represent a defendant in a proceeding related to (E), above, the court shall grant the defendant relief from the obligation to repay the State for their appointed counsel fees under RSA 604-A:9 I-b, when the court determines that the defendant is financially unable to repay.

RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- DISTRICT DIVISION

CRIMINAL RULES

Rule 2.7. Payment of fines. *EXISTING*

(A) In all cases, fines imposed by the Court shall be due and payable on the date imposed. In those cases where a defendant indicates an inability to pay forthwith, the defendant shall be required to complete an affidavit of resources, under oath, prior to leaving the courthouse. The Court may consider such factors as the defendant's employment, good faith attempts to seek employment, spousal, family and partner income, savings, property ownership, credit lines and expenses including child support.

(B) In any case where the Court finds the defendant indigent or the defendant is unable to pay the fine on the date imposed, the Court may defer payment of the fine or order periodic payment. In any such deferral or order of periodic payment, the court shall, pursuant to RSA 490:26-a, II-a, include a \$25.00 fee to be added to the fine. The \$25.00 fee shall be paid prior to or simultaneously with the payment of the fine. Eligibility for appointed counsel shall not be conclusive on the issue of indigency for purposes of fine payment orders.

(C) In any case where a defendant proves an inability to pay a fine, the Court may allow the defendant to perform community service, pursuant to a plan submitted to and approved by the Court. Every hour of verified community service shall be applied against the fine at the rate of \$10.00 an hour.

(D) Conduct which amounts to willful failure to pay any fine or perform community service as ordered, may be punishable as contempt of court or through the provisions of RSA 618:9.

RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE -- DISTRICT DIVISION

CRIMINAL RULES

Rule 2.7. Payment of fines. *PROPOSED*

(A) Fines imposed by the court shall be due and payable on the date the sentence is imposed. Where a defendant indicates an inability to pay forthwith, the defendant shall complete an affidavit of resources, under oath, prior to leaving the courthouse. The court will then determine whether the defendant has the financial ability to pay the fine.

(B) The determination of a defendant's financial ability to pay the fine shall be made by comparing the defendant's assets and incomes with the amount of the fine. The defendant's assets shall include all real and personal property owned in any manner by the defendant, unless exempt from execution, levy, attachment, garnishment, or other legal process under any state or federal law. The defendant's income shall include all income, whether earned or not, from any source, unless exempt from execution, levy, attachment, garnishment, or other legal process under any state or federal law, and shall be reduced only by the amount of expenses which are reasonably necessary for the maintenance of the defendant and his dependents and by the amount of defendant's anticipated or current obligation to repay the Office of Cost Containment for the cost of appointed counsel.

(C) In any case where the court finds that the defendant is unable to pay the fine either on the date the sentence is imposed or later, the court may: (i) defer or suspend payment of all or part of the fine or order periodic payment; or (ii) allow the defendant to perform community service, pursuant to a plan submitted to and approved by the court. In any such deferral or order of periodic payment, the court shall, pursuant to RSA 490:26-a, II-a, include a \$25.00 fee to be added to the fine. Every hour of verified community service shall be applied against the fine at the rate of \$15.00 an hour. A community service plan approved under this paragraph shall take into account the defendant's circumstances including but not limited to age, disability, health, employment, and access to child-care and transportation.

(D) Conduct which the court finds is a willful failure to pay a fine or to perform community service as ordered may be punishable as criminal contempt of court and only through the provisions of RSA 618:9. “Willful failure to pay” means a defendant has intentionally chosen not to pay the fine when he has had the ability to do so.

(E) No defendant shall be incarcerated for nonpayment of a fine unless counsel has been appointed or the defendant executes a valid waiver of counsel, and the Court, having conducted an ability-to-pay hearing, concludes that the defendant willfully failed to pay the fine or perform community service.

(F) In any case where the court is considering the issuance of an order of commitment for willful nonpayment of a fine, it may also consider whether an order of periodic payments is appropriate under the circumstances as well as the appropriateness of the options set forth in paragraph (C) above. The court shall also make written findings of the facts upon which the court has made its determination that the defendant has willfully failed to pay the fine or perform community service as ordered.

(G) When the court appoints counsel to represent a defendant in a proceeding related to (E), above, the court shall grant the defendant relief from the obligation to repay the State for their appointed counsel fees under RSA 604-A:9 I-b, when the court determines that the defendant is financially unable to repay.