

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

O R D E R

By order dated January 19, 2011, we adopted new Family Division Rule 1.25-A, regarding mandatory initial self-disclosure, as set forth in Appendix A, and ordered that the new rule would take effect on April 1, 2011. In March 2011, Administrative Judge Edwin Kelly requested that the effective date of this rule be delayed in light of the amount of staff time that will be necessary for implementation of this new rule. After consideration of Justice Kelly's request, the court agrees that implementation of new Family Division Rule 1.25-A should be delayed. Accordingly, Family Division Rule 1.25-A shall not take effect on April 1, 2011; the effective date of Family Division Rule 1.25-A is hereby delayed until further order of this court.

Date: March 22, 2011

ATTEST: _____
Eileen Fox, Clerk of Court
Supreme Court of New Hampshire

APPENDIX A

Rule 1.25-A Mandatory Initial Self Disclosure:

A. APPLICATION.

This Mandatory Initial Self Disclosure Rule applies to all new actions in the family division for divorce, legal separation, annulment, or civil union dissolution. For parenting or child support petitions, or petitions to enforce or change court orders in parenting, divorce, legal separation, or civil union dissolution cases in the family division, sections B (1) (g) through (l) shall not apply.

This rule applies to parties engaged in mediation or other alternative dispute resolution processes once the petition invoking court involvement has been served/delivered. Parties involved in alternative dispute resolution before filing are not bound by the rule until they initiate court action.

B. INITIAL DISCLOSURES.

1. Except as otherwise agreed by the parties or ordered by the Court, each party shall deliver the following documents to the other no later than the earlier of (i) forty-five (45) days from the date of service/delivery of the petition or (ii) ten (10) days prior to the temporary hearing or initial hearing on the petition, not including the First Appearance required by rule 2.11:

(a) A current financial affidavit in the format required by family division rule 2.16, including the monthly expense form.

(b) The past three (3) years' personal and business federal and state income tax returns and partnership and corporate returns for any non-public entity in which either party has an interest, together with all tax return schedules, including but not limited to W-2s, 1099s, 1098s, K-1s, Schedule C, Schedule E and any other schedules filed with the IRS.

(c) The four (4) most recent pay stubs (or equivalent documentation) from each current employer, and the year-end pay stub (or equivalent documentation) for the calendar year that concluded prior to the filing of the action.

(d) For business owners or self-employed parties, all monthly, quarterly and year-to-date financial statements to include profit and loss, balance sheet and income statements for the year in which the action was filed; and all year-end financial statements for the calendar year that concluded prior to the filing of the action.

(e) Documentation confirming the cost and status of enrollment of employer provided medical and dental insurance coverage for:

- i. The party,
- ii. The party's spouse, and
- iii. The party's dependent child(ren).

(f) For the twelve (12) months prior to the filing of the action, any credit, loan and/or mortgage applications, or other sworn statement of assets and/or liabilities, prepared by or on behalf of either party.

(g) For the twelve (12) months prior to the filing of the action, documentation related to employee benefits such as but not limited to stock options, retirement, pension, travel, housing, use of company car, mileage reimbursement, profit sharing, bonuses, commissions, membership dues, or any other payments to or on behalf of either party.

(h) For the twelve (12) months prior to the filing of the action, statements for all bank accounts held in the name of either party individually or jointly, or any business owned by either party, or in the name of another person for the benefit of the either party, or held by either party for the benefit of the parties' minor child(ren).

(i) For the twelve (12) months prior to the filing of the action, statements for all financial assets, including but not limited to all investment accounts, retirement accounts, securities, stocks, bonds, notes or obligations, certificates of deposit owned or held by either party or held by either party for the benefit of the parties' minor child(ren), 401K statements, individual retirement account (IRA) statements, and pension-plan statements.

(j) For the twelve (12) months prior to the filing of the action, any and all life insurance declaration pages, beneficiary designation forms and the most recent statements of cash, surrender and loan value.

(k) For the six (6) months prior to the filing of the action, statements for all credit cards held by either party, whether individually or jointly.

(l) Any written prenuptial or written postnuptial agreements signed by the parties.

2. The parties may redact all but the last four (4) digits of any account numbers and social security numbers that appear on any statements or documents.

3. The parties shall promptly supplement all disclosures as material changes occur while the action is pending.

4. A party may seek a protective order for information disclosed in response to these mandatory disclosures. Protective orders will ordinarily be available upon request. In the event of a dispute concerning the need for a protective order, the party seeking the order shall file a motion requesting that the Court conduct an *in*

camera review of the materials in dispute. The Court will review the materials and determine if a protective order is necessary. From the date of the filing of the motion until such ruling, the materials shall be produced, but shall be disclosed by the parties only to their attorneys, staff, experts/consultants, in court, and as otherwise necessary in connection with the pending action. Materials submitted for *in camera* review shall be sealed in the Court's file until the Court determines the necessity of a protective order. If a protective order is issued, the Court shall seal the exhibits submitted in connection with the request for the protective order that remain in the Court's file.

C. UNAVAILABILITY OF DOCUMENTS.

1. In the event that either party does not have any or all of the documents required under this rule or has not been able to obtain them, that party shall state in writing, under oath, the specific documents which are not available, the reasons the documents are not available, and the efforts made by the party to obtain the documents. A statement of unavailability under this provision does not limit the filing party's duty to supplement disclosures and provide the other party with documentation as it becomes available.

2. When a statement of unavailability is filed or when it otherwise becomes apparent that documents required by this rule are unavailable, the party seeking the documents may prepare and submit to the other party appropriate authorizations or releases enabling the seeking party to retrieve the documents from their source. Upon receipt of such a release or authorization the party to whom documents were unavailable shall execute and immediately return to the seeking party the release or authorization. The seeking party may use the authorization or release to retrieve the unavailable documents covered by this rule, initially at their own expense, but that expense may be reallocated upon motion or at the final hearing.

D. FAILURE TO PROVIDE INITIAL DISCLOSURES.

1. Unless and until a party provides Initial Disclosures as required by section B and C above, the Court may impose sanctions, including, but not limited to prohibiting that party from: (a) introducing into evidence any document which was required under section B or C of this rule; (b) testifying or making an offer of proof regarding information or subject matter which is likely to be contained in or referred to in section documents required by section B and C; (c) filing requests for discovery as allowed under the family division rules; or (d) filing any discovery motions.

2. If a party's failure to provide Initial Disclosures prejudices access of a compliant party to requested substantive relief, such as the calculation and receipt of child support, the Court may, in addition to other sanctions, address the relief requested by the compliant party on the basis of reasonable estimates and assumptions, at least until such time as the documents are produced.

E. ADDITIONAL DISCOVERY.

If a party is in compliance with section B and C of this rule, that party may request further information as allowed under family division rules. This rule is not intended to limit the scope of discovery as provided under family division rule 1.25.

F. COURT ORDERED COMPLIANCE

Notwithstanding any agreement by the parties for limited applicability, the Court may, at any time, order full compliance with this rule.