



City of Keene
New Hampshire

COPY

August 7, 2013

Eileen Fox, Clerk
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

Re: *Rule 7 Notice of Mandatory Appeal*
City of Keene v. Ian Bernard (a/k/a Freeman)

Dear Clerk Fox:

Enclosed please find an original and 8 copies of a Mandatory Appeal of the decision in re: *City of Keene v. Ian Bernard (a/k/a Freeman)*, 8th Circuit – District Division – Keene, Case Number 449-2013-CR-206. Also enclosed is a check for the filing fee.

In accordance with the Court's instructions, copies of the enclosed were also provided to the Circuit Court and to Mr. Bernard.

Thank you.

Very truly yours,

Leon I. Goodwin III
Assistant City Attorney

LIG:bd

Enclosure

Cc: Med Kopczynski, ACM/Director
Mark Howard, Fire Chief (Act.)

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

<http://www.courts.state.nh.us>

RULE 7 NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court or circuit court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving a 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; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A other than an appeal from a final divorce decree or from a decree of legal separation. (An appeal from a final divorce decree or from a decree of legal separation should be filed on this form.)

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

**City of Keene v. Ian Bernard (a/k/a Freeman)
Case Number: 449-2013-CR-206**

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

**8th Circuit - District Division - Keene
Trial Judge - L. Phillips Runyon III**

3A. NAME AND MAILING ADDRESS OF APPEALING PARTY. IF REPRESENTING SELF, PROVIDE E-MAIL ADDRESS AND TELEPHONE NUMBER

**City of Keene
3 Washington Street
Keene, New Hampshire 03431**

E-Mail address:

Telephone number: _____

3B. NAME, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS AND TELEPHONE NUMBER OF APPEALING PARTY'S COUNSEL

**Leon I. Goodwin III
Assistant City Attorney
3 Washington Street
Keene, New Hampshire 03431**

E-Mail address: lgoodwin@ci.keene.nh.us

Telephone number: (603) 357-9806 ext

4A. NAME AND MAILING ADDRESS OF OPPOSING PARTY. IF OPPOSING PARTY IS REPRESENTING SELF, PROVIDE E-MAIL ADDRESS AND TELEPHONE NUMBER

**Ian Bernard (a/k/a Freeman)
63 Emerald Street PMB #458
Keene, New Hampshire 03431**

E-Mail address: ian@freetalklive.com

Telephone number: (603) 513-2449 ext

4B. NAME, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS AND TELEPHONE NUMBER OF OPPOSING PARTY'S COUNSEL

E-Mail address: _____

Telephone number: _____

RULE 7 NOTICE OF MANDATORY APPEAL

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

N/A

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING. ATTACH COPY OF NOTICE AND DECISION.

07/15/2013

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY. ATTACH COPY OF NOTICE AND DECISION.

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

N/A

8. APPELLATE DEFENDER REQUESTED?

YES

NO

IF YOUR ANSWER IS YES, YOU MUST CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND ATTACH FINANCIAL AFFIDAVIT (OCC FORM 4)

9. IS ANY PART OF CASE CONFIDENTIAL?

YES

NO

IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.

N/A

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

YES

NO

IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL?

YES

NO

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

RULE 7 NOTICE OF MANDATORY APPEAL

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. SEE SUPREME COURT RULE 16(3)(b).

See attached list of specific questions to be raised on appeal.

14. CERTIFICATIONS

I hereby certify that 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.

Zeev L. Aoodin III
Appealing Party or Counsel

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).

8/7/2013
Date

Zeev L. Aoodin III
Appealing Party or Counsel

RULE 7 NOTICE OF MANDATORY APPEAL

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 Supreme Court Rule 15(3)), 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 court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
4. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. Parties will be provided with an electronic copy of the transcript in PDF-A format. A paper copy of the transcript will also be prepared for the court.

PROCEEDINGS TO BE TRANSCRIBED					
PROCEEDING DATE (List each day separately, e.g. 5/1/11; 5/2/11; 6/30/11)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	LENGTH OF PROCEEDING (in .5 hour segments, e.g., 1.5 hours, 8 hours)	RATE (standard rate unless ordered by Supreme Court)	DEPOSIT
05/29/2013	Hearing on Pending Motions	Judge Runyon III	2.0 hours	X \$137.50	\$ 275.00
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
				TOTAL DEPOSIT	\$ 275.00

PROCEEDINGS PREVIOUSLY TRANSCRIBED					
PROCEEDING DATE (List date of each transcript volume)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	NAME OF TRANSCRIBER	DO ALL PARTIES HAVE COPY (YES OR NO)	DEPOSIT FOR ADDITIONAL COPIES
				<input type="checkbox"/> Yes <input type="checkbox"/> No	TBD
				<input type="checkbox"/> Yes <input type="checkbox"/> No	TBD
				<input type="checkbox"/> Yes <input type="checkbox"/> No	TBD

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you will 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.

STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

RULE 7 NOTICE OF MANDATORY APPEAL

City of Keene v. Ian Bernard (a/k/a Ian Freeman)
8th Circuit – District Division - Keene
Case Number: 449-2013-CR-206

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. SEE SUPREME COURT RULE 16(3)(b).

Question 1: Whether, after a hearing on pending motions held on May 29, 2013, the lower court erred when it granted Appellee's Motion to Suppress dated February 7, 2013, to which Appellant filed an objection on February 15, 2013, where said Motion to Suppress had been previously denied by the same court by Order dated March 11, 2013, in which it held that "[Appellee] does not raise suppression issues, but may raise these allegations as part of his defense." (Preserved in Appellant's Motion for Reconsideration dated June 14, 2013.)

Question 2: Whether the lower court erred when it held that Appellant had sufficient probable cause to conduct an administrative inspection pursuant to RSA 595-B for a potential zoning violation based upon substantial evidence that Appellee had converted a single-family dwelling to a lodging house, but that RSA 153:14, II (a) precluded an administrative inspection warrant for potential fire code violations until such time as the Appellant actually verified that the premises were not being used as a single-family dwelling or multi-unit dwelling containing two units, even though probable cause existed as to the change in use. (Preserved in Appellant's Motion for Reconsideration dated June 14, 2013.)

Question 3: Whether the lower court erred, when notwithstanding its ruling concluding that the Administrative Inspection Warrant authorizing Appellant to conduct an inspection for potential fire code violations was issued in error, it suppressed the evidence collected as a result of Appellant's administrative inspection where pursuant to RSA 595-B:7, the "[f]ailure to obtain an inspection warrant or to execute such a warrant in accordance with this chapter or the terms of the warrant shall not be cause for the exclusion of evidence derived from or obtained pursuant to any inspection, testing, or sampling, in any civil or criminal proceeding, if the receipt of such evidence is otherwise permitted by law." (Preserved in Appellant's Motion for Reconsideration dated June 14, 2013.)

Question 4: Whether the lower court erred when it granted Appellee's Motion to Dismiss/Strike dated June 7, 2013 that was based upon the lower court's June 5, 2013 Order suppressing the evidence collected as a result of Appellant's administrative inspection, even though Appellant had filed a Motion for Reconsideration and an Objection to Appellee's Motion to Dismiss/Strike, both of which raised errors of law with regard to the Court's June 5, 2013 Order. (Preserved in Appellant's Motion for Reconsideration dated June 14, 2013 and Appellant's Objection to Motion to Dismiss dated June 14, 2013.)

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

8th Circuit - District Division - Keene
3 Washington St./PO Box 364
Keene NH 03431-0364

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

July 15, 2013

**GARY LAFRENIERE
CITY OF KEENE
3 WASHINGTON ST
KEENE NH 03431**

Case Name: **State v. Ian Bernard**
Case Number: **449-2013-CR-00206**

Please be advised that on July 10, 2013 the Court (L. Phillips Runyon, III) issued the following Order with respect to a "Motion To Dismiss/Strike" filed by the Defendant.

7/10/13 "Motion granted." (LPR)

Larry S. Kane
Clerk of Court

(374)

C: Ian Bernard; Thomas P. Mullins, ESQ