

STATE OF NEW HAMPSHIRE
SUPREME COURT

NO. 2006-_____

IN THE MATTER OF

JILL IRVING

and

BRADLEY LORD

NOTICE OF MANDATORY APPEAL OF RESPONDENT, BRADLEY LORD
Pursuant to Supreme Court Rule 7(1)(A)

By: TIMOTHY S. WHEELLOCK, Esq.
600 State Street, Suite 3
Portsmouth, NH 03801
Tel: (603) 431-3430
Bar No. 2723

**NEW HAMPSHIRE SUPREME COURT
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, 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

In the Matter of Jill Irving and Bradley Lord
Docket #: 2006-M-0096

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

Judicial Branch – Family Division at Portsmouth

Master: Harriet J. Fishman
Presiding Justice: Lucinda V. Sadler

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

Bradley E. Lord
2 Freedom Circle, #7
Portsmouth, NH 03801

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

Timothy S. Wheelock, Esq.
600 State Street, Suite 3
Portsmouth, NH 03801
Tel: (603) 431-3430

4A. NAME AND ADDRESS OF OPPOSING PARTY

Jill M. Irving
4 Carriage Hill Road
Amesbury, MA 01913

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

Alexander G. Nossiff, Esq.
Nossiff & Giampa, PC
24 Chestnut Street
Dover, NH 03820
Tel: (603) 742-1260

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

None.

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

09/01/06

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

N/A

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

N/A

8. APPELLATE DEFENDER REQUESTED?

IF SO, CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND ATTACH FINANCIAL AFFIDAVIT (OCC FORM 4)

N/A

9. IS ANY PART OF CASE CONFIDENTIAL? IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

There is no known basis for confidentiality.

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?

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.

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS 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. SEE SUPREME COURT RULE 16(3)((B).

1. Whether the Trial Court erred in awarding respondent monthly alimony of only \$850.00 for only four months, followed by a reduction of alimony by \$200.00 every three months until the sum of zero was obtained, given petitioner's annual income of approximately \$80,000.00 per year, respondent's annual income of approximately \$13,000.00 per year, and respondent's demonstrated need for alimony to assist him to approximate the standard of living during the marriage?

2. Whether the Court failed to properly address or erred in addressing the appropriate statutory factors in determining the amount and duration of Respondent's need for alimony by first awarding alimony in an amount less than Respondent's need, and for a duration less than the length of respondent's need, without any evidence that the party in need would be able to be self-supporting through appropriate employment at a standard of living that approximated the standard of living during the marriage within the time frame of the alimony award?

3. Did the Court err by not awarding respondent alimony in the amount and duration he requested, when he was impoverished and incapable of obtaining alternative employment because of his emotional collapse caused by the parties' separation and divorce, and his wife had the ability to pay the alimony he requested?

4. Whether the Court erred in failing to award alimony to respondent in the amount he requested and, at a minimum, for the duration requested because: (a) the respondent had only a high school diploma and was discouraged from working full-time outside the home during the parties' marriage by his wife in order to make non-economic contributions to the family home and her in support of petitioner's career; (b) respondent will be 40 years of age at the time the alimony award expires in 2007; (c) respondent has not worked on a full-time basis for over five years; (d) respondent's physical and mental health issues affect his ability to obtain and maintain employment; (e) respondent is unlikely to obtain any employment that would enable him to provide for his reasonable needs, taking into account the style of living to which the parties had become accustomed during the marriage?
5. Whether or not the Court erred in awarding respondent rehabilitative alimony in a 12-year marriage where the respondent lacks the requisite job skills to independently approximate the standard of living established during the marriage?
6. Whether the Court erred in awarding the respondent rehabilitative alimony where the respondent suffers from ill health and is probably not capable of establishing an individual source of income approximating the standard of living established during the marriage?
7. Did the Court improperly impute to respondent an earning capacity sufficient to approximate the standard of living established during the marriage where the evidence before the Court was that, as a result of the parties' separation and divorce, respondent suffers from clinical depression, anxiety, and suicidality requiring medical attention.
8. New Hampshire's divorce statute requires the Court to specify reasons for making its alimony award. Beyond a cursory order, the Court did not specify reasons why the award would be for a lesser amount and duration than requested by respondent. Did the Court err by failing to specify reasons for the amount and duration of respondent's alimony award?
9. Did the Court err by failing to award alimony in the amount and duration of respondent's request for an alimony award where the Court's previous temporary alimony award in the amount of \$800.00 per month proved inadequate to meet the respondent's need?

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.

September _____, 2006
Date

Timothy S. Wheelock, 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).

September _____, 2006
Date

Timothy S. Wheelock, Esq.

ATTACHMENTS

- (1) Final Decree of Divorce, September 1, 2006
- (2) Final Partial [Stipulation] on Petition for Divorce or Legal Separation
- (3) Temporary Decree, July 27, 2006

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)	NAME OF COURT REPORTER (IF PROCEEDING WAS RECORDED SO INDICATE:	PORTIONS PREVIOUSLY PREPARED	DEPOSIT (SEE SCHEDULE BELOW)
09/01/06	Final Divorce Hearing	Hearing or trial up to ½ day	Judge Lucinda V. Sadler	Recorded	None	\$450.00
DO NOT SEND DEPOSIT AT THIS TIME.						TOTAL DEPOSIT \$450.00

SCHEDULES OF DEPOSITS

<u>Length of Proceeding</u>	<u>Deposit Amount</u>
Hearing or trial of one hour or less	\$175
Hearing or trial up to ½ day	\$450
Hearing or trial of more than ½ day	\$900/day
Previously prepared portions	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.

