

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

BETHANY R. SCAER and STEPHEN :
SCAE, :

Plaintiffs, :

v. :

Case No. 1:24-cv-00277-LM-TSM

CITY OF NASHUA, a municipal :
corporation; :

Defendant. :

**PLAINTIFFS’ NOTICE OF ACCEPTANCE OF
DEFENDANT’S RULE 68 OFFER OF JUDGMENT**

Pursuant to Rule 68(a) of the Federal Rules of Civil Procedure, Plaintiffs Bethany and Stephen Scaer, through their undersigned counsel, hereby accept and provide notice that they accept Defendant’s Rule 68 Offer of Judgment, dated April 24, 2026 (attached hereto as Exhibit Q). Under the terms of this judgment to be entered, the City of Nashua is ordered to adhere to Ordinance O-26-001 or a similar future ordinance regarding the City Hall flag poles. The City is also ordered to pay an award of \$17.91 in nominal damages to Bethany Scaer, an award of \$17.91 in nominal damages to Stephen Scaer, and various costs and interest accrued. This judgment does not resolve the issues of attorneys’ fees and expenses, which are left for later litigation in the case.

Dated: May 7, 2026

/s/ Roy S. McCandless
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Respectfully submitted,

/s/ Nathan J. Ristuccia
Nathan J. Ristuccia*¹
Virginia Bar No. 98372
Endel Kolde*
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**Pro hac vice*

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on May 7, 2026, a true and correct copy of the foregoing notice was served via CM/ECF upon the counsel of record of all parties.

Executed under penalty of perjury.

Dated: May 7, 2026

s/Nathan J. Ristuccia

¹ Not a D.C. Bar Member but providing legal services in the District of Columbia exclusively before federal courts, as authorized by D.C. Ct. App. R. 49(c)(3).

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

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| | : | |
| BETHANY R. SCAER and STEPHEN | : | |
| SCAER, | : | |
| | : | Case No. 1:24-cv-00277-LM-TSM |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| CITY OF NASHUA, | : | |
| | : | |
| Defendant. | : | |
| _____ | : | |

THE DEFENDANT, CITY OF NASHUA’S OFFER OF JUDGMENT

TO: Endel Kolde
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Pursuant to Rule 68 of the Federal Rules of Civil Procedure, the Defendant, City of Nashua, hereby offers to allow Judgment to be entered against it in this action. The terms of this Offer of Judgment are as follows:

- 1) \$17.91 in nominal damages awarded to the Plaintiff, Betharny R. Scaer, plus interest at a rate set forth in RSA 336;

- 2) \$17.91 in nominal damages awarded to the Plaintiff, Stephen Scaer, plus interest at a rate set forth in RSA 336;
- 3) That the City is ordered to adhere to City Ordinance O-26-001 passed by the City of Nashua's Board of Alderman on February 10, 2026, or a future ordinance that similarly keeps the flag poles in front of City Hall closed to the public and only permits them to be used by the City, and cannot resume its prior practice or policy unless there is a change in the law that would permit, or require the City to do so; and
- 4) An award of costs to the Plaintiffs, Bethany R. Scaer and Stephen Scaer equal to the amounts incurred by filing the complaint and appellate brief, together with interest at the rate set forth in RSA 336.
- 5) This Offer of Judgment is made for the purposes specific in Federal Rule of Civil Procedure 68, and is not to be construed as either an admission that the Defendant, City of Nashua, is liable in this action, or that the Plaintiffs, Bethany R. Scaer and Stephen Scaer, have suffered any damages.
- 6) This Offer of Judgment does not include an award of attorneys' fees.
- 7) The parties agree that the Plaintiffs, Bethany R. Scaer and Stephen Scaer, may pursue attorney's fees, by filing a motion with the court, but are under no requirement to do so.
- 8) The parties agree that the Defendant, City of Nashua, may object to any motion for attorney's fees filed with the court by the Plaintiffs, Bethany R. Scaer and Stephen Scaer.
- 9) This Offer of Judgment shall not be filed with the Court unless (a) accepted or (b) in a proceeding to determine awards, costs, or attorney's fees.
- 10) If the Plaintiffs, Bethany R. Scaer and Stephen Scaer, do not accept this offer, they may become obligated to pay the City's costs and attorney's fees incurred after the making of

this offer in the event that they do not recover a judgment that is more favorable than this offer of judgment pursuant to Rule 68(d) of the Federal Rules of Civil Procedure.

11) To accept this offer, both of the Plaintiffs, Bethany R. Scaer and Stephen Scaer, must serve written notice of acceptance thereof within fourteen (14) days of the date this offer is made. If both of the Plaintiffs, Bethany R. Scaer and Stephen Scaer, do not accept this offer, then it is deemed rejected.

Respectfully submitted,
City of Nashua, Defendant
By its Attorneys,

/s/ Jonathan A. Barnes
Steven A. Bolton, Esq. (NH Bar #67)
Celia K. Leonard, Esq. (NH Bar #14574)
Jonathan A. Barnes, Esq. (NH Bar #20061)
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barnesj@nashuanh.gov

Dated: April 24, 2026

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been forwarded via email to Bethany R. Scaer and Stephen Scaer via their counsel of record.

/s/ Jonathan A. Barnes
Jonathan A. Barnes