

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

Order Promulgating Amendments to the
Vermont Rules of Criminal Procedure

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 5 of the Vermont Rules of Criminal Procedure be amended as follows (deleted matter struck through; new matter underlined):

RULE 5. APPEARANCE BEFORE A JUDICIAL OFFICER

* * * * *

(e) Advisement of Pretrial Risk Assessment and Needs Screening; Use of Results Thereof. The judicial officer must inform the defendant that:

(1) The court may order that the defendant participate in a pretrial risk assessment or pretrial needs screening and any recommended treatment as a condition of release; and

(2) If the defendant participates in a pretrial risk assessment or pretrial needs screening, the results will:

(A) be shown to the prosecuting attorney, but may not be used by the prosecuting attorney to prove the defendant's guilt in the pending case;

(B) be available to the defendant, prosecuting attorney and the court to be used in setting bail, conditions of release and programs for the defendant in the case, and

(C) not be otherwise subject to disclosure as a public record.

(e)(f) Assignment of and Consultation With Counsel. No further proceedings shall be had until counsel has been assigned, if the case is an appropriate one for such assignment, and until the defendant and his counsel have had an adequate opportunity to confer; unless the defendant has intelligently waived the right to be represented by counsel.

(f)(g) Determination of Arraignment Date. If the defendant is not discharged under subdivision (c), the judicial officer shall, upon consultation with the prosecuting officer ~~attorney~~ and the defendant or his counsel, set a date and time for arraignment which shall be within a reasonable time, but in no event less than 24 hours, after the time of such determination, except at the request of the defendant. The judicial officer may, if the defendant so requests, conduct the arraignment forthwith as part of the proceedings under this rule. Otherwise, the judicial officer shall either order the defendant to appear before him or her at a later date and time or

order the defendant to appear for arraignment in the court having jurisdiction in the county unit where the offense occurred at the date and time set.

(g)(h) Pretrial Release. If the defendant has been arrested and is not released upon citation under Rule 3(c) or discharged under subdivision (c) of this rule and the prosecuting officer attorney does not stipulate to the release of the defendant on his or her own recognizance, the judicial officer shall determine whether and on what conditions the defendant shall be released pending trial in accordance with the standards provided in Rule 46.

(h)(i) Review of Probable Cause Determination. Upon request of the defendant, the judicial officer shall review the finding of probable cause. The review shall be solely on the affidavits or sworn statements taken pursuant to Rule 4(a), (b) or 5(c).

Reporter's Notes—2015 Amendment

A new subdivision 5(e) is added, and former subdivisions (e), (f), (g), and (h) are now designated as (f), (g), (h), and (i) respectively. New subdivision 5(e) is added in response to the passage of Act No. 195 of 2013 (Adj. Sess.), which establishes a system of pretrial risk assessments and needs screenings, which may be voluntarily engaged in by defendants in: (a) felony cases excepting listed crimes; (b) felony or misdemeanor drug offenses; (c) cases in which showing is made that a defendant has a substantial substance-abuse or mental-health issue, and (d) all other cases, with limited exceptions, where the defendant has been held, unable to make bail, for over 24 hours after lodging, or (e) in more limited circumstances, ordered by the court (and not voluntarily) as a condition of release under 13 V.S.A. § 7554. See 2013, No. 195 (Adj. Sess.), § 2, codified at 13 V.S.A. § 7554c. It is anticipated that the system will be phased in over a period of approximately ten months, beginning with defendants referenced in category (a). In most instances, defendants will be contacted by a pretrial monitor in the period between their citation and arraignment dates and offered the opportunity to participate voluntarily in a pretrial risk assessment or needs screening. Defendants may decline participation, as they choose. Defendants are notified that they have the right to advice of an attorney as to whether to participate or not, and are provided with contact information for the local public defender for such advice. The stated objectives of the legislation include provision of alternatives to traditional criminal justice response for people who, consistent with public safety, can effectively and justly benefit from those alternative responses, under an evidence-based approach to assessment and effective treatment and recovery.

13 V.S.A. § 7554c(e)(1) provides that information secured in consequence of either a voluntary or court-ordered risk assessment or needs screening must be used solely for purposes of determining bail or conditions of release and appropriate programming for the defendant in the pending case. Per amendment of V.R.P.A.C.R. 6(b)(35) effective January 1, 2015, the results of the pretrial screening or assessment that are filed with the court are exempt from public inspection and copying under the Public Records Act. Use and derivative use

immunity is accorded to information gained as a proximate result of the risk assessment or needs screening. This subdivision makes provision for explicit advisement to the defendant of the nature, purposes and use of pretrial risk screenings and needs assessments, and the consequences of participating therein, at time of the defendant's initial appearance before a judicial officer under Rule 5. New Rule 5(e)(2), which indicates that the results of pretrial screening or assessment "cannot be used by the prosecuting attorney to prove the defendant's guilt in the pending case," references the statutory grant of use and derivative use immunity of 13 V.S.A. §7554c(e)(1). "Pending case" refers to the charge or charges in the case in which Rule 5 advisements are being provided upon initial appearance before the judicial officer.

Reference to "county" in newly designated subdivision 5(g) is amended to reference "unit," consistent with changes in nomenclature necessitated by the Judicial Restructuring Act, Act 154 of 2009 (Adj. Sess.).

References to prosecuting "officer" in newly designated subdivisions 5(g) and (h) are amended to reference prosecuting "attorney," consistent with restyling of the rules to implement the Judicial Restructuring Act.

2. That Rule 16 of the Vermont Rules of Criminal Procedure be amended as follows (new matter underlined):

RULE 16. DISCOVERY BY DEFENDANT

* * * * *

(d) Matters Not Subject to Disclosure

* * * * *

(3) *Victim's Residential Address or Place of Employment.* Disclosure shall not be required of a victim's residential address or place of employment unless the court finds, based upon a preponderance of the evidence, that nondisclosure of the information will prejudice the defendant.

Reporter's Notes—2015 Amendment

New subdivision 16(d)(3) provides that the prosecuting attorney is not required to disclose to the defendant information as to the residential address or place of employment of the victim, unless the court finds, based upon a preponderance of the evidence, that nondisclosure of the information will prejudice the defendant. The amendment serves to implement the provisions of 13 V.S.A. § 5310, while expressly reserving the court's authority to order that the state disclose the information where necessary to preserve a defendant's due process and confrontation guarantees. In contrast

to Vermont Rule 16, Federal Rule 16 makes no provision for disclosure of the addresses or places of employment of witnesses; the Jencks Act, 18 U.S.C. § 3500, provides for disclosure of certain prior statements of witnesses to the defendant after they have testified, for purposes of cross-examination.

3. That Rule 30 of the Vermont Rules of Criminal Procedure be amended to read as follows (new matter underlined):

RULE 30. INSTRUCTIONS

(a) In General. At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed instructions prior to delivering them.

(b) Objections. All parties shall have the opportunity to present objections to the instructions before their delivery. No party may assign as error any portion of the charge or omission therefrom unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which objection is made and the ground of the objection. Opportunity shall be given to make the objection out of the hearing of the jury. The court shall give a written copy of the instructions to the jury before it retires.

(c) Preservation of Objections. An objection to the instructions shall be deemed timely and preserved if it is made during a charge conference held on the record prior to closing arguments, and renewed after the charge has been delivered and before the jury retires to consider its verdict. A renewal which incorporates a prior objection by reasonable reference shall be deemed sufficient.

Reporter's Notes—2015 Amendment

Rule 30 is reorganized into three separate paragraphs, and subsection (c) is added to clarify the circumstances under which an objection to a jury instruction is sufficiently preserved. The amendment is intended to address the circumstances in issue in State v. Vuley, 2013 VT 9, ¶¶ 36-40, 193 Vt. 622, 70 A.3d 940, and Straw v. Visiting Nursing Ass'n., 2013 VT 102, ¶¶ 10-13, 195 Vt. 152, 86 A.3d 1016 (construing V.R.C.P. 51(b)), to clarify that while an objection to an instruction must still be articulated after the charge and before deliberation in order to be preserved, the objection may be preserved if it is distinctly articulated at a charge conference so that the court can fully appreciate the objection and consider whether changes to the instructions are appropriate, even though it is the subject of objection by reasonable reference after its delivery to the jury. Cf. State v. Kolibas, 2012 VT 37, ¶¶ 10-12, 191 Vt. 474, 48 A.3d 610 (construing as sufficient for preservation post-charge objection which briefly, but succinctly, stated grounds thereof, where there had

been “lengthy debate” at the charge conference as to the instruction in issue). Provided that there is reasonable and distinct articulation of objection to an instruction at an earlier charge conference, a postcharge objection by reasonable reference suffices to preserve the objection, while avoiding unnecessary delay, extending dismissal of the jury to receive and address lengthy and detailed repetition of prior objections to instructions, at a time when the jury is ready to begin deliberations.

The amendment does not obviate the need for fair and reasonable articulation of specific objections to jury instructions, asserted distinctly and stating the bases thereof. However, the amendment contemplates that where the record of an objection to a jury instruction is well developed, with distinct articulation at an earlier juncture in the case, a lengthy repetition of the specific objection and its bases is not required postcharge and predeliberation, provided that there is reasonable reassertion of objection by reference.

Subsection (c) does not address the circumstance in which the instruction as given does not comport with the particular language of an instruction that has been indicated by the court in a precharge ruling, or in which the court has omitted a particular instruction to the jury altogether. Nor does the rule preclude assertion of objection to an instruction the basis for which is first presented in the court’s instructions as actually stated to the jury. In such circumstances, preservation of objection would require full articulation of a party’s objection, distinctly and stating the bases thereof, postcharge, and predeliberation, to provide the court with the opportunity to reasonably address any claim of error.

4. That Rule 41 of the Vermont Rules of Criminal Procedure be amended to read as follows (new matter underlined):

RULE 41. SEARCH AND SEIZURE

* * * * *

(e) Execution and Return of the Warrant.

* * * * *

(3) *Return.* The return shall be made as promptly as possible, and in no event later than five calendar days after execution of the warrant and completion of the search, and shall be accompanied by the inventory and a copy of the warrant as served. Upon certification by a law enforcement officer, an attorney for the state or any other person authorized by law that good cause exists for extension of time for filing the return and inventory, the judicial officer may extend the time for making the return for such period of time as the judicial officer deems reasonable. If no property was seized in consequence of the authorized search, the return shall so indicate. The clerk of the court to which the warrant was returned shall upon request deliver a

copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) *Execution and Return of a Warrant for Monitoring a Conversation.*

* * * * *

(B) Return. If the warrant is executed a return shall be made within 90 days. The return and any accompanying documents may be filed by reliable electronic means. However, in such case, the original documents prepared by the officers completing the return and accompanying documents must be filed with the court no later than 15 days following electronic submission. Upon certification by a law enforcement officer, an attorney for the state, or any other person authorized by law that an investigation related to the warrant is ongoing, a judicial officer may authorize an extension of the time for making the return for such period as the judicial officer deems reasonable. The return shall identify:

- (i) the identity of any nonconsenting parties to the conversation, if known;
- (ii) the date and time of any monitored conversations; and
- (iii) the approximate length of any monitored conversations.

* * * * *

(5) *Execution and Return of a Warrant for a Tracking Device.*

* * * * *

(B) Return. Within 10 calendar days after the use of a tracking device has ended, the law enforcement officer executing the warrant shall return it to the court designated in the warrant. The return shall describe the person or property tracked, and indicate the exact date and time for which the person or property's movement was tracked. The return and any accompanying documents may be filed by reliable electronic means. However, in such case, the original documents prepared by the officers completing the return and accompanying documents must be filed with the court no later than 15 days following electronic submission.

* * * * *

(6) *Warrants Not Executed; Filing Requirements.* If a warrant is not executed within its prescribed term, the applicant shall within five days of the expiration of its term, file with the clerk of the court designated in the warrant, the original warrant as issued, the application, the affidavit, and a return signed and dated by the applicant with the notation "warrant not executed". The return and any accompanying documents may be filed by reliable electronic means. However, in such case, the original documents prepared by the officers completing the return and accompanying documents must be filed with the court no later than 15 days following electronic submission.

Reporter's Notes—2015 Amendments

The amendments to Rule 41(e)(4), (5) and (6) authorize the filing of search warrant returns and accompanying documents by reliable electronic means to facilitate prompt filing where great distances, or particular circumstances of completion of the return, would otherwise impede timely submission of search warrant returns as contemplated by Rule 41, consistent with the warrant "accountability" procedures adopted in 2013. Subdivision 41(d)(4) already provides for the electronic application for and issuance of search warrants, and at this juncture there is general understanding of and experience with the process of issuing search warrants by reliable electronic means. The present amendment adds the filing of returns to this established process of transmission of warrant documents by reliable electronic means. The amendment adds the requirement that, in event of electronic submission, the original return and accompanying documents that were prepared by the executing officers must be subsequently filed with the court no later than 15 days following electronic submission to avert any dispute as to which are the original, and operative, return, inventory and other accompanying documents.

5. That these Rules, as amended, are prescribed and promulgated to become effective _____ . The Reporter's Notes are advisory.

6. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont this _____ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, III, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM 2015

**Order Promulgating Amendments to Rule 32
of the Vermont Rules of Criminal Procedure**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 32 of the Vermont Rules of Criminal Procedure be amended to provide as follows (new matter underlined):

RULE 32. SENTENCE AND JUDGMENT

* * * * *

(g) Restitution. In every case in which a victim has suffered a material loss, the court must determine the amount of restitution, if any, which the defendant must pay. Unless the amount of restitution is agreed to by the parties at the time of sentencing, a restitution hearing must be held. The court must issue findings either on the record or in writing as to any matters of factual dispute in the determination of the amount of restitution or the defendant's current ability to pay restitution. The court must enter a restitution judgment order establishing the defendant's restitution obligation. The provisions of subdivision (c)(4)(A) apply in the conduct of restitution hearings. At least 10 days prior to the restitution hearing, the prosecuting attorney must provide to the defendant a written statement of the amount of restitution claimed, and copies of any documents that it intends to offer in evidence to establish a victim's material loss and support the claim for restitution. The prosecuting attorney must disclose in writing to the defendant the existence and terms, if known after reasonable inquiry, of any policy of insurance for the losses in issue that would serve to compensate the victim for all or any portion of material loss held by the victim or a party other than the defendant. The disclosure must include uninsured motorist coverage, if applicable, and it must be made to the defendant at least 10 days prior to the restitution hearing. If the defendant claims that a victim's losses are not uninsured by reason of the existence of defendant's own, or a third party's insurance coverage for the losses in issue, he or she must disclose to the prosecuting attorney in writing the existence and terms of this liability insurance coverage, if known after reasonable inquiry, at least 10 days prior to the restitution hearing.

Reporter's Notes—2015 Amendment

Subdivision 32(g) is added in response to the Court's decision in State v. Morse, 2014 VT 84, ___ Vt. ___, 106 A.3d 902, to provide specific procedures for the conduct of, and evidentiary standards in, restitution hearings convened pursuant to 13 V.S.A. § 7043. The subdivision also specifies written prehearing disclosures that are required to be made to the defendant by the prosecuting attorney, who

has the burden of proof in establishing restitution claims payable to a victim of crime. These disclosures include the existence and terms, if known after reasonable inquiry, of any policy of liability insurance of the victim or a third party which would serve to independently compensate the victim apart from an order of restitution. In cases in which a defendant claims that a victim's material losses are not "uninsured," and thus not compensable in restitution by reason of the defendant's own, or a third party's liability insurance that would serve to cover the loss, he or she must make such written prehearing disclosure to the prosecuting attorney as well. The existence of liability insurance coverage held personally by a victim or a defendant is uniquely and reasonably within their direct knowledge, and the rule contemplates that this information would be routinely subject to disclosure. Information about other insurance coverage for the losses in issue held by third parties such as family members, friends, or other property owners involved in the losses may not be so readily available. The rule imposes an obligation of reasonable inquiry as to the existence and terms of such other insurance, anticipating disclosure of such information as is reasonably known, to enable the court to render a fully informed decision on the issue of material loss as the term is defined by 13 V.S.A. § 7043(a)(2).

The subdivision adopts by reference the provisions of subdivision 32(c)(4), specifying procedural due process in restitution hearings, and evidentiary standards therein, including admission of hearsay evidence determined by the court to be reliable, as in sentencing proceedings generally.

2. That this rule, as amended, is prescribed and promulgated to become effective _____. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont this ____ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

PROPOSED

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

**Order Promulgating Amendments to the
Vermont Rules of Criminal Procedure**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 12.1(a) of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 12.1. NOTICE OF ALIBI, INSANITY OR EXPERT TESTIMONY

(a) **Notice.** A defendant who wishes to offer an alibi, raise the issue of insanity, or offer expert testimony related to a mental disease or defect or any other mental condition of the defendant bearing upon the issue of his or her guilt must give written notice thereof, together with the information required by subdivision (b) of this rule, to the prosecuting attorney on the date of the status conference, or at least ~~10~~ 30 days prior to trial, whichever is sooner. The prosecuting attorney must give the defendant the information required by subdivision (c) of this rule within ~~10~~ 14 days after receipt of notice of an alibi. The court may extend the time limits of this subdivision for good cause shown.

Reporter's Notes – 2015 Amendment

Rule 12.1(a) is amended to conform its 10-day time periods to the contemporaneously amendment of Rule 45, which adopts Federal Rule 45's "day is a day" standard for the computation of the running of time periods in criminal cases. In consideration of the practical difficulties associated with investigation of the circumstances of a proffered alibi defense, and with securing and disclosure of expert assessment in the case of insanity or other mental state defenses, the period for provision of notice of such defenses is increased to 30 days under the present amendments, in contrast to other contemporaneous amendments of 10 day periods, which are extended to 14 days.

2. That Rule 29(c) of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 29. MOTION FOR JUDGMENT OF ACQUITTAL

* * * * *

(c) Motion After Discharge of Jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within ~~10~~ 14 days after the jury is discharged or within such time as the court may fix during the ~~10~~ 14 day period.

Reporter's Notes – 2015 Amendment

Rule 29(c) is amended to conform its 1-day time period to the contemporaneously amendment of Rule 45, which adopts Federal Rule 45's "day is a day" standard for the computation of the running of time periods in criminal cases.

3. That Rule 32(c)(4)(A) of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 32. SENTENCE AND JUDGMENT

* * * * *

(c) Sentencing Information.

* * * * *

(4) *Right to Comment and Offer Evidence.*

(A) Prior to imposing sentence, the court shall afford the state, the defendant and his or her attorney an opportunity to comment upon any and all information submitted to the court for sentencing. Any objection to facts contained in the presentence investigation report shall be submitted, in writing, to the court at least ~~three~~ 5 days prior to the sentencing hearing, unless good cause is shown for later objection. Either party may offer evidence, including hearsay, specifically on any disputed factual issues in open court with full rights of cross-examination, confrontation, and representation. When a defendant objects to factual information submitted to the court or otherwise taken into account by the court in connection with sentencing, the court shall not consider such information unless, after hearing, the court makes a specific finding as to each fact objected to that the fact has been shown to be reliable by a preponderance of the evidence, including reliable hearsay. If the court does not find the alleged fact to be reliable, the court shall either make a finding that the allegation is unreliable or make a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report or other controverted document thereafter made available by the court to the Department of Corrections.

Reporter's Notes – 2015 Amendment

Rule 32(c)(4)(A) is amended to conform its 3-day time period to the contemporaneously amendment of Rule 45, which adopts Federal Rule 45's "day is a day" standard for the computation of the running of time periods in criminal cases.

4. That Rule 33 of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 33. NEW TRIAL

The court on motion of a defendant may grant a new trial to ~~him~~ the defendant if required in the interests of justice. If trial was had by court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ~~10~~ 14 days after verdict or finding of guilty or within such further time as the court may fix during the ~~10~~ 14-day period.

Reporter's Notes – 2015 Amendment

Rule 33 is amended to conform its 10-day time periods to the contemporaneously amendment of Rule 45, which adopts Federal Rule 45's "day is a day" standard for the computation of the running of time periods in criminal cases.

5. That Rules 45(a) and (b) of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 45. TIME

~~(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a State or federal legal holiday; or, when the act to be done is the filing of some paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.~~

Computing Time. The following rules apply in computing any time period specified in these rules by court order or in any statute that does not specify a method of computing time.

- (1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:
- (A) exclude the day of the event that triggers the period;
 - (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
 - (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (2) Period Stated in Hours. When the period is stated in hours:
- (A) begin counting immediately on the occurrence of the event that triggers the period;
 - (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and
 - (C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
- (3) Inaccessibility of the Clerk's Office. Unless the court orders otherwise, if the clerk's office is inaccessible:
- (A) on the last day for filing under Rule 45(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or
 - (B) during the last hour for filing under Rule 45(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.
- (4) "Last Day" Defined. Unless a different time is set by statute or court order, the last day ends:
- (A) for electronic filing, at midnight in the court's time zone; and
 - (B) for filing by other means, when the clerk's office is scheduled to close.
- (5) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
- (6) "Legal Holiday" Defined. "Legal Holiday" means:
- (A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Town Meeting Day, Memorial Day, Independence Day, Bennington Battle Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;
 - (B) any day declared a holiday by the President or Congress of the United States; and
 - (C) for periods that are measured after an event, any other day declared a holiday by the State of Vermont.

~~(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 29, 33, and 34, except to the extent and under the conditions stated in them.~~

Extending Time.

- (1) In General. When an act must be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made:
 - (A) before the originally prescribed or previously extended time expires; or
 - (B) after the time expires if the party failed to act because of excusable neglect.
- (2) Exception. The court may not extend the time to take any action under Rule 35, except as stated in that rule.

Reporter's Notes – 2015 Amendment

Rule 45(a) is amended to standardize and simplify the manner of computing the running of time under the rules, adopting what is known as the “day is a day” rule which governs computation of the running of time under Federal Rule of Criminal Procedure 45(a). As in 1995, the rule is amended contemporaneously with V.R.C.P. 6(a) [and V.R.P.P. 6(a)] so that time is computed identically under all of the rules of procedure. Note that the rule addresses the method of computation of time periods established elsewhere in the rules, and “externally” to the rules by reference, by provision of statute or by rules of appellate procedure. The amendment does not serve to alter such “external” times and deadlines, as in the case of the deadline for filing of presentence investigation reports under Rule 32(c)(3), which is also the subject of statute, 28 V.S.A. §§ 204(c) and 204a(a)(5).

As the Federal Advisory Committee's Notes point out, the “day is a day” computation method does not apply when a court order has establishes a specific date as a deadline or when a statute prescribes a specific method for computing time. The Advisory Committee's Notes provide a helpful further explanation of the change:

Under former Rule 45(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 45(a) thus made computing deadlines

unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day—and the 10-day period not infrequently ended later than the 14-day period....

Under [the amended rule], all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days—including intermediate Saturdays, Sundays, and legal holidays—are counted, [except that if] the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday.

Of course, if the clerk's office is inaccessible or the electronic filing system is unavailable on the last day or the day to which the period has been extended, the deadline falls on the next accessible or available day. Note that in the rule as amended, former terms "act, event, or default" have been changed to "event" for brevity and simplicity. This change is not intended as a change in meaning.

Under the amended rule, periods of time of less than 11 days in other provisions of the rules would be shortened by the inclusion of intermediate Saturdays, Sundays, and legal holidays. Accordingly, shorter time periods in other rules are being extended by simultaneous amendments, generally following guidelines stated in the Federal Advisory Committee's Notes.

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method—two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period—the 14th day after a Monday, for example, is a Monday.... Thirty-day and longer periods, however, were generally retained without change.

An exception under simultaneous amendment is established for a defendant's notice of alibi, insanity or expert testimony of mental state or condition, under V.R.Cr.P. 12.1, which is amended from 10 days to 30 days prior to trial.

As the Federal Advisory Committee's Notes indicate, time periods may be either forward-looking or backward-looking. "A forward-looking time period requires something to be done within a period of time after an event. See, e.g., [F.R.Cr.P.] 35(a) (stating that a court may correct an arithmetic or technical error in a sentence '[w]ithin 14 days after sentencing.') Cf. existing V.R.Cr.P. 33 (Motion for new trial other than on grounds of newly-discovered evidence must be made within 10 days after verdict or finding of guilty or within such further time as the court may fix during the 10-day period). "A backward-looking time period requires something to be done within a period of time before an event. See, e.g., [F.R.Cr.P.] 47(c) (stating that a party must serve a written motion 'at least 7 days before the hearing date')." Cf. existing V.R.Cr.P. 12.1 (a defendant wishing to offer an alibi or insanity defense, or offer expert testimony bearing upon mental condition must provide specified notice to the prosecuting attorney at time of status conference, or "at least 10 days prior to trial," whichever is sooner).

The last day of a period ending on a weekend or holiday should be determined by counting in the same direction that the time period runs. For example, the Federal Advisory Committee's Notes suggest, that if

a filing is due within 30 days after an event, and the thirtieth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, 2007 being Labor Day). But if a filing is due 21 days before an event, and the twenty-first day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk's office is inaccessible on August 31, then [the rule] extends the filing deadline forward to the next accessible day that is not a Saturday, Sunday, or legal holiday—no earlier than Tuesday, September 4.

In either the "after" or "before" situation, if the clerk's office were inaccessible on Tuesday, September 4, the extension would continue until the office was accessible.

Rule 45(b) is amended to provide generally for extension of the time established for an act under the rules, by the court, or on motion filed within the period established for an act, or upon showing of excusable neglect after expiration of the period to act, with the exception of a Motion for Reduction of Sentence under Rule 35, the time for which is expressly established by statute, 13 V.S.A. § 7042(a). Former Rule 45(b) additionally precluded cognizance of

untimely motions to extend time for filing a post-trial Motion for Judgment of Acquittal under V.R.Cr.P. 29, Motion for New Trial under V.R.Cr.P. 33, or Motion in Arrest of Judgment under V.R.Cr.P. 34 under all circumstances. Consistent with 2005 amendments to F.R.Cr.P. 45(b)(1)(B), under amended V.R.Cr.P. 45(b), the court upon motion and the establishment of excusable neglect, may extend the time for an act, even after expiration of the time otherwise established for the filing of Rule 29, 33, or 34 motions.

6. That Rule 47(b)(1) of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 47. MOTIONS

* * * * *

(b) Disposition of Written Motions With or Without Argument.

(1) *Memorandum in Opposition.* Any party opposed to the granting of a written motion shall must file a memorandum in opposition thereto, not more than ~~10~~ 14 days after service of the motion, unless otherwise ordered by the court. The memorandum may be accompanied by affidavit. If a memorandum in opposition is not timely filed when required under this rule, the court may dispose of the motion without the memorandum.

Reporter's Notes—2015 Amendment

Rule 47(b)(1) is amended to conform its 10-day time period to the contemporaneously amendment of Rule 45, which adopts Federal Rule 45's "day is a day" standard for the computation of the running of time periods in criminal cases.

7. That these Rules, as amended, are prescribed and promulgated to become effective _____ . The Reporter's Notes are advisory.

8. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont this _____ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, III, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
AUGUST TERM, 2015

**ORDER PROMULGATING AMENDMENTS TO THE
VERMONT RULES OF APPELLATE PROCEDURE**

Pursuant to the Vermont Constitution, Chapter II, Section 37 and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3(b)(2) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 3. APPEAL AS OF RIGHT—HOW TAKEN

(b) Filing and Serving the Notice of Appeal

* * * * *

(2) Sentence of Life Imprisonment.

(A) ~~No notice of appeal is necessary in~~ In a criminal case resulting in a sentence of life imprisonment, an appeal will be entered without the filing of a notice of appeal, except that a notice of appeal must be filed by the defendant in a case in which

(i) the defendant has, with the advice of counsel, waived his right to appeal on the record in open court, or

(ii) the defendant, with the advice of counsel, entered a plea of guilty or nolo contendere to the underlying charge.

(B) When an appeal is entered without the filing of a notice of appeal in accordance with subparagraph (A), the following procedures will apply:

(i) The date of entry of judgment will be treated as the date from which all time periods will run that would otherwise be triggered by the filing of the notice of appeal of filing the notice of appeal for all purposes under these rules.

(ii) (C) Unless the defendant has, with the advice of counsel, waived appeal on the record in open court, the ~~The~~ judge will direct the clerk to mail a copy of the notice of entry of judgment required by V.R.Cr.P. 56(d), and a copy of the docket entries, to the Supreme Court clerk.

(iii) (D) The appeal will be docketed in the Supreme Court and the record and transcript prepared and forwarded as provided in these rules for appeals in other criminal cases. The Supreme

Court will review the record in the interests of justice and consider any claim of error as if a notice of appeal has been filed.

Reporter's Notes–2015 Amendment

Rule 3(b)(2) is amended to eliminate the automatic entry of appeal provision for cases in which a defendant who is represented by counsel has entered a plea of guilty or nolo contendere and has been sentenced to life imprisonment. The amendment comports with the concurring opinion (Johnson, J.) given in *State v. Sheperd*, 2011 VT 44, ¶ 2, 189 Vt. 636, 21 A.3d 694 (mem.). The only substantive change is to add the provisions under which appeal would not be automatic in case of either explicit record waiver of right of appeal, or entry of a plea of guilty or nolo contendere resulting in a life sentence, in either instance with advice of counsel. A defendant still has a right to appeal, but in the case of a plea of guilty or nolo contendere, entry of appeal would not be automatic; defendant or counsel would be required to file a timely notice of appeal to preserve the right. The existing rule has been construed to require that in all cases in which life imprisonment is the sentence, a defendant must personally appear, with counsel, to explicitly waive appeal rights after an appeal has been automatically entered, even if judgment of conviction results from a plea of guilty or nolo contendere rather than a verdict, and even if an appeal is not contemplated by the defendant. In such cases, personal appearance, explicit colloquy and waiver of right of appeal is not necessary.

Subsection 3(b)(2)(B)(ii) provides that the clerk of the unit of the Superior Court having the case transmits the necessary appeal documents to the clerk of the Supreme Court as directed by the court in cases of automatic appeal. Otherwise, transmittal of appeal documents in life sentence cases occurs only upon timely filing of a notice of appeal by defendant or counsel consistent with the provisions of subsection 3(b)(1).

2. That Rule 10(b)(3) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined):

RULE 10. THE RECORD ON APPEAL

* * * * *

(b) Transcript

(3) *Life Imprisonment Cases.* In any criminal case resulting in a sentence of life imprisonment where the defendant has not waived appeal or entered a plea of guilty or nolo contendere to the underlying charge, the superior court clerk must, within 10 days of the entry of judgment, order from a Court-approved transcription service a complete transcript of the proceedings.

* * * * *

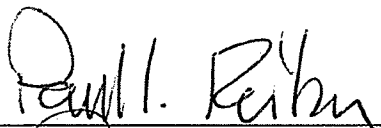
Reporter's Notes--2015 Amendment

Rule 10(b)(3) is amended consistent with a contemporaneous amendment of Rule 3(b)(2), which eliminates provision for automatic entry of appeal in cases in which a defendant who is represented by counsel has entered a plea of guilty or nolo contendere and has been sentenced to life imprisonment. The present amendment serves to clarify that the clerk is obligated to order a complete transcript of proceedings within 10 days of judgment in life imprisonment cases only where there has not been a waiver of appeal, or a plea of guilty or nolo contendere to the underlying charge, consistent with the provisions of amended Rule 3(b)(2). Even in such cases, a defendant has a right to file a timely notice of appeal, in which event the manner of securing a transcript of proceedings is governed by the other provisions of Rule 10(b), as applicable, and by Rule 24(d) (preparation of transcripts for appellants proceeding in forma pauperis).

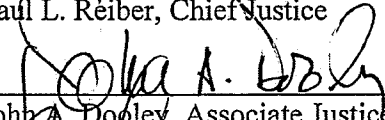
3. That this rule, as amended, is prescribed and promulgated to become effective October 5, 2015. The Reporter's Notes are advisory.

4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

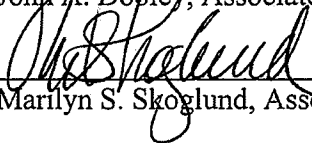
Dated in Chambers at Montpelier, Vermont this 5th day of August, 2015.



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice

Bis

Beth Robinson, Associate Justice

Harold E. Eaton, Jr.

Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2015

Order Promulgating Emergency Amendment to Rule 4(r)(3) of the Vermont Rules for Family Proceedings

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 4(r)(3) of the Vermont Rules for Family Proceedings be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 4. DIVORCE, ANNULMENT AND LEGAL SEPARATION; ABUSE PREVENTION

* * * * *

(r) Property Masters.

(1) *Appointment by the Court.* In any action subject to this rule where equitable division of the marital estate or spousal maintenance is in issue, the court may appoint a master to determine the following matters:

- (A) The value of any items of tangible property such as household furnishings;
- (B) The value of assets and debts, including but not limited to the value of businesses owned by either or both parties;
- (C) The amount of each party's annual income from all sources;
- (D) The amount of each party's annual living expenses.

(2) *Appointment by Agreement.* In any action subject to this rule where equitable division of the marital estate or spousal maintenance is in issue, the court, with the agreement of the parties, may appoint a master to determine the matters set forth in paragraph (1) of this subdivision and also to determine the fair allocation of the marital estate between the parties and an award of spousal maintenance if appropriate.

(3) *Compensation and Necessary Expenses.* The compensation and necessary expenses to be allowed to a master shall be fixed by the court.

(A) In an appointment pursuant to paragraph (1) of this subdivision, such compensation and necessary expenses shall be paid by the state, ~~as provided by law~~ except that if

(i) the distribution of property is contested and governed by 15 V.S.A. § 751 and the value of the property to be distributed exceeds \$500,000, or

(ii) one or both parties seek an award of maintenance under 15 V.S.A. § 752 and the parties have nonwage income of \$150,000 or more, excluding up to \$500,000 of income from the sale of a primary residence or jointly owned business.

the court may order the compensation and necessary expenses of a master to be shared by the parties, with the shares specified in the order.

(B) In an appointment pursuant to paragraph (2), such compensation and necessary expenses shall be paid by the parties as agreed or ordered by the court.

* * * * *

Reporter's Notes—2015 Amendment

Rule 4(r) is amended to conform to an amendment of 32 V.S.A. § 1758 by § E.204.10 of Act 58 of 2015, effective July 1, 2015. The Act permits the Superior Court to order the parties to share the cost of a master in a contested distribution of property exceeding \$500,000 in value or a claim for maintenance where there is nonwage income of \$150,000 or more, excluding up to \$500,000 of income from the sale of a primary residence or jointly owned business.

Amended Rule 4(r)(3)(A) incorporates virtually verbatim the language of amended 32 V.S.A. § 1758 as amended, making clear that the statutory term “cost” of a master includes compensation and necessary expenses. Note that under the amended statute and rule, the court continues to fix the amount of compensation and expenses to be paid. The court also retains discretion to require the state to pay the amount fixed for a master appointed under paragraph (1) of the rule to determine property and asset values and income and expense amounts even if the statutory criteria now incorporated in subparagraph (3)(A) are met. If the appointment is made by agreement under paragraph (2) of the rule, allowing the master also to allocate the marital estate and determine a maintenance award, paragraph (3)(B) continues to require that compensation and expenses be paid by the parties as agreed or ordered.

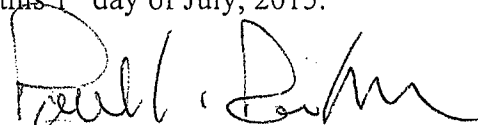
2. That the Court finds that this emergency amendment must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11 in order to make it effective on July 1, 2015, the effective date of the amendment of 32 V.S.A. § 1758 that it implements.

3. That the Court Administrator is directed to send this rule as amended out for comment pursuant to Administrative Order 11, with comments to be made to the Advisory Committee on Rules for Family Proceedings by September 1, 2015. The Advisory Committee is directed to review any comments received and advise the Court whether the amendments should be revised or made permanent.

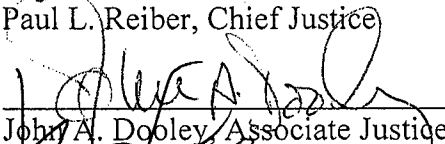
4. That this rule as amended is prescribed and promulgated effective July 1, 2015. The Reporter's Notes are advisory.

5. That the Chief Justice is authorized to report these rules to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

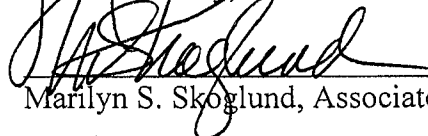
Dated in Chambers at Montpelier, Vermont, this 1st day of July, 2015.



Paul L. Reiber, Chief Justice



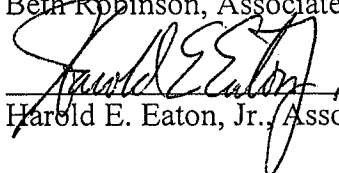
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice

**STATE OF VERMONT
VERMONT SUPREME COURT
AUGUST TERM, 2015**

Emergency Order Extending Effective Date for Amendments to the Vermont Rules for Electronic Filing and the Vermont Rules for Environmental Court Proceedings and Promulgating Emergency Amendments to the Vermont Rules for Electronic Filing

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That the effective date for the amendments to Rules 1, 2, and 11 of the Vermont Rules for Electronic Filing and Rules 3, 4, and 5 of the Vermont Rules for Environmental Court Proceedings, promulgated on July 1, effective September 1, 2015, be extended until January 4, 2016.

2. That Rule 1(a)(2) of the Vermont Rules for Electronic Filing, as added by Order of July 1, 2015, be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 1. APPLICABILITY; EFFECTIVE DATES; TITLE

(a) These rules apply to all actions and proceedings commenced in the divisions and units of the Superior Court specified below:

* * * * *

(2) Electronic filing in accordance with these rules is required in all cases commenced in the Environmental Division on and after ~~September 1, 2015~~ January 4, 2016.

* * * * *

Reporter's Notes—2015 Emergency Amendment

Rules 1(a)(2) is amended consistent with the extension of its effective date by paragraph 1 of this order.

3. That Rule 2(b)(6) of the Vermont Rules for Electronic Filing, as amended by Order of July 1, 2015, be amended by to read as follows (deleted matter struck through; new matter underlined):

RULE 2. WHO MUST FILE ELECTRONICALLY; EXCEPTIONS

* * * * *

(b) A document may be filed by nonelectronic means when

* * * * *

(6) it is filed in a case commenced in the Civil Division on or before January 25, 2011, or in the Environmental Division before ~~September 1, 2015~~ January 4, 2016, in which documents were filed by nonelectronic means, unless the court orders that documents filed after those dates in such a case be filed electronically.

Reporter's Notes—2015 Emergency Amendment

Rule 2(b)(6) is amended consistent with the extension of its effective date by paragraph 1 of this order.

4. That the Court finds that these emergency amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11 because the continuing need to resolve staffing issues in the Environmental Division and the difficulty of completing necessary training for lawyers make it impossible to implement electronic filing in the Environmental Division by September 1, 2015.

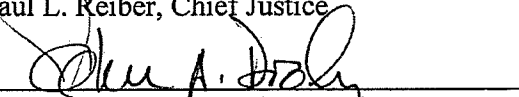
5. That this order and these rules as amended are prescribed and promulgated to take effect immediately.

6. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

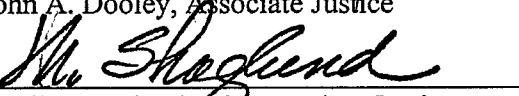
Dated in Chambers at Montpelier, Vermont, this 5th day of August, 2015.



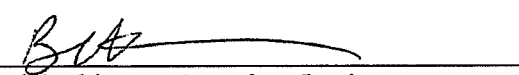
Paul L. Reiber, Chief Justice



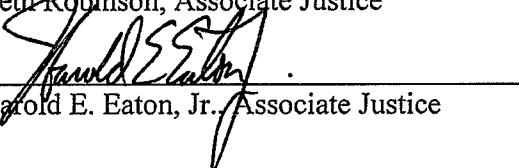
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice

**STATE OF VERMONT
VERMONT SUPREME COURT**

MARCH TERM, 2015

**Order Promulgating Emergency Amendments Rule 11(b)(3) of the
Vermont Rules of Appellate Procedure**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 11(b)(3) of the Vermont Rules of Appellate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 11. FORWARDING THE RECORD

(b) Clerk's Duty to Forward the Record; Transcript

* * * * *

(3) ~~The superior court clerk must number the documents constituting the record and send them with a list of documents correspondingly numbered and reasonably identified.~~ Unless directed to do so by a party or the Supreme Court clerk, the superior court clerk will not send unusually bulky or heavy documents, and physical exhibits other than documents. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

* * * * *

Reporter's Notes—2015 Amendment

Rule 11(b)(3) is amended as part of the Supreme Court's effort to obtain cost savings in the operations of the clerk's offices in all courts by saving clerk time. The amendment does not relieve the superior court clerks of their obligation to assure that trial court files sent to the Supreme Court for appeals contain all of the case documents in chronological order.

2. That the Court finds that these emergency amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11, because the time savings that the amendments will produce must be implemented as soon as possible to enable the Judicial Branch to meet the budget reduction targets set by the Legislature for FY 15 and anticipated for FY 16.

3. The Court Administrator is directed to send these rule amendments out for comment pursuant to Administrative Order 11, with comments to be made, within 60 days, to the Advisory

Committee on the Rules of Civil Procedure. The Advisory Committee is directed to review any comments received and advise the Court whether the amendments should be revised.

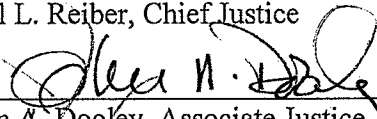
4. That these rules as amended are prescribed and promulgated to take effect on April 10, 2015. The Reporter's Notes are advisory.

5. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

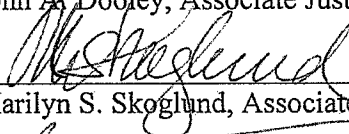
Dated in Chambers at Montpelier, Vermont, this 9th day of March, 2015.



Paul L. Reiber, Chief Justice



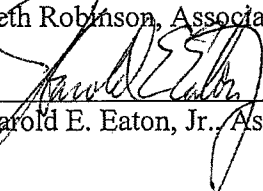
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2015

**Order Promulgating Amendments and Additions to Rules 3, 7, and 80.4 of the Vermont
Rules of Probate Procedure**

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3(b) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

(b) Commencement and duration: decedents' estates.

(1) For purposes of these rules, a probate proceeding involving a decedent's estate shall begin with:

(A) a petition to open an estate, or

(B) a petition to begin a proceeding authorized by law with respect to a decedent's estate, including a declaratory judgment petition, if the decedent's estate is not already the subject of a probate proceeding under this subdivision,

and shall continue until the proceeding is closed pursuant to Rule 60.1. The petition shall be accompanied by a death certificate or other proof of death satisfactory to the court and the original will, if any, and any codicils thereto.

(2) If a petition to open a decedent's estate alleges that the estate contains no assets that will pass by will or under the laws of descent and distribution and is accompanied by an affidavit of the petitioner attesting to the lack of any such assets and setting forth facts demonstrating the need of an executor or administrator to perform administrative acts for the estate, the court will issue letters testamentary or grant administration to enable performance of such other acts as may be necessary to administer the estate.

(23) If the petitioner reasonably believes that all interested persons identified at the commencement of the proceeding pursuant to Rule 17(a)(1) will consent to the allowance of the will, or to the intestate proceeding, as provided in Rule 16, the petitioner may file the petition without serving them and may seek their consents. If all interested persons file consents, the court may proceed with the petition without further notice; provided that if any interested person does not file a consent within a reasonable time, the court will set a hearing date, and the petitioner will serve notice of the hearing on all interested persons.

Reporter's Notes—2015 Amendment

Rule 3(b)(2) is adopted to provide an expedited procedure for dealing with an estate with no assets. Former Rule 3(b)(2) is renumbered as paragraph (3). The petition in an asset-less estate that requires some acts of administration is to be filed as provided in Rule 3(b)(1), with payment of the entry fee required by 32 V.S.A. § 1434(a)(1) for an estate of \$10,000 or less, which has been increased from \$30 to \$50 by Act 57 of 2015, § 32, effective July 1, 2015. The petitioner's affidavit is to state the acts to be performed that require administration. The court is to issue appropriate letters authorizing the actions that the petitioner is to take. The provisions of V.R.P.P. 80.3 governing administration of small estates will provide a guide to the actions that the court will authorize.

2. That Rule 7 of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 7. PLEADINGS AND MOTIONS

(a) Pleadings. A proceeding shall be commenced by a petition. No other pleadings shall be required unless the court orders that there shall be an answer to a petition. Any party may file an answer to a petition without court order.

(b) Motions.

(1) An application to the court for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the order sought

(2) The rules applicable to caption, signature, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(4) Unless a different time is fixed by the court, any party opposing the motion may file a memorandum in opposition within 10 days after service of the motion.

(c) Failure to Timely File. Unless the court decides otherwise, a pleading, motion, or memorandum filed less than five days before a hearing will not be considered at the hearing.

(e d) Argument on Motions. Unless otherwise required by these rules, oral argument on a motion shall be deemed waived unless requested by an interested party or required by the court. The court may dispose of the motion without argument whether or not the parties have waived oral argument. The court may hear motions at any time and place upon reasonable notice to the parties.

Reporter's Notes—2015 Amendment

Rule 7 is amended by the addition of paragraphs (b)(3) and (4), the insertion of a new subdivision (c), and the redesignation of former (c) as (d). The amendment is intended to provide a clear and uniform practice for making and hearing motions for all units of the Probate Division. It incorporates V.R.C.P. 7(b)(3) and the essence of V.R.C.P. 78(b)(1) in a simpler form appropriate for probate practice. The provisions of V.R.C.P. 7(b)(4) and 78(b)(2) concerning evidentiary hearings, oral argument, and costs on motions are not adopted in these amendments. Probate court motion practice is very limited and does not require the formality appropriate to civil actions. The court can deal with a last-minute offer of evidence on a motion by granting a continuance and has inherent discretion concerning oral argument and costs on motions. See V.R.P.P. 54(b).

3. That Rule 80.4 of the Vermont Rules of Probate Procedure be added to read as follows:

RULE 80.4. DELIVERY OF WILL BY CUSTODIAN; COPY OF WILL FILED FOR SAFEKEEPING

(a) Duties of Custodian of Will. A person who has the custody of the will of a decedent must deliver the will, together with a death certificate or other credible proof of death, to the Probate Division of the Superior Court in a district where venue lies, or to the executor named in the will, within 30 days after learning of the death of the testator, with a statement that the will is being delivered as required by 14 V.S.A. § 103. Thereafter, the person will be discharged from further responsibility under Title 14 of the Vermont Statutes Annotated unless the individual is the executor named in the will. If the person who has custody of a will is the executor, the court may issue further orders to that person as appropriate.

(b) Disclosure of Existence of a Will Held in Safekeeping. When a will has been filed with the Probate Division of the Superior Court in any district for safekeeping pursuant to 14 V.S.A. § 2, the register for that district, upon inquiry and presentation of a death certificate of the testator, will reveal the existence of the will.

Reporter's Notes—2015 Amendment

Rule 80.4 as originally promulgated to cover relinquishment proceedings was repealed effective October 1, 2004, in light of the enactment of the comprehensive provisions of the Uniform Adoption Act, 15A V.S.A. §§ 1-101 to 8-101. See Reporter's Notes to 2004 repeal.

New Rule 80.4(a) is adopted to provide a uniform procedure for carrying out the responsibilities imposed by 14 V.S.A. § 103 on the

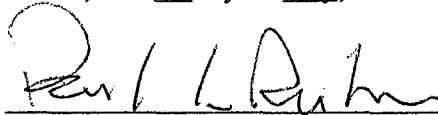
custodian of a will who learns of the death of the testator. A death certificate or other credible proof of death is required for consistency with the basic provision of Rule 3(b)(1) for opening a decedent's estate. The requirement of "credible proof of death" in the absence of a death certificate could, in the court's discretion, be met by evidence such as an affidavit or testimony of a witness to the fact of death, or an authenticated obituary or other notice of death.

New Rule 80.4(b) provides that, when the Probate Division has custody of a will for safekeeping in accordance with 14 V.S.A. § 2, the register may reveal the existence of the will upon inquiry and presentation of a death certificate. This provision, though applicable to anyone who can produce a death certificate, is intended to allow the survivor of a deceased, or the representative of a survivor, to determine, through a search of probate districts where the deceased had connections, whether a will exists. For actual delivery of a will or copy, the more substantial showing of the testator's intentions or the needs of the estate required by 14 V.S.A. § 2 must be made.

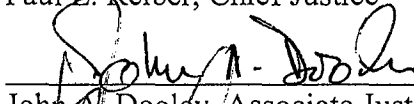
4. That these rules, as amended or added, are prescribed and promulgated effective **September 1, 2015**. The Reporter's Notes are advisory.

5. That the Chief Justice is authorized to report these amendments and this rule to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

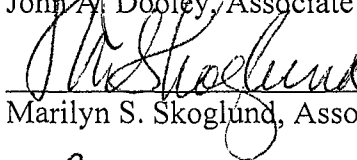
Dated in Chambers at Montpelier, Vermont, this 1st day of July, 2015.



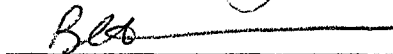
Paul L. Reiber, Chief Justice



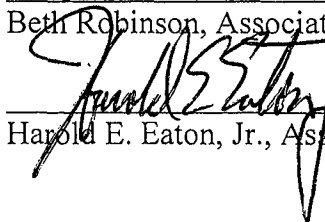
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

Order Promulgating Amendments to Rules 47 and 77
of the Vermont Rules of Probate Procedure

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That Rules 47(a) and (b) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 47. RECORDING OF PROBATE PROCEEDINGS

(a) When required. A recording shall be made of the proceedings in the following all cases except:

- (1) ~~An involuntary guardianship case, including a contested guardianship of a minor~~ The finalization of an adoption;
- (2) ~~A relinquishment if objection is made thereto~~ An uncontested name change proceeding;
- (3) ~~An adoption proceeding in which there is objection to the proposed action of the court~~ An uncontested vital records request.

(b) When ordered. The court may require that a recording be made of any other proceeding listed in subdivision (a) on the request of a party or on the court's own motion. The method of recording shall be specified in the order of the court.

* * * * *

Reporter's Notes—2015 Amendment

Rule 47 is amended in the interests of uniformity to require all units of the Probate Division to follow the practice of most of those courts by recording all proceedings, with specific exceptions for proceedings that are normally nonadversarial or where confidentiality may be in issue. Amended subdivision (b) makes clear that the court may require recording of one of the excepted proceedings on its own or a party's motion.

2. That Rule 77(c) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through):

RULE 77. PROBATE COURTS AND REGISTERS

(c) Register's office; orders by the register. The register's office with a register or clerical assistant in attendance shall be open during business hours on all days except Saturdays, Sundays and legal holidays. The register may make out and sign process and other instruments as provided by law ~~and may perform the duties of the probate judge when provided by law.~~ The action of the register may be suspended or rescinded by the probate judge upon cause shown unless the judge is disqualified to act.

Reporter's Notes—2015 Amendment

Rule 77 is amended to conform with a statutory amendment by deleting the provision that registers "may perform the duties of the probate judge when provided by law." This authority was derived from 4 V.S.A. §355 which was amended in 2011 to eliminate any authority of registers to act for probate judges.

3. That these rules, as amended or added, are prescribed and promulgated effective _____, 2015. The Reporter's Notes are advisory.

4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2015

**Order Promulgating Amendments to Rules 4(a)(2), 9(a)(2), 9(e), and 15(f)(1)(A) and the
Addition of Rule 18 of the Vermont Rules for Family Proceedings**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 4(a)(2) of the Vermont Rules for Family Proceedings be amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 4. DIVORCE, ANNULMENT AND LEGAL SEPARATION; ABUSE
PREVENTION**

(a) Applicability of Rules.

* * * * *

(2) *Rules Not Applicable.* Rules 16.3 (Alternative Dispute Resolution) and 79.1 (Appearance and Withdrawal of Attorneys) of the Vermont Rules of Civil Procedure does not apply to actions under this rule.

Reporter's Notes—2015 Amendment

Rule 4(a)(2) is amended to reflect the fact that V.R.F.P. 18, promulgated simultaneously, establishes a mediation rule for Family Division cases that renders the application of V.R.C.P. 16.3 for alternative dispute resolution unnecessary and inappropriate.

2. That Rules 9(a)(2) and (e) of the Vermont Rules for Family Proceedings be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 9. ABUSE PREVENTION

(a) Application of Civil Rules.

* * * * *

(2) *Rules Not Applicable.* Rules 16.3 (Alternative Dispute Resolution) and 79.1 (Appearance and Withdrawal of Attorneys) of the Vermont Rules of Civil Procedure does not apply to actions under this rule.

* * * * *

(e) Denial of Ex Parte Temporary Orders. When a judge denies an application for temporary order under this rule, the judge shall record the reasons for the denial in writing and

shall give the written denial to the plaintiff. In addition, any denial in whole or in part shall inform the plaintiff that, within five business days after entry of the denial on the docket, he or she may request that the court hold a hearing on the complaint after notice to the defendant. Any such hearing shall be scheduled no more than ten days from the date of the request.

Reporter's Notes—2015 Amendment

Rule 9(a)(2) is amended to reflect the fact that V.R.F.P. 18, promulgated simultaneously, establishes a mediation rule for Family Division cases that renders the application of V.R.C.P. 16.3 for alternative dispute resolution unnecessary and inappropriate.

Note that new V.R.F.P. 18(a) makes clear that mediation under Rule 18 does not apply in abuse proceedings under Rule 9. Also, under V.R.F.P. 18(c)(3), mediation may not be ordered in a Rule 4 or 8 proceeding if Rule 9 proceedings are pending between the parties or a final order issued in such proceedings is in effect. V.R.F.P. 18(c)(4) provides that even if an order issued in a prior abuse proceeding is no longer in effect, the court may order mediation only on a finding that it is appropriate in the circumstances. See Reporter's Notes to V.R.F.P. 18(a), (c).

Rule 9(e) is amended to expedite proceedings for holding a hearing when an ex parte temporary relief-from-abuse order has been denied by requiring that the written denial must inform the plaintiff that the request for hearing must be filed within five business days after entry of the denial on the docket. The time period is stated as five "business" days for the benefit of self-represented litigants. It is consistent with V.R.F.P. 6(a) (applicable by virtue of V.R.F.P. 9(a)), which provides that a five-day period does not include Saturdays, Sundays, or legal holidays. Under the civil rule, the period is extended if the last day is one on which the clerk's office is inaccessible.

3. That Rule 15(f)(1)(A) of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 15. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

* * * * *

(f) Withdrawal.

(1) *In General.* Except as may be otherwise agreed or ordered pursuant to a limited appearance under subdivision (h):

(A) *Actions under Rule 4 and Rule 9.* In any ~~divorce, parentage, or other~~ action under Rule 4 or Rule 9, the appearance of an attorney shall be deemed to be withdrawn upon the entry of final judgment and the expiration of the time for appeal therefrom. Prior to the

expiration of the time for appeal from a final judgment in such an action, an attorney who has entered an appearance may withdraw only with leave of court granted as provided in paragraph (2) or (3) of this subdivision.

(B) *Other Actions.* In any other action, an attorney who has entered an appearance may withdraw only with leave of court granted as provided in paragraph (2) or (3) of this subdivision.

* * * * *

Reporter's Notes—2015 Amendment

Rule 15(f)(1)(A) is amended to make applicable to relief-from-abuse actions under Rule 9 the provision that an attorney is deemed to have withdrawn after the time for appeal of a final judgment in the proceeding has run. The amendment is intended to make clear that the automatic withdrawal provision of the rule is to be uniformly applied in relief-from-abuse cases in all units of the Family Division.

5. That Rule 18 of the Vermont Rules for Family Proceedings be added to read as follows:

RULE 18. MEDIATION

(a) **Applicability.** This rule applies to all actions and proceedings under V.R.F.P. 4(a)-(q) and V.R.F.P. 8.

(b) **Order to Mediate.** Except as provided in subdivision (c), the court, on its own motion or the motion of a party, at any time after the commencement of an action or proceeding to which this rule applies may order the parties to participate in mediation of any issue or issues involved in the action or proceeding if the court determines that the issue or issues could be resolved or clarified through mediation and that the interest of the parties and the court in a fair, economical, and efficient resolution of the issues would be served thereby.

(c) **Exceptions.** The court will not order mediation if

(1) at the commencement of the action or proceeding, the parties jointly certify that they have in good faith voluntarily engaged in mediation with a neutral of their choice regarding the issue or issues that would have been the subject of the court's order and file with the court a report of the neutral describing the process employed and the results;

(2) at, or at any time after, the commencement of the action or proceeding, the parties jointly agree on the record that they will voluntarily participate in mediation regarding the issue or issues that would have been the subject of the court's order and will file the neutral's report of the process and results by a specific date;

(3) a relief-from-abuse action is pending between the parties, or a final order issued in such an action between the parties is in effect;

(4) a final order issued in a relief-from-abuse action between the parties is no longer in effect; provided that the court may order mediation in such a case if the court specifically finds good cause to believe that mediation would be appropriate in the circumstances; or

(5) the court determines that mediation would not be appropriate due to allegations of abuse, the possibility of undue hardship, or for other reasons.

(d) Conduct of Mediation. In a mediation ordered under subdivision (b),

(1) The mediation will be conducted by an individual mediator from the Family Division Mediation Program's list of mediators, acceptable to the court and the parties. If no mediator on the Mediation Program's list who is acceptable to the court and the parties is available to conduct the mediation, the court, with the agreement of the parties, may designate another mediator with credentials comparable to the minimum requirements for inclusion on the list.

(2) The mediation will be carried out on a schedule prepared by the parties in consultation with the mediator and approved by the court unless the court subsequently, on the request of the parties and mediator, approves a modification.

(3) The mediator will meet with each party separately prior to the mediation and may meet with any party separately at any time during the mediation.

(4) The parties are expected to attend all mediation sessions and to mediate in good faith. Attorneys may attend mediation sessions with their clients.

(5) If at any time the mediator determines that the issues are not suitable for mediation, the mediator may refer the matter back to the court to be determined in further proceedings as ordered by the court.

(6) The mediator has no authority to make a decision or impose a settlement upon the parties. Any settlement must be voluntary. The parties may reach a partial settlement of the issues and preserve the right to litigate remaining issues. In the absence of settlement, the parties retain their rights to a resolution of all issues through litigation.

(7) Any agreement reached by the parties through the mediation process on all or some of the disputed issues must be reduced to writing, signed by each party and the mediator, and filed with the court by the parties within ten days after the date of the last signature.

(8) If no settlement is reached by the date specified in the schedule approved or modified under paragraph (2), the parties must notify the court in writing. The matter will then be determined by the court as provided in any agreement reached in the mediation and approved by the court or, in the absence of agreement, as ordered by the court.

(e) Sanctions. If a party, lawyer, or other person who is required to participate in mediation under this rule does not appear at the mediation, or does not comply with any other requirement of this rule or any order made under it, unless that person shows good cause for not appearing or not complying, the court will impose one or more of the following sanctions:

(1) The court will require the party or lawyer, or both, to pay the reasonable expenses, including attorney fees, of the opposing party, and any fees and expenses of the mediator, incurred by reason of the nonappearance, unless the court finds that such an award would be unjust in the circumstances.

(2) In addition, the court may upon motion of a party, or upon its own motion, order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, or impose any other sanction that is just and appropriate in the circumstances.

Reporter's Notes

Rule 18 is added to make clear that mediation may be ordered in a Family Division proceeding and to provide standards and a procedure for the process. The rule is not intended to preclude voluntary use of mediation or another form of ADR by agreement of the parties without judicial involvement. See discussion of Rule 18(c)(1) and (2) below. Simultaneous amendments to V.R.F.P. 4(a) and 9(a) make clear that the provisions of V.R.C.P. 16.3 for alternative dispute resolution no longer apply in the Family Division.

The rule is intended to resolve a difference of opinion among Superior Court judges. Some judges were ordering mediation; others declined to do so because there was no express provision for the general use of ADR in the Family Rules. V.R.C.P. 16.3 permits or requires the court to order mediation or other forms of ADR in many types of civil actions. That rule is expressly incorporated in V.R.E.C.P. 2(d), with the result that the process is being used effectively in the Environmental Division. The rules and statutes of a number of other states, including New Hampshire and Maine, expressly provide for mandatory mediation in family cases. See, e.g., N.H. R. Fam. Div. 2.13, 2.14.

The Vermont bench and bar generally support the idea of mediation in the Family Division. When used in Vermont, the process has been found generally beneficial for the parties. Specific benefits include (1) management of conflict and decreasing acrimony between parties in disputes concerning parental rights and responsibilities, (2) promotion of the best interests of children, (3) improvement of the parties' satisfaction with the outcome of

Family Division matters, (4) increased participation of parties in making decisions for themselves and their children, (5) increased compliance with court orders, (6) reduction in the number and frequency of cases returning to court, and (7) improvements in court efficiency.

Rule 18(a) specifies that the rule applies only in the matters covered in V.R.F.P. 4(a)-(q), whether before a judge or before a magistrate under V.R.F.P. 8. Property matters before a master under Rule 4(r) and parent coordination proceedings under Rule 4(s) are excluded because they provide a different, specialized, form of ADR. The rule does not apply in abuse-prevention proceedings under V.R.F.P. 9. See Reporter's Notes to simultaneous amendment of V.R.F.P. 9(a). Other exceptions, including those applicable in cases involving abuse or abuse proceedings, are spelled out in Rule 18(c).

Rule 18(b) provides that, with important exceptions set out in subdivision (c), the court may order mediation of any or all issues at any time after commencement of the action on its own or a party's motion on a determination that mediation would resolve or clarify the issues and that mediation would serve the interests of both the parties and the court in "a fair, economical, and efficient resolution of the issues."

Rule 18(c)(1) and (2) make clear that the rule is not intended to preclude voluntary use of mediation by agreement of the parties. Under paragraph (c)(1), the court will not order mediation if the parties certify that they voluntarily engaged in mediation with a neutral of their choice before the action was commenced and file the neutral's report with the court. Alternatively, under paragraph (c)(2), if the parties agree on the record after the commencement of the action that they will engage in mediation and will file the neutral's report by a specific date, mediation will not be ordered. Note that these two provisions come into play only if one party has moved for mediation and withdraws the motion or the court has indicated an intention to order mediation on its own motion. If no motion for mediation has been made or proposed, the parties are free to engage in mediation or another form of ADR at any time as part of their efforts to settle the issues between them.

Rules 18(c)(3)-(5) address the problem of abuse, which is a significant risk in using mediation in domestic-violence situations, where an abuser may seek to manipulate or control the other party's responses in the proceeding. As previously noted, mediation is not available in a relief-from-abuse proceeding under Rule 9. As a

further precaution, paragraph (c)(3) provides that mediation may not be ordered if an RFA proceeding is pending between the parties or a final RFA order that has been issued in an action between them remains in effect.

Under paragraph (c)(4), the court will not order mediation even if such an order is no longer in effect unless “the court specifically finds good cause to believe that mediation would be appropriate in the circumstances.” For example, a court might order mediation if otherwise appropriate, where the parties had an RFA many years previously but have subsequently lived together for a long and continuous period without problems.

Under paragraph (c)(5), the court will not order mediation if, even in the absence of an RFA proceeding, there are allegations of abuse or child neglect; the process could involve financial or physical hardship for a party; or there are “other reasons.” Those reasons could include findings of alcohol or drug abuse or other serious emotional or psychological condition, the unavailability of an acceptable mediator within a reasonable time given the demands of the proceeding, or deliberate use of the process by a party to defer action on the merits.

Rule 18(d) provides details of the process by which mediation ordered under Rule 18(b) is to be carried out. To assure that any mediator selected has sufficient training and experience to deal with all issues that may arise, including situations of domestic violence, paragraph (d)(1) provides that the court will ordinarily designate a mediator acceptable to the court and the parties from the Family Division Mediation Program’s list of mediators. Individuals on that list are selected after meeting significant requirements of experience and training. If no acceptable mediator on the list is available, the court, with the agreement of the parties, may designate another mediator with credentials comparable to the minimum requirements for inclusion on the list. If no acceptable mediator can be found or agreed upon within a reasonable time, as noted above, under Rule 18(c)(4) the court will not order mediation.

Other provisions of subdivision (d) describe standard mediation practice. The mediation schedule prepared by the parties and mediator is subject to approval and modification by the court. The mediator must meet separately with the parties at the outset and may do so at any time during the mediation. The parties are to attend all sessions and participate in good faith. They may be accompanied by counsel. Under paragraph (d)(5), if the mediator determines for any reason that the matter cannot be mediated, the

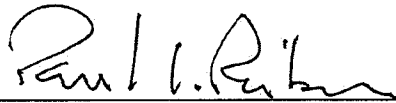
mediator may send the matter back to the court for judicial determination.

Paragraph (d)(6) provides that any settlement reached must be voluntary. The parties have the right to litigate any issues not settled in the mediation. Under paragraphs (d)(7) and (8), any agreement reached must be filed in court within 10 days by the parties in a writing signed by them and the mediator. If no settlement is reached by the scheduled date, the parties must notify the court in writing. The court may then determine the matter in accord with any agreement that has been reached, or may order further proceedings in its discretion.

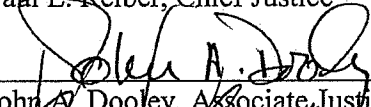
Subdivision (e), based on V.R.C.P. 16.3(h), has been added to assure appropriate participation in the mediation process.

5. That these rules as amended or added are prescribed and promulgated effective **September 21, 2015**. The Reporter's Notes are advisory.
6. That the Chief Justice is authorized to report these rules to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

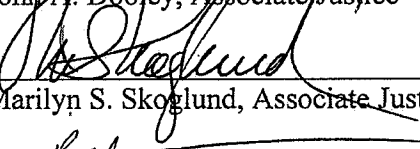
Dated in Chambers at Montpelier, Vermont, this 20th day of July, 2015.



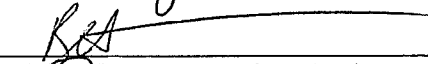
Paul L. Reiber, Chief Justice



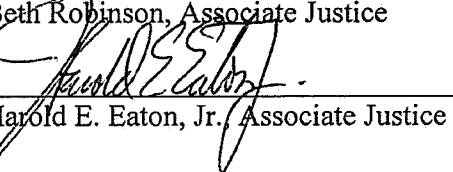
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

**Order Amending Rule 3(c)(1) of the
Vermont Rules Governing Dissemination of Electronic Case Records**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3(c)(1) of the Vermont Rules Governing Dissemination of Electronic Case Records be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 3. ACCESS TO ELECTRONIC CASE RECORDS

(c) Public Documents.

(1) *Initial Responsibility of the Filer.* It is the responsibility of the filer of a document that is otherwise publicly accessible under Rule 6 of the Rules for Public Access to Court Records to omit or redact, or partially omit or redact, if the information is material or required by law, the following personal identifiers from all electronically or nonelectronically filed documents and exhibits, unless otherwise provided in the applicable rules of procedure or ordered by the court:

~~(A) Personal identification numbers issued by a governmental entity, including Social Security and Tax Payer Identification, passport, and military serial numbers, but not including motor vehicle operators' license numbers; and~~

~~(B) Personal identification numbers, such as motor vehicle operators' license numbers, passport numbers, military serial numbers, and Personal identification numbers issued by a nongovernmental entity, including medical or financial account or credit or debit card numbers or personal identification numbers (PIN), codes, or passwords, except the type of account or card and institution and last four digits if material,~~

Reporter's Notes—2015 Amendment

Rule 3(c)(1) is amended for clarity by dividing the present list of personal identifiers in subparagraphs (A) and (B) that must be omitted or redacted into those issued by a governmental entity and those issued by a nongovernmental entity. The amendment also

excludes motor vehicle operators' license numbers from the list of government-issued identifiers that must be omitted or redacted.

Driver's license numbers appear currently on many documents that are filed with or by the court—for example, affidavits of law enforcement officers in criminal motor-vehicle cases; notices of intent to suspend a license in civil or criminal license-suspension cases; civil-suspension disposition reports sent by the court to the Department of Motor Vehicles, which are currently available to the public; and documents associated with child-support license suspension. The requirement of omission or redaction significantly impacts the work of officials and court staff in such cases and, given the public availability of license numbers, does not provide significant protection against identity theft.

The amendment does not limit the authority of a court clerk under 9 V.S.A. § 2440(f) to remove upon written request various personal identifiers, including driver's license numbers, from a copy of an official record that is placed on an internet web site available to the general public. The amendment is also not inconsistent with 1 V.S.A. § 317(c)(31), which exempts from public inspection and copying driver's license numbers and certain other personal identifiers included on the statewide voters' checklist application or the statewide voter checklist established pursuant to 17 V.S.A. § 2154. See *id.* §§ 2145, 2145a.

2. That this rule, as amended, is prescribed and promulgated to take effect on _____, 2015. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ___ day of _____, 2015

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

**Order Promulgating Amendment to § 13 of the Rules of Admission to the Bar
of the Vermont Supreme Court**

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That § 13 of the Rules of Admission to the Bar of the Vermont Supreme Court be amended to read as follows (new matter underlined; deleted matter overstruck):

13. Appearance in court by interns; authorized activities; eligibility; supervision; limitations

* * * * *

(b) To be an eligible intern pursuant to this section, an individual must:

(1)(A) be pursuing the study of law and be enrolled in good standing at an approved law school, ~~as that phrase is defined by § 6(h)(2) of these rules, and~~

(B) have completed the study of law for at least ~~four~~ three semesters, or the equivalent thereof, in such a school; or

* * * * *

~~(c) To be an eligible intern pursuant to this section the individual must have satisfactorily completed a course in evidence, or, in the case of those who are pursuing the study of law in the office of an attorney, have completed a systematic study of evidence as certified by the attorney who is supervising the law office study.~~

(d) ~~(c)~~ Notwithstanding any other provision of this section, no person may be deemed an eligible intern who has sat for the Vermont Essay Examination or the Multistate Bar Examination, has received a grade on either examination and has not, following the second administration of such examinations, thereafter obtained a passing grade on all sections of the Vermont Bar Examination (including the Multistate Professional Responsibility Examination). In its discretion, the Board of Bar Examiners may for good cause shown waive the foregoing limitation. No person may be deemed an eligible intern who has been denied admission to the Bar of the Vermont Supreme Court for failure to establish good moral character or fitness.

(e) ~~(d)~~ An attorney who supervises an intern shall:

- (1) Be an attorney admitted to practice in this state who has been admitted to practice before this Court not less than three years prior to the supervision;
- (2) Assume personal professional responsibility for the intern's work;
- (3) Assist the intern as needed;
- (4) Introduce the intern to the court at his or her first appearance before the court;
- (5) Appear with the intern at all court appearances involving a contested matter;
and
- (6) Appear with the intern at all other court appearances unless the attorney's presence is expressly waived by the court and the client's written consent includes consent to appearance by the intern without the presence of the supervising attorney.

(f) (e) The supervising attorney, the attorney's law firm or other employer may charge the client a legal fee which reflects the intern's services, and may compensate the intern. This section shall not be construed to authorize a fee splitting agreement between the supervising attorney and the intern, nor shall it be construed to authorize the direct employment of an intern by the client.

Board's Notes – 2015 Amendment

The amendment makes two changes to the requirements for law student interns. A law student in good standing is now eligible to practice as a law student intern after completing three semesters, or the equivalent, instead of four. The amendment also eliminates the requirement of a course in evidence as a prerequisite to practice under this rule. These changes will allow law students more access to clinical experience and training and provide greater opportunities for law students and law school clinics to serve indigent clients. The amendment leaves unchanged the requirement that the supervising attorney for a law student intern "[a]ssume personal professional responsibility for the intern's work." Thus, although the amendment eases some of the requirements for law student interns, a supervising attorney must still ensure that an intern has sufficient education and preparation to appear in court and represent clients. Former paragraphs (d), (e) and (f) have been renumbered as (c), (d), and (e).

2. That these rules, as amended, are prescribed and promulgated, effective _____, 2015. The Board's Notes are advisory.

3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont this ___ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

PROPOSED

**STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2015**

**Order Promulgating Amendments to the Vermont Rules of Civil Procedure and the
Vermont Rules of Small Claims Procedure**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 9.1 of the Vermont Rules of Civil Procedure be added to read as follows:

RULE 9.1. COMPLAINT IN AN ACTION ON A CREDIT CARD DEBT

Any complaint based on a credit card debt shall contain additional information necessary to provide the court with sufficient information regarding standing and the statute of limitations. At a minimum, the complaint must include the following, unless otherwise ordered by the court:

- (a) The name of the original creditor, as well as the name of the current owner of the debt, if different.
- (b) The last four digits of the original account number or other identifying information uniquely associated with the account.
- (c) The date of last payment by the accountholder and the amount due at that time.
- (d) The date the plaintiff claims the defendant defaulted and the basis for that default.
- (e) The total amount currently due on the debt, with any amount of interest claimed post-default separately identified.
- (f) The date and parties to the contract or other source of the original debt.
- (g) If the debt was assigned, the date and parties to the assignment. If the debt has been assigned more than once, then the date and parties to each assignment must be identified to establish an unbroken chain of ownership. The complaint must allege that each assignment or other writing evidencing transfer of ownership contains at least the last four digits of the original account number of the debt purchased or other identifying information uniquely associated with the account and shows the debtor's name associated with that account number.

Reporter's Notes

V.R.C.P. 9.1 is added to incorporate in the civil rules the pleading requirements for an action on a credit card debt added to the Vermont Rules of Small Claims Procedure by the addition of V.R.S.C.P. 3(h) in a 2013 amendment and a simultaneous 2015 clarifying amendment to V.R.S.C.P. 3(h)(7). By simultaneous amendment, V.R.C.P. 55(b)(7) is added to incorporate the provisions of the 2013 amendment of V.R.S.C.P. 3(e) and a simultaneous 2015 clarifying amendment covering the requirements for a motion for default in a credit card debt action.

New V.R.C.P. 9.1 requires that the complaint in a civil action on a credit card debt must plead the details of the original transaction and subsequent assignments of the debt. New V.R.C.P. 55(b)(7) requires that a motion for default judgment in a credit card action must be accompanied by documentary evidence of the matters required to be pleaded. See Reporter's Notes, V.R.C.P. 55. These new rules adopt virtually verbatim the 2013 amendment of V.R.S.C.P. 3(e) and addition of V.R.S.C.P. 3(h) and their 2015 amendments. These rules were based on rules and statutes in other states, including North Carolina, Delaware, and New York. The new rules require the plaintiff creditor to establish the existence of the debt and ownership of it--or at least that the plaintiff is acting as an agent of one who can establish ownership.

The new rules are necessary because many credit card collection actions are brought in the Superior Court, Civil Division, as civil, rather than small claims, actions. The amendments reflect best practices followed by many plaintiffs' attorneys in such civil actions, but some do not follow the pleading and motion practice provided for small claims actions. As a result, defendants must expend significant resources and time on lengthy and difficult discovery to obtain the information and documents that V.R.S.C.P. 3(h) and (e) require to be pleaded and attached to a motion for default judgment in a small claims action. The rules will harmonize practice in small claims and civil actions and avoid the need for discovery with regard to basic items related to a credit card collection claim.

2. That Rule 55(b)(7) of the Vermont Rules of Civil Procedure be added to read as follows (new matter underlined):

RULE 55. DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) Judgment. Judgment by default may be entered as follows:

(1) *Application; Affidavit.* The party entitled to a judgment by default shall apply to the court therefor. No judgment by default shall be entered against a party who has not appeared in the action until the filing of an affidavit made on personal knowledge and setting forth facts as to liability and damages. No judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian, conservator, or other such representative who has appeared therein.

(2) *By the Clerk When Claim is Is for a Sum Certain and Defendant Has Not Appeared.* If the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk, upon order of the Presiding Judge issued without notice or hearing and upon affidavit of the amount due, shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.

(3) *By the Court When Defendant Has Not Appeared and Claim Not for a Sum Certain, or By the Court for Other Reasons.* If the defendant has not appeared in the action and the claim is not for a sum certain, or if it is otherwise necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(4) *By the Court When the Defendant Has Appeared.* If the party against whom judgment by default is sought has appeared in the action judgment may be entered after hearing, upon at least 3 days' written notice served by the clerk.

(5) *Affidavit Required.* Notwithstanding the foregoing, no judgment by default shall be entered until the filing of an affidavit as required by section 201(b)(1) of the Servicemembers Civil Relief Act, 50 U.S.C. App. 521, stating whether or not the defendant is in military service and showing necessary facts to support the affidavit or, if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. If it appears that the defendant is in military service, the court shall take appropriate action as provided in that Act.

(6) *Failure to Appear at Trial.* In those cases in which a defendant has appeared in the action but has failed to appear at a duly noticed trial on the merits, the plaintiff may either move for default or proceed to trial. If plaintiff obtains judgment based on evidence submitted at trial, that judgment shall be deemed a default judgment solely for the purposes of Rule 55(c), Rule 62(b) and Vermont Rule of Appellate Procedure 4.

(7) *Credit Card Debt.* In actions based on a credit card debt, the motion for default shall include a copy of the contract or other documentary evidence of the original debt, which must contain a signature of the defendant. If no such signed writing evidencing the original debt ever existed, then a copy of the last statement generated when the credit card was actually used for purchase or other competent evidence of the existence of the debt must be included. The motion must also contain a copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain at least the last four digits of the original account number of the debt purchased or other identifying

information uniquely associated with the account and must show the debtor's name associated with that account number.

* * * * *

Reporter's Notes—2015 Amendment

V.R.C.P. 55(b)(7) is added to incorporate in the civil rules the provisions of V.R.S.C.P. 3(e) as amended in 2013 and in a simultaneous 2015 amendment to cover the requirements for a motion for default in an action on a credit card debt. By simultaneous amendment, V.R.C.P. 9.1 is added to incorporate the pleading requirements for such actions added to the Vermont Rules of Small Claims Procedure by the addition of V.R.S.C.P. 3(h) in a 2013 amendment and a simultaneous 2015 amendment.

New V.R.C.P. 55(b)(7) requires that a motion for default in a credit card action must be accompanied by signed evidence of the debt or, in the absence of such documentation, a credit card statement showing the debt, "or other competent evidence" of it. In addition, the motion must be supported with copies of the assignment and any subsequent assignments, linked to the defendant, and showing that the present plaintiff is the owner of the debt. These documents are being required because they are often helpful, or even necessary, to assist the court in determining that the plaintiff has a solid claim. New V.R.C.P. 9.1 requires that the complaint in such an action must plead similar specific details of the original transaction and subsequent assignments.

The new rules are necessary because many credit card collection actions are brought in the Superior Court, Civil Division, as civil, rather than small claims, actions. Plaintiffs' attorneys in such civil actions do not always follow the pleading and motion practice provided for small claims actions. As a result, defendants must expend significant resources and time on lengthy and difficult discovery to obtain the information and documents that V.R.S.C.P. 3(h) and (e) require to be pleaded and attached to a motion for default judgment in a small claims action. The rules will harmonize practice in small claims and civil actions and avoid the need for discovery with regard to basic items related to a credit card collection claim.

3. That Rule 3(h)(7) of the Vermont Rules of Small Claims Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 3. PLEADINGS; SERVICE OF PLEADINGS

* * * * *

(h) Credit Card Debt Collection Actions. Any complaint based on a credit card debt shall contain additional information necessary to provide the court with sufficient information regarding standing and the statute of limitations. At a minimum, the complaint must include the following, unless otherwise ordered by the court:

* * * * *

(7) If the debt was assigned, the date and parties to the assignment. If the debt has been assigned more than once, then the date and parties to each assignment must be identified to establish an unbroken chain of ownership. The complaint must allege that each assignment or other writing evidencing transfer of ownership (A) contains at least the last four digits of the original account number of the debt purchased or other identifying information uniquely associated with the account and (B) must clearly show the debtor's name associated with that account number.

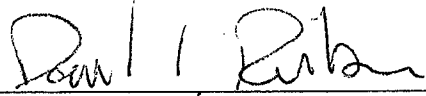
Reporter's Notes—2015 Amendment

Rule 3(h)(7) is amended to clarify the requirement adopted in 2013 that the complaint in a credit card debt collection action "allege" that each assignment of the debt show the name of the debtor on the original debt.

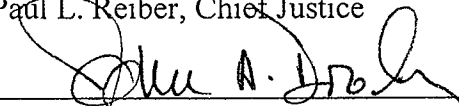
4. That these rules, as amended or added, are prescribed and promulgated effective September 1, 2015. The Reporter's Notes are advisory.

5. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

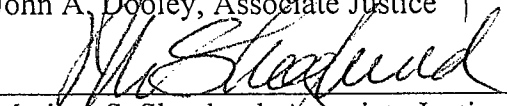
Dated in Chambers at Montpelier, Vermont, this 1st day of July, 2015.



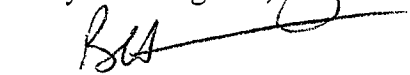
Paul L. Reiber, Chief Justice



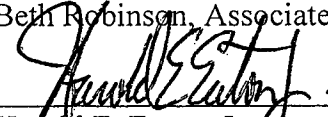
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2015

**Order Promulgating Amendments and Additions to the Vermont Rules of Civil Procedure
and Appendix of Forms**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rules 4(b) and (l) of the Vermont Rules of Civil Procedure be amended, and Rule 4(l)(3)(H) be added, to read as follows (deleted matter struck through; new matter underlined):

RULE 4. PROCESS

* * * * *

(b) Same: Form. The summons shall be signed by the plaintiff's attorney or, if the plaintiff has no attorney, by any Superior Judge or a judge or the clerk of the court to which it is returnable. It shall contain the name and address of the court and the names of the parties, be directed to the defendant, state the name and postal and e-mail addresses of the plaintiff's attorney, and the time and manner within which these rules require the defendant to respond to the complaint, and shall notify defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint. A summons shall comply with the format provisions of the Vermont Rules for Electronic Filing, if applicable. The plaintiff must include with the summons a blank Notice of Appearance form.

* * * * *

(l) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

* * * * *

(3) *Method.* The notice and request given under this subdivision

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to any other person authorized under subdivision (d) of this rule to receive service of process on behalf of a defendant who is not an individual, provided that notice may not be given hereunder to a public officer who is designated by statute as an agent to receive service of process;

(B) shall be dispatched through first class mail or other reliable electronic or nonelectronic means;

(C) shall be accompanied by a copy of the complaint and shall identify

the court in which it has been filed;

(D) shall inform the defendant, by means of a form conforming substantially to Forms 1B and 1C as contained in the Appendix of Forms to these rules, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any state or territory of the United States; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as an electronic or prepaid nonelectronic means of compliance in writing; and

(H) shall include a blank Notice of Appearance form.

* * * * *

Reporter's Notes—2015 Amendment

Rules 4(b) and (l) are amended to address a problem that arises with increasing frequency with the increase of self-representation. It is not uncommon for a court to get a letter or answer from an unrepresented defendant with no return address, email address, or phone number. The court may then have an answer or other pleading but no good address to which to mail hearing notices, and no way to call or email the party if there are last minute continuances of court dates. A notice of appearance form for self-represented parties is already in use informally in some Civil Division courts, but it is only available once a party comes to the courthouse. Provision of a blank notice of appearance form at the time the complaint is served will encourage unrepresented defendants to provide contact information for the court as well as to comply with V.R.C.P. 79.1(d). Form 28, Notice of Appearance for Self-Represented Litigant, is added by simultaneous amendment to the Appendix of Forms.

2. That Rule 5(d) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through):

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

* * * * *

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, except that all requests for discovery under Rules 26-34 and 36 and answers and responses thereto shall not be filed unless on order of the court or for use in the proceeding. If a paper is not to be filed, the party serving it shall file instead a certificate that each deposition has been completed and sealed pursuant to Rule 30(f) or that each request, interrogatory, answer or response has been served in accordance with this rule. ~~A filing pursuant to this rule by a party's attorney shall constitute a representation by the attorney, subject to the obligations of Rule 11, that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice.~~

Reporter's Notes—2015 Amendment

Rule 5(d) is amended to delete the provision that a filing by an attorney constitutes a representation that the paper filed has been or will be served. The amendment removes language inconsistent with simultaneously adopted V.R.C.P. 5(h), which requires a certificate of service to be filed by an attorney as well as by a self-represented litigant.

3. That Rule 5(h) of the Vermont Rules of Civil Procedure be added to read as follows:

(h) Certificate of Service. Every document filed with the court after the complaint, and required by this rule to be served upon a party, must be accompanied by a separate certificate of service that meets the following requirements:

(1) *Signing.* The certificate must be signed by the party's lawyer or an authorized employee of the lawyer, or by a self-represented party, subject to the obligations of Rule 11.

(2) *Contents.* The certificate must:

- (A) certify that the document has been served upon every other party to the case;
- (B) state the manner of service (mail, personal delivery, or other service authorized by this rule);
- (C) state the name and address of each person or entity served; and
- (D) state the date of the mailing or other means of delivery.

(3) *Acceptance.* The court may strike any document not accompanied by a certificate of service, may suspend running of the time for response by the other party or parties until the filing of a proper certificate of service, and may decline to act on the filing until a proper certificate is filed.

Reporter's Notes—2015 Amendment

Rule 5(h) is added to require a separate certificate of service to be filed after service of any document under Rule 5. The new provision is primarily intended to address a problem resulting from the fact that more and more cases involve one or more self-represented parties. However, it applies to filings by attorneys as well as by self-represented parties. Form 29, incorporating the requirements of the certificate laid out in new Rule 5(h)(1) and (2), has been added to the Appendix of Forms by simultaneous amendment. Consistent with the new rule, a simultaneous amendment to V.R.C.P. 5(d) deletes the provision that filing by an attorney is sufficient proof of service.

Many self-represented parties are unfamiliar with the requirement of Rule 5(a) that every filing with the court must also be sent to all other parties or their lawyers. Although sometimes unrepresented parties list a "cc" to other parties, this is often not the case. It is therefore impossible to tell whether other parties have been informed of the filing. Thus, the court may rule on a motion because the time to respond has passed and it is unopposed, only to find out later, when a motion to reconsider or reopen is filed, that the other parties were not even aware of the motion until the court's ruling. The court must then vacate the ruling, potentially wait again for the motion reaction time to pass, and then revisit the motion. This results in more work for the court staff, the judge, and the other parties who should have been served. It can also create extensive delays. To avoid this, in some courts staff routinely make photocopies of filings by self-represented litigants and mail them to the other side to be sure the other side is aware of the motion or filing. This practice, however, shifts to already overburdened staff a duty that is legally the obligation of the parties. It also shifts the costs of photocopying and mailing to the court.

Even when lawyers appear in a case there are times when it is unclear whether service has been made—for example, where new counsel came in close to the time of a filing, and it is not apparent whether the filing was served on the new counsel. This lack of clarity can lead to misunderstandings, wasted hearing time, reconsideration, or time spent by court staff calling or emailing counsel to determine who has been served.

Finally, when the courts move to electronic filing, cover letters will likely be eliminated. Thus, even the "cc" that now may appear on a cover letter will no longer be submitted to assist the court in determining whether copies of filings were sent to other parties.

All of these problems will be greatly reduced by the simple requirement of a certificate of service, by which every lawyer or party filing a document with the court certifies to whom he or she has mailed the document, on what date, and to what address. The rule is not intended to change the requirements of Rule 5 regarding what documents must be served or the manner of service. Federal Rule 5(d) has required certificates of service since 1991. See 4B C. Wright & A. Miller, Federal Practice & Procedure: Civil § 1150 (3d ed. 2002).

4. That Form 1 in the Appendix of Forms to the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

FORM 1. SUMMONS

STATE OF VERMONT
COUNTY OF _____
_____ Unit

SUPERIOR COURT
CIVIL DIVISION
Docket No. _____

Plaintiff(s)

v.

SUMMONS

Defendant(s)

THIS SUMMONS IS DIRECTED TO _____

1. **YOU ARE BEING SUED.** The plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights.

2. **YOU MUST REPLY WITHIN 20* DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Plaintiff a **written response** called an Answer within 20* days of the date on which you received this Summons. You must send a copy of your Answer to the [Plaintiff][Plaintiff's attorney] located at:

_____ ,

You must also give or mail your Answer to the Court located at:

3. YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT. If you do not Answer within 20* days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint.

5. YOU MUST MAKE ANY CLAIMS AGAINST THE PLAINTIFF IN YOUR REPLY. Your Answer must state any related legal claims you have against the Plaintiff. Your claims against the Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to bring them up at all. Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.

6. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. **Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.**

7. NOTICE OF APPEARANCE FORM. THE COURT NEEDS TO KNOW HOW TO REACH YOU SO THAT YOU WILL BE INFORMED OF ALL MATTERS RELATING TO YOUR CASE. If you have not hired an attorney and are representing yourself, in addition to filing the required answer it is important that you file the Notice of Appearance form attached to this summons, to give the court your name, mailing address and phone number (and email address, if you have one). You must also mail or deliver a copy of the form to the lawyer or party who sent you this paperwork, so that you will receive copies of anything else they file with the court.

~~Plaintiff's attorney~~/Plaintiff

Dated

Served on

Date

Sheriff

* Use 20 days, except that in the exceptional situations where a different time is allowed by the court in which to answer, the different time should be inserted.

Reporter's Notes—2015 Amendment

Form 1 is amended to alert a self-represented defendant that he or she must complete and file Form 28, the newly adopted Notice of Appearance form that the simultaneous amendment to Rule 4(b) requires to be attached to the summons.

5. That Form 1B in the Appendix of Forms to the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

FORM 1B. NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * * * *

If you do not return the signed waiver by _____(F)_____, I will have formal service made in a manner authorized by the Vermont Rules of Civil Procedure. I will then ask the court to require [you] [the party on whose behalf you are addressed] to pay the full costs of that service, to the extent authorized by those rules. In that connection, please read the statement concerning the duty of the parties to waive the service of summons, which is set forth on the enclosed waiver form.

THE COURT NEEDS TO KNOW HOW TO REACH YOU SO THAT YOU WILL BE INFORMED OF ALL MATTERS RELATING TO YOUR CASE. If you have not hired an attorney and are representing yourself, in addition to filing the required answer it is important that you file the Notice of Appearance form attached to this notice and request, to give the court your name, mailing address and phone number (and email address, if you have one). You must also mail or deliver a copy of the form to the lawyer or party who sent you this paperwork, so that you will receive copies of anything else they file with the court.

I affirm that this request is being sent to you on _____(I)_____.

* * * * *

Reporter's Notes—2015 Amendment

Form 1B is amended to alert a self-represented defendant that he or she must complete and file Form 28, the simultaneously adopted Notice of Appearance form that the simultaneous amendment to Rule 4(l) requires to be attached to the notice and request.

6. That Form 1C in the Appendix of Forms to the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

FORM 1C. WAIVER OF SERVICE OF SUMMONS

* * * * *

I understand that a judgment may be entered against [me] [entity] if an answer or motion under Rule 12 of the Vermont Rules of Civil Procedure is not served upon you by [date from Form 1B, note H]. If I have not hired an attorney and am representing myself, I am filing the attached Notice of Appearance form in addition to filing the required answer.

* * * * *

Reporter's Notes-2015 Amendment

Form 1C is amended, consistent with the simultaneous amendments of Rule 4(I) and Form 1B, to provide for submission of Form 28, the simultaneously adopted Notice of Appearance form that the simultaneous amendment to Rule 4(I) requires to be attached to the notice and request.

7. That Form 28 be added to the Appendix of Forms in the Vermont Rules of Civil Procedure to read as follows:

FORM 28. NOTICE OF APPEARANCE FOR SELF-REPRESENTED LITIGANT

STATE OF VERMONT

SUPERIOR COURT
CIVIL DIVISION

_____ Unit

Docket No. _____

Plaintiff(s)

v.

**NOTICE OF APPEARANCE
For Self-Represented Litigant**

Defendant(s)

I am a ___ Plaintiff ___ Defendant in this case.

I will represent myself and, in addition to filing the required answer, I hereby enter my appearance with the court. If I decide to be represented by an attorney in the future, either my attorney or I will notify the court of the change.

In representing myself, I understand that I **MUST**:

- 1. Notify the court in writing of any changes in my address, phone number, or email address.**
- 2. Give or send copies of any papers I file with the court to every other party in this case. If another party has an attorney, I will give or send copies to that party's attorney.**
- 3. File a certificate of service with the court swearing that I have sent the papers I am filing to all parties. I understand that I can find that form on the Vermont Judiciary website or at the court house.**

All court papers may be mailed to me by first class mail at the address listed below.

My Street Address (or my Mailing Address if different from my street address) is:

Town/City State Zip Code

Telephone Number (day): _____ Telephone Number (evening): _____

Email address: _____

Date: _____ Signature: _____

Name Printed: _____

Reporter's Notes

Form 28 is added to implement the simultaneous amendment of V.R.C.P. 4(b) and (l) requiring a notice of appearance by a self-represented litigant to assure compliance with V.R.C.P. 79.1(d). The form is similar to that found on the Judiciary website for use in the Family Division.

8. That Form 29 be added to the Appendix of Forms in the Vermont Rules of Civil Procedure to read as follows:

FORM 29. CERTIFICATE OF SERVICE

STATE OF VERMONT

SUPERIOR COURT
CIVIL DIVISION

_____ Unit

Docket No. _____

Plaintiff(s)

CERTIFICATE OF SERVICE

v.

Defendant(s)

I certify that I have today delivered the attached [title of filings] to all other parties to this case as follows:

- By first class mail by depositing it in the U.S. mail;
- By personal delivery to [name of party or parties] or his/her counsel;
- Other. Explain:

The names and addresses of the parties/lawyers to whom the mail was addressed or personal delivery was made are as follows:

[List each party served]

Dated at _____, Vermont this ____ day of ____, 20__

Signature: _____

[Typed Name]
Counsel for _____

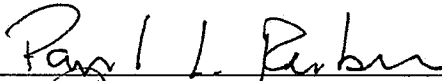
Reporter's Notes

Form 29 is added to implement the simultaneous addition of V.R.C.P. 5(h) requiring a certificate of service on a motion under Rule 5. If service was by electronic means the "Other" box should be checked and that fact noted.

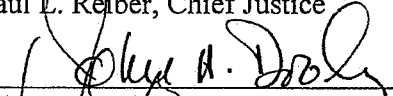
9. That these rules and forms, as added or amended, are prescribed and promulgated effective September 21, 2015. The Reporter's Notes are advisory.

10. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

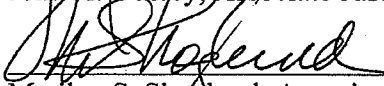
Dated in Chambers at Montpelier, Vermont, this 20th day of July, 2015.



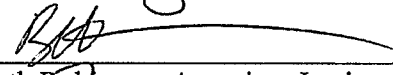
Paul L. Reiber, Chief Justice



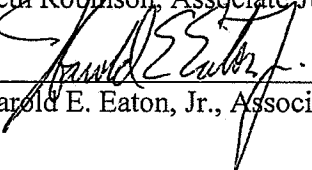
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

Order Promulgating Addition to the Vermont Rules of Civil Procedure

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 80.11 of the Vermont Rules of Civil Procedure be added to read as follows:

RULE 80.11. PROCEDURE IN EXPEDITED ACTIONS

(a) Applicability.

(1) *Designation.* A civil action will proceed as an expedited action under this rule when

(A) The complaint expressly designates the case as an expedited action and alleges that the amount in controversy is less than \$50,000, exclusive of interest and costs; or

(B) All parties to the action file a joint stipulation that the action will be designated as an expedited action; or

(C) The court, on the motion of a party, finds that designation of the action as an expedited action will serve the interests of the parties and the court in its just, speedy, and inexpensive determination.

(2) *Identification in Filings.* When an action is designated as an expedited action, it shall be clearly identified in the caption of all subsequent filings as an "EXPEDITED ACTION."

(3) At any time on motion of a party in an action that has been designated as an expedited action under paragraph (1), the court, on a showing of good cause, may order that the action shall no longer be so designated and shall proceed as an ordinary civil action under the Vermont Rules of Civil Procedure.

(4) The Vermont Rules of Civil Procedure apply to actions under this rule except as otherwise provided in the rule or when inconsistent with its provisions.

(5) Any deadline or limitation stated in this rule may be eliminated or extended by the court on a showing of good cause.

(b) **Scheduling Conference.** Unless the parties file a stipulation on a form to be provided by the Court Administrator as to the matters enumerated in V.R.C.P. 16.2(i)-(v) and a certificate and report or stipulation as to the scheduling of alternative dispute resolution under subdivision (d) of this rule, the court shall hold a scheduling conference within 21 days after the filing of the last answer to consider those matters and shall issue a scheduling order as provided in V.R.C.P. 16.2.

(c) **Motions.** Motions may be filed for all purposes, and in the manner, provided in the Rules of Civil Procedure, except that

(1) A memorandum in support of or opposition to a motion may not exceed 10 double-spaced pages in length, and a reply memorandum may not exceed 5 double-spaced pages.

(2) No motion may be filed unless the moving party has conferred or attempted to confer with every opposing party and files an affidavit asserting that the conference was held or explaining why the conference was not possible.

(d) **Alternative Dispute Resolution.** Unless the parties have filed a certificate and report of voluntary alternative dispute resolution as provided in V.R.C.P. 16.3(a)(1)(B), they must undertake alternative dispute resolution in the manner provided in V.R.C.P. 16.3(c)(2)-(7), (d)-(f), except that

(1) Scheduling of the alternative dispute resolution proceeding must take place within 21 days after the filing of the last answer.

(2) The alternative dispute resolution proceeding must be completed within 90 days after the filing of the last answer unless the court extends the date on motion of a party.

(3) The alternative dispute resolution proceeding shall not last more than 6 hours unless the parties agree to extend the time.

(4) The cost of alternative dispute resolution must be divided equally among the parties except as otherwise provided in V.R.C.P. 16.3(e)(1)-(3). If one or both parties are unable to pay, the court shall determine whether alternative dispute resolution is required.

(e) **Discovery.** Discovery may be had as provided in V.R.C.P. 26-37, except as provided in this subdivision.

(1) *Timing of Discovery.* All discovery other than expert disclosures under paragraph (3) must be completed within 180 days after the filing of the last answer.

(2) *Initial Disclosures.* A party shall, within 30 days after the filing of the last answer, and without waiting for a discovery request, provide to the other parties:

(A) The name and, if known, address, telephone number and email address, of each individual likely to have discoverable information regarding the claims and defenses asserted, and a statement identifying the subjects of information, unless the use of the information would be solely for impeachment;

(B) A copy of each document, data compilation, and tangible thing and all electronically stored information in the possession or control of the disclosing party which may be used in the party's case in chief, unless the use of the information would be solely for impeachment;

(C) A copy of each document referenced in the party's pleadings;

(D) A computation of any damages claimed by the party and a copy of all discoverable documents or evidentiary material on which such computation is based, including materials about the nature and extent of the injuries suffered; and

(E) A copy of any agreement under which any other person or entity may be liable to satisfy part or all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment.

(3) Disclosure of Retained Expert Testimony.

(A) Disclosures. A party shall, without waiting for a discovery request, disclose the identity of any retained expert witness it may use at trial to present evidence under V.R.E. 702. This disclosure must be accompanied by a written report including: (i) the expert's name and qualifications, including a list of all publications authored within the preceding ten years, and a list of any other cases in which the expert has testified as an expert within the preceding four years; (ii) a brief summary of the opinions to which the expert is expected to testify; (iii) all data and other information that will be relied upon by the witness in forming those opinions; and (iv) the compensation to be paid to the witness.

(B) Timing. The party who bears the burden of proof on the issue for which expert testimony is offered shall provide the information required in subparagraph (3)(A) within 15 days after the close of fact discovery. If expert testimony is intended solely to rebut or contradict an expert disclosed by another party, the rebuttal expert shall be disclosed within 15 days after the deposition of the other party's expert.

(4) Limits on Discovery.

(A) Interrogatories under V.R.C.P. 33. Each party may serve on any other party no more than 15 written interrogatories, including all discrete subparts.

(B) Requests to Produce. The parties shall be limited to 15 requests for production under V.R.C.P. 34, including all discrete subparts.

(C) Requests for Admission. The parties shall be limited to 15 requests for admission under V.R.C.P. 36, including all discrete subparts.

(D) Depositions. The parties shall be limited to a total of 15 hours each for oral depositions of parties and fact witnesses under V.R.C.P. 30.

(E) Depositions of Experts. An expert may be deposed under V.R.C.P. 26(b)(4) within thirty days after being disclosed. A deposition of an expert shall last no more than three hours.

(5) Additional Discovery.

(A) Stipulation. The parties may stipulate to additional discovery within the deadlines established by this rule or by the court

(B) Motion. The court may grant additional discovery pursuant to paragraph (a)(5).

(f) Trial Readiness; Pretrial Conference.

(1) *Timeframe*. Every action under this rule shall be ready for trial within 270 days after the filing of the last answer unless the court grants an extension for good cause on motion filed before the deadline.

(2) *Pretrial Conference*. When the action is ready for trial, the court will hold a pretrial conference to set or confirm the trial date, specify the issues to be tried, determine the number of days required for trial, and address any other matters pertaining to trial raised by the parties or the court.

(3) *Pretrial Disclosures*. Not later than 14 days prior to trial, the parties shall exchange witness and exhibit lists, including a marked copy of each exhibit that may be used at trial. Unless good cause is shown, failure to adhere to this requirement shall result in preclusion of the witness or exhibit. Objections to the proffered witnesses and exhibits, including the grounds therefor, shall be filed seven days prior to trial.

(g) Effective Date.

This rule applies to cases filed after its effective date. Parties to a case pending at the time this rule becomes effective may opt in to its provisions by stipulation.

Reporter's Notes

Rule 80.11 is added to address the widely recognized problem that the cost and time needed to litigate civil claims are often disproportionate to the value of the cases. Currently, simple nonmonetary claims and any case exceeding the small-claims threshold of \$5,000 must be brought as a civil action under the Vermont Rules of Civil Procedure. As a result, the pursuit of potentially meritorious claims and defenses may be discouraged because of the cost entailed, or litigants may represent themselves—a course that is ineffective and imposes significant costs on opposing parties and court resources.

The new rule is designed to provide an effective, efficient and predictable case management process for lower-value or less-complicated cases. Its intent is to make it economically feasible for lawyers to take on these cases and for litigants to be able to afford to hire lawyers. Rule 80.11 will also result in the more efficient conduct of litigation in cases where litigants are self-represented or have limited representation under V.R.C.P. 79.1(h). Making representation both more economical and less time-consuming will increase access to justice.

The rule was developed by a committee of the Vermont Bar Association working in conjunction with the Civil Division Oversight Committee and the Court's Advisory Committee on the Rules of Civil Procedure. After an initial comment period and public presentation at the fall 2014 VBA meeting, a rule revised by the VBA committee on the basis of extensive comments received was sent out for comment at the request of the Civil Rules Advisory Committee. With its adoption, Vermont joins several federal district courts and the courts of a number of other states that have developed rules to expedite procedures in less complicated civil cases. See Institute for the Advancement of the American Legal System, *Rule One Initiative* (2015), at <http://iaals.du.edu/initiatives/rule-one-initiative/implementation>.

Rule 80.11(a)(1)(A) provides that the expedited procedures apply when a case is expressly designated as an "Expedited Action" in a complaint alleging that less than \$50,000 is in controversy. Subparagraph (B) allows the parties to agree that an action will be commenced and carried on as an expedited action regardless of the amount in controversy, or to agree that an action commenced under the ordinary provisions of the rules will be designated and carried on as expedited if proceedings subsequent to the complaint have shown that less than \$50,000 is in controversy. Subparagraph (C) allows the court, on any party's motion, to designate an action as expedited regardless of the amount in controversy if designation will advance "the just, speedy, and inexpensive determination" standard of Rule 1. Paragraph (a)(2) requires that all filings subsequent to designation, whenever and however it occurs, must be clearly labeled "EXPEDITED ACTION".

Rule 80.11(a)(3) allows the court on motion to remove the action from the expedited process on a showing of good cause—for example that more than \$50,000 is in controversy and there is no contrary showing of need for the expeditious process pursuant to subparagraph (1)(C), or that there is a demonstrable need for procedural steps not permitted by other provisions of Rule 80.11. Note that paragraph (a)(5) provides that the court, for good cause, may make exceptions to deadlines or other limits provided in the rule. See also Rule 80.11(e)(5) (stipulation or motion for additional discovery). These provisions may address specific concerns that might otherwise require removal of the action from expedited status.

Rule 80.11(a)(4) provides that the general provisions of the Civil Rules apply to expedited actions unless otherwise provided in, or

inconsistent with the rule; however, careful attention should be paid to the significant differences in key procedural areas.

Unless the parties stipulate as to the matters listed in V.R.C.P. 16.2 and the scheduling of ADR under subdivision (d), Rule 80.11(b) requires a scheduling conference and scheduling order early in the case to address those matters. Under Rule 80.11(c), there are important limitations on motion practice, including a requirement that the parties confer before a motion is filed. Rule 80.11(d) requires parties who have not voluntarily undertaken ADR to engage in ADR in accordance with V.R.C.P. 16.3 but on a tight schedule and under other limitations. Paragraph (d)(4) requires the court to make a specific determination on whether to require ADR if either or both parties cannot pay its cost.

Rule 80.11(e) imposes significant limits on discovery to minimize its time and cost. Under Rule 80.11(e)(1), all discovery except of retained experts must be completed within 180 days after the last answer is filed. Paragraph (2) requires that initial disclosures like those required under the federal rules must be made within 30 days after the last answer is filed. Similarly, under paragraph (3), automatic disclosures of the identity of retained expert and the substance of their testimony are required. Rule 80.11(e)(4) provides limits on specific forms of discovery: The parties are limited to fifteen Rule 33 interrogatories, fifteen Rule 34 requests to produce, and fifteen Rule 36 requests for admission, in each case including discrete subparts. Oral depositions other than of experts are limited to 15 hours each. Expert depositions may be taken within 30 days after disclosure and are limited to three hours each. Rule 80.11(e)(5)(A) allows stipulations for additional discovery within existing deadlines. Under subparagraph (B), the court may extend deadlines or other limitations on additional discovery for good cause as provided in Rule 80.11(a)(5)

The foregoing provisions expediting all aspects of pretrial procedure culminate in the requirement of Rule 80.11(f)(1) that all cases must be ready for trial within nine months of the time the answer is filed. Once a case is ready, further provisions of subdivision (f) expedite the trial itself, requiring a pretrial conference covering issues pertaining to trial and mandating the exchange of witness and exhibit lists and copies of exhibits under penalty of preclusion of a witness or exhibit. Objections must be filed seven days prior to trial.

Rule 80.11(g) provides that the rule applies to all cases filed after its effective date and that parties to cases pending on that date may jointly stipulate that their cases may go forward under the rule. See Rule (a)(1)(B).

2. That this rule is prescribed and promulgated effective _____. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this rule to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

PROPOSED

PROPOSED

STATE OF VERMONT

**VERMONT SUPREME COURT
_____ TERM, 2015**

**Order Making Permanent Emergency Amendments and Promulgating
Amendments and Additions to the Vermont Rules of Small Claims Procedure**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3 of the Vermont Rules of Small Claims Procedure as amended by emergency amendment promulgated April 28, 2015, effective May 4, 2015, be further amended to read as follows (deleted matter struck through; new matter underlined):

RULE 3. PLEADINGS; SERVICE OF PLEADINGS

(a) Pleading by plaintiff.

(1) To bring a small claims action, the plaintiff must file ~~two copies of the original~~ complaint and any attachments with the court clerk on a form obtained from the Judiciary website or at the clerk's office and must pay the required filing fee as specified in a current schedule published by the Court Administrator. If the plaintiff has registered to receive documents from the court by e-mail and provides the registration information in the complaint, the plaintiff must file only the original complaint and any attachments. Otherwise, the plaintiff must file the original and one copy of the complaint and any attachments and must provide the clerk with a self-addressed envelope with sufficient postage for return purposes returning the summons, complaint, and attachments to the plaintiff.

(2) The complaint must contain information identifying the plaintiff and the defendant and a ~~concise~~ short statement of the nature and amount of the claim.

~~(3) If any document is attached to the complaint, the plaintiff must supply the court clerk with a copy.~~ (4) The clerk will assign a docket number to the claim, sign the summons to the defendant, and provide the signed summons and file-stamped complaint and any attachments to the plaintiff by the method determined in paragraph (1).

* * * * *

(d) Pleading by defendant.

(1) The defendant must file an answer with the court clerk within 30 days of the date of mailing by the plaintiff, or within 30 days of the receipt of service completed by the sheriff, or another person authorized to serve process, ~~with a copy to the plaintiff.~~

(2) The defendant may include in the answer a short statement of the nature and amount of any counterclaim that the defendant has against the plaintiff which that arises from the same occurrence as the plaintiff's claim, but any Any judgment on a counterclaim may not exceed the statutory limit for small claims. The defendant must pay the required filing fee as specified in a current schedule published by the Court Administrator.

(3) If the defendant has registered to receive documents from the court by e-mail and provides the registration information in the complaint, the defendant must file only the original answer, any counterclaim, and any attachments. Otherwise, the defendant must file the original and one copy of those documents and must provide the clerk with a self-addressed envelope with sufficient postage for mailing the documents that the clerk is required to provide to the defendant by paragraph (4).

(4) The clerk will return the file-stamped answer and any counterclaim and attachment to the defendant by the method determined in paragraph (3). Within seven days after receipt of the file-stamped answer, the defendant must send the answer and any counterclaim and attachment, with the court-approved answer form and instructions if a counterclaim has been filed, to the plaintiff by first class mail. The defendant must also file with the clerk the applicable certificate of service, which is available on the Judiciary website and at the clerk's office.

* * * * *

(g) Reopening a default judgment. ~~A motion to reopen a default judgment is timely if filed in writing with the court clerk prior to or at the time of the first financial disclosure hearing relating to the default judgment. If no motion for a financial disclosure hearing has been filed, a motion to reopen a default judgment must be filed in writing with the court clerk no later than 90 days after entry of a default judgment, unless the judgment debtor proves to the court that he or she did not have notice of the default judgment. The required fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid. A default judgment will not be reopened unless good cause is shown.~~

(1) A party against whom a default judgment has been entered (the "judgment debtor") may move to reopen the judgment.

(A) The judgment debtor must file the motion in writing with the court clerk no later than the time of the first financial disclosure hearing relating to the judgment.

(B) If no motion for a financial disclosure hearing has been filed, the court

may not reopen the judgment unless (i) the motion is filed in writing with the court clerk no later than 90 days after entry of the judgment, or (ii) the court finds that the judgment debtor did not receive timely notice of the entry of the judgment.

(C) The judgment debtor must pay the required fee for filing a motion, as specified in a current schedule published by the Court Administrator.

(2) If the judgment debtor has registered to receive documents from the court by e-mail and provides the registration information in the motion, the judgment debtor must file only the original motion. Otherwise, the judgment debtor must file the original and one copy of the motion and must provide the clerk with a self-addressed envelope with sufficient postage for mailing the document that the clerk is required to provide to the judgment debtor by paragraph (3).

(3) The clerk will provide the file-stamped motion to the judgment debtor by the method determined in paragraph (2). Within seven days after receipt of the file-stamped motion, the judgment debtor must send it to the judgment creditor by first class mail and file with the clerk the applicable certificate of service, which is available on the Judiciary website and at the clerk's office.

(4) A default judgment will not be reopened unless good cause is shown.

Reporter's Notes—2015 Amendment

Rules 3(a) (complaint) and (d) (answer) of the Vermont Rules of Small Claims Procedure as amended by emergency rule on April 28, effective May 4, 2015, are further amended and made permanent, and Rule 3(g) (reopening default) of those rules is amended.

The amendments provide that, if the party filing a complaint, an answer, or a motion to reopen a default judgment has agreed by registering an e-mail address in the action that the clerk may return the time-stamped document by e-mail, the party needs to file only the original document and any attachments. The court clerk will then return the document, time-stamped to indicate that it has been filed, to the filing party electronically for service upon the other party. If the filing party has not registered an e-mail address, the party must file an original and one copy of the form and any attachments accompanied by a self-addressed envelope stamped with sufficient postage to enable the clerk to return the document to the filer by ordinary mail.

Comparable provisions are added by simultaneous amendments to V.R.S.C.P. 7(a) (financial disclosure hearing), 8(b) (contempt summons), 9(b) (writ of execution), and 10(a) (notice of appeal).

3. That Rule 7(a) of the Vermont Rules of Small Claims Procedure as amended by emergency amendment promulgated April 28, 2015, effective May 4, 2015, be further amended to read as follows (deleted matter struck through; new matter underlined):

RULE 7. FINANCIAL DISCLOSURE HEARING

(a) Availability.

(1) A party who has recovered a judgment in a small claims action (the “judgment creditor”) may file a motion for a financial disclosure hearing on a form obtained from the Judiciary website or at the clerk’s office, with a copy to the party against whom the judgment was awarded (the “judgment debtor”), if

(A) the judgment was awarded as a lump sum and remains unpaid for 30 days after the entry of judgment, or

(B) an installment on the judgment is overdue for 30 days or longer.

(2) The judgment creditor must pay the required fee for filing a motion, as specified in a current schedule published by the Court Administrator. If the judgment creditor has registered to receive documents from the court by e-mail and provides the registration information in the motion, the judgment creditor must file only the original motion. Otherwise, the judgment creditor must file the original and one copy of the motion and must provide the clerk with a self-addressed envelope with sufficient postage for mailing the document that the clerk is required to provide to the judgment debtor by paragraph (3).

(3) ~~The judgment creditor must file a certificate of service with the clerk showing that the judgment debtor was served with the motion. The clerk will provide the file-stamped motion to the judgment creditor by the method determined in paragraph (2). Within seven days after receipt of the file-stamped motion, the judgment creditor must send it to the judgment debtor by first class mail and file with the clerk the applicable certificate of service, which is available on the Judiciary website and at the clerk’s office.~~

(4) The judgment creditor may not file a motion for a financial disclosure hearing more often than once in three months.

Reporter’s Notes—2015 Amendment

Rules 7(a) of the Vermont Rules of Small Claims Procedure as amended by emergency rule on April 28, effective May 4, 2015, is further amended and made permanent to provide for return of a file-stamped motion to a registered filer by e-mail. See Reporter’s Notes to simultaneous amendment of V.R.S.C.P. 3.

3. That Rule 8(b) of the Vermont Rules of Small Claims Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 8. CIVIL CONTEMPT

* * * * *

(b) Issuance and service of judicial summons.

(1) Upon receiving such a motion, the court clerk will set a date for hearing and issue a judicial summons requiring the judgment debtor to appear and present evidence showing why he or she should not be held in contempt of court. The judicial summons will include notice to the judgment debtor that he or she may be represented by legal counsel at the hearing.

(2) If the judgment creditor has registered to receive documents from the court by e-mail and provides the registration information in the motion, the judgment creditor must file only the original motion. Otherwise, the judgment creditor must file the original and one copy of the motion and must provide the clerk with a self-addressed envelope with sufficient postage for mailing the document that the clerk is required to provide to the judgment creditor by paragraph (3).

(3) The clerk will provide the summons to the judgment creditor by the method determined in paragraph (2). Within seven days after receipt of the summons, the judgment creditor must have send the judicial summons served on the judgment debtor by to a sheriff (or other person authorized to serve process) for service on the judgment debtor at the judgment creditor's expense, but no attendance or mileage fee need be paid to the judgment debtor. The return of service must be filed by the judgment creditor with the court clerk no later than the beginning of the hearing.

Reporter's Notes—2015 Amendment

Rule 8(b) of the Vermont Rules of Small Claims Procedure is amended to provide for return of a summons for contempt to a registered filer by e-mail. See Reporter's Notes to simultaneous amendment of V.R.S.C.P. 3.

4. That Rule 9 of the Vermont Rules of Small Claims Procedure amended to read as follows (deleted matter struck through; new matter underlined):

RULE 9. OTHER ENFORCEMENT OF JUDGMENTS

(a) Trustee process. If a judgment is not paid within 30 days and no appeal is pending, the judgment creditor may seek trustee process against earnings or other property subject to trustee process under the procedure prescribed in Rule 4.2 of the Vermont Rules of Civil

Procedure. The judgment creditor must pay the required fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid.

(b) Writ of execution.

(1) If a judgment is not paid within 30 days and no appeal is pending, the judgment creditor may obtain a writ of execution by filing a written request accompanied by a writ of execution on a form provided by the court clerk obtained from the Judiciary website or at the clerk's office, on which the judgment creditor has included required information concerning the parties and the amount of the judgment recovered and any amount paid by the judgment debtor. The judgment creditor must pay the required fee for obtaining a writ of execution, as specified in a current schedule published by the Court Administrator.

(2) If the judgment creditor has registered to receive documents from the court by e-mail and provides the registration information in the request, the judgment creditor must file only the original request and writ. Otherwise, the judgment creditor must file the original and one copy of the request and writ and must provide the clerk with a self-addressed envelope with sufficient postage for mailing the document that the clerk is required to provide to the judgment debtor by paragraph (3).

(3) The clerk will provide the completed and file-stamped writ of execution to the judgment creditor by the method determined in paragraph (2).

(4) The judgment creditor must have the writ of execution served by a sheriff or other person authorized to serve process on the judgment debtor at the judgment creditor's expense. The judgment creditor must deliver to the officer or other person levying execution the list of exemptions appearing in Form 34 of the Vermont Rules of Civil Procedure, which may be obtained from the Judiciary website or at the clerk's office. The officer or other person will serve the list on the judgment debtor with a copy of the writ of execution. The return of service must be filed with the court clerk by the judgment creditor. The required fee for obtaining a writ of execution, as specified in a current schedule published by the Court Administrator, must be paid.

(c) Judgment lien. If a judgment is not paid within 30 days and no appeal is pending, the judgment creditor may purchase obtain a certified copy of the judgment from the court clerk and file it for recording with the town or city clerk of a municipality where the judgment debtor owns real estate. If the judgment creditor is requesting that the certified copy be sent by mail, the judgment creditor must provide the clerk with a self-addressed envelope with sufficient postage for mailing the certified copy.

Reporter's Notes—2015 Amendment

Rule 9(a) of the Vermont Rules of Small Claims Procedure is amended for stylistic reasons.

Rule 9(b) is amended to provide for return of a file-stamped writ of execution to a registered filer by e-mail. See Reporter's Notes to simultaneous amendment of V.R.S.C.P. 3.

Rule 9(c) is amended to clarify the judgment creditor's responsibilities.

5. That Rule 10(a) of the Vermont Rules of Small Claims Procedure as amended by emergency amendment promulgated April 28, 2015, effective May 4, 2015, be further amended to read as follows (deleted matter struck through; new matter underlined):

RULE 10. APPEALS

(a) Notice of appeal.

(1) Any party to a small claims action may appeal the judgment to the civil division by filing a notice of appeal with the civil division clerk within 30 days from the entry of the judgment, using a form obtained from the Judiciary website or at the clerk's office.

(2) The notice of appeal may, but need not, contain a statement of the basis of the appeal.

(3) The appealing party must pay the required filing fee, as specified in a current schedule published by the Court Administrator. If the appealing party did not previously register to receive documents from the court by e-mail, that party may do so when filing the appeal by providing the registration information in the notice of appeal, and the court will e-mail all documents to the party instead of sending them by mail.

(4) At the time of filing the notice of appeal, the appealing party must serve a copy of the notice upon all other parties to the small claims action, and must file a certificate of service with the court clerk.

Reporter's Notes—2015 Amendment

Rule 10(a) of the Vermont Rules of Small Claims Procedure is amended to provide for delivery of court documents to an appellant who is a registered filer by e-mail. See Reporter's Notes to simultaneous amendment of V.R.S.C.P. 3.

6. That Rules 3, 7, 10, and 12 of the Vermont Rules of Small Claims Procedure, promulgated as emergency amendments on April 28, effective May 4, 2015, are made permanent, and that those rules and Rules 8 and 9 of the Vermont Rules of Small Claims Procedure, as amended or added in this order, are prescribed and promulgated as permanent rules effective _____, 2015. The Reporter's Notes are advisory.

7. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ___ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

Order Promulgating Amendment to Rule 43(f) of the Vermont Rules of Civil Procedure

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 43(f) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 43. EVIDENCE

* * * * *

(f) **Interpreters.** The court ~~may~~ shall appoint an competent interpreter of its own selection when appointment of an interpreter is necessary to ensure meaningful access to all court proceedings and court-managed functions in or related to civil actions for a party, witness, or other person whose presence or participation is necessary or appropriate and who is a person with limited English proficiency or hearing impairment. ~~The court shall and may fix the interpreter's reasonable compensation for court proceedings and court-managed functions.~~ The compensation shall be paid by ~~one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court~~ the State of Vermont.

Reporter's Notes—2015 Amendment

V.R.C.P. 43(f) is amended to make clear that the requirements in actions in the Civil Division of the Superior Court for court appointment of interpreters for persons with limited English proficiency (LEP) or hearing impairments comply with federal law.

The U.S. Department of Justice (DOJ) in 2002 issued final guidance (DOJ Guidance) making clear that court systems receiving federal financial assistance that did not provide meaningful access to LEP persons, including competent interpretation, in civil and other proceedings were not in compliance with Title VI of the Civil Rights Act of 1964, as amended, and the Omnibus Crime and Safe Streets Act of 1968, as amended, and their implementing regulations. See 67 Fed. Reg. 41,455, 41,462, 41,471 (June 18, 2002); 42 U.S.C. § 2000d et seq.; 42 U.S.C. § 3789d(c); 28 C.F.R. §§ 42.1104(b)(2), 42.203(e). In a letter of August 16, 2010 to state court officials intended to provide greater clarity regarding these requirements (DOJ Letter), DOJ stated its expectation that "meaningful access will be provided to LEP persons in all court and court-annexed proceedings, whether

civil, criminal, or administrative including those presided over by non-judges.” DOJ Letter, at p. 2.

While the Vermont Judiciary’s current policy is in basic compliance with the DOJ Guidance and Letter, existing V.R.C.P. 43(f) and similar procedural rules applicable in other divisions of the Superior Court do not reflect it. The specific language of the amended rule is intended to address that problem. Thus, “other persons” in the amended rule includes LEP nonparties “whose presence or participation is necessary or appropriate,” such as parents or guardians of minors involved in criminal or juvenile matters. DOJ Letter, p. 2. The amended rule covers “court proceedings,” which DOJ defines as including proceedings before “magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers.” *Id.* The rule also covers “court-managed functions in or related to civil actions.” DOJ broadly defines programs outside the courtroom to include information counters, filing offices, sheriffs’ offices, probation and parole offices, ADR programs, diversion programs, and similar offices and activities, as well as communication with court-appointed participants, such as defense counsel and guardians ad litem. *Id.* at p. 3. The rule, however, should be understood as requiring judicial appointment of a specific interpreter for a specific individual only when participation in those functions or programs is managed or operated by the court and is a necessary component of participation in a specific action before the court. The rule does not impose on the judiciary the cost of providing interpretation services for communication with individuals who are operating under the control of a different agency, such as public defenders, probation and parole officers, or corrections officers. The rule also complies with the DOJ position that “meaningful access” requires that interpretation services be provided at no cost to the individuals. *Id.* at p. 2.

The Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, as implemented by U.S. Department of Justice Final Rule: Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. Part 35, 56 Fed. Reg. 35694 (July 26, 1991), entitles deaf participants in court activities to “auxiliary aids and services,” such as qualified interpreter services, to ensure effective communication during the proceeding. 28 C.F.R. §§ 35.104, 35.160(b). Court activities include any type of state or local court proceeding as well as court administrative activities. Deaf participants cannot be charged for the auxiliary aid or service. See 28 C.F.R. § 35.130(f), 56 Fed. Reg. 35705-06. See generally, <http://www.nad.org/issues/justice/courts/communication-access-state-and-local-courts>.

In Vermont, 1 V.S.A. § 332 provides that “Any deaf or hard of hearing person who is a party or a witness in any proceeding shall be entitled to be provided with a qualified interpreter” or to be provided with “assistive listening equipment.” Under 1 V.S.A. § 333, the “presiding officer” (i.e., the judge in a court proceeding) is to appoint the interpreter. Section 335 provides that “in civil proceedings, the court may order that” the interpreter’s fees and expenses “be paid by a party, as justice may require, or may order the costs to be paid by the state. In criminal proceedings, costs of the interpreter shall be paid by the state.” These provisions are inconsistent with the ADA and implementing regulations described above. V.R.C.P. 43(f) as amended extends, and to the extent they are inconsistent with federal law, supersedes these statutory provisions.

V.R.C.P. 43(f) as amended, which governs actions in the Civil Division of the Superior Court, will apply in the Criminal and Probate Divisions by virtue of conforming changes to be made in the comparable provisions of the Vermont Rules of Criminal Procedure and the Vermont Rules of Probate Procedure. See V.R.Cr.P. 28 and V.R.P.P. 43(e). The civil and criminal rules as amended will apply in other proceedings by virtue of their incorporation in the rules governing those proceedings. See V.R.F.P. 1(a), 2(a), 4(a) (Family Division juvenile and civil proceedings); V.R.E.C.P. 3(a), 4(a), 5(a) (Environmental Division civil, enforcement, and appellate proceedings); V.R.S.C.P. 13 (Civil Division small claims proceedings); V.R.A.P. 2, 21(b) (Supreme Court suspension of the rules, actions for extraordinary relief)

2. That this rule as amended is prescribed and promulgated effective _____. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

DISPOSED

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

Order Promulgating Amendments Rule 1(a)(1) of the Vermont Rules for Electronic Filing

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is here by ordered:

1. That Rule 1(a)(1) of the Vermont Rules for Electronic Filing is amended to read as follows (deleted matter struck through; new matter underlined):

RULE 1. APPLICABILITY; EFFECTIVE DATES; TITLE

(a) These rules apply to all actions and proceedings commenced in the divisions and units of the Superior Court specified below:

(1) Electronic filing in accordance with these rules is required

(A) in all cases commenced in the Civil Division, Rutland and Windsor Units, on and after January 26, 2011, except small claims actions, and small claims appeals filed before January 25, 2016, and stalking and sexual assault actions.

(B) in all small claims actions commenced in the Civil Division, Addison, Orange, Rutland, and Windsor Units, and in all small claims appeals commenced in the Rutland and Windsor Units, on and after January 25, 2016.

Reporter's Notes—2015 Amendment

Rule 1(a)(1) is amended to provide that on and after January 25, 2016, the Vermont Rules for Electronic Filing apply in small claims actions filed in the Addison, Orange, Rutland, and Windsor Units of the Civil Division and in small claims appeals filed in the Rutland and Windsor Units. The purpose of the amendment is to implement the Small Claims centralization pilot project in those counties.

2. That this rule as amended is prescribed and promulgated to become effective on January 25, 2016. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ___ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

PROCC

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

ORDER PROMULGATING AMENDMENTS TO THE
VERMONT RULES OF CIVIL PROCEDURE AND
THE APPENDIX OF FORMS

Pursuant to the Vermont Constitution, Chapter II, Section 37 and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 3. COMMENCEMENT OF ACTION

A civil action is commenced by filing a complaint with the court, except that in any case where attachment of real or personal property or attachment on trustee process is not to be made, or goods are not to be replevied, an action may be commenced by the service of a summons and complaint. When an action is commenced by filing, summons and complaint must be served upon the defendant within 60 days after the filing of the complaint. When an action is commenced by service, the complaint must be filed with the court within ~~20~~ 21 days after the completion of service upon the first defendant served. If service is not timely made or the complaint is not timely filed, the action may be dismissed on motion, including motion of the court pursuant to Rule 41(b)(1), and notice, and in such case the court may in its discretion, if it shall be of the opinion that the action was vexatiously commenced, tax a reasonable attorney's fee as costs in favor of the defendant, to be recovered of the plaintiff or plaintiff's attorney.

Reporter's Notes—2015 Amendment

Rule 3 is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

2. That Rules 4(g)(3) and 4(l)(3)(F) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 4. PROCESS

* * * * *

(g) Service by Publication.

* * * * *

(3) *Time of Publication; When Service Complete.* The first publication of the summons shall be made within ~~20~~ 21 days after the order is granted. Service by

publication is complete on the ~~twenty-first~~ twenty-second day after the first publication. The plaintiff shall file with the court an affidavit that publication has been made.

* * * * *

(I) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

* * * * *

(3) Method. The notice and request given under this subdivision

* * * * *

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or ~~60~~ 42 days from that date if the defendant is addressed outside any state or territory of the United States; and

* * * * *

Reporter's Notes—2015 Amendment

Rule 4(g)(3) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a). Rule 4(I)(3)(F) is amended to shorten the time for return of a waiver of service from 60 to 42 days. The existing rule allowed too much time to make this method of service feasible for timely commencement under Rule 3 in the case of a defendant outside any state or territory of the United States.

3. That Rule 4.1(b)(2) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 4.1. ATTACHMENT

* * * * *

(b) Writ of Attachment: Issuance.

* * * * *

(2) Except as provided in paragraphs (3) and (4) of this subdivision, an order of approval may be issued only upon motion after ~~five~~ 7 days' notice to the defendant, or on such shorter notice as the judge may prescribe for good cause shown, and upon hearing and a finding by the court that there is a reasonable likelihood that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment over and above any liability insurance, bond, or other security shown by the defendant to be available to satisfy the judgment. The motion shall be filed with the

complaint and shall be supported by an affidavit or affidavits meeting the requirements set forth in subdivision (i) of this rule. The motion and affidavit or affidavits, together with the notice of hearing thereon, shall be served upon the defendant in the manner provided in Rule 4 at the same time that the summons and complaint are served upon the defendant.

Reporter's Notes—2015 Amendment

Rule 4.1(b)(2) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

4. That Rule 4.2(j)(3) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 4.2. TRUSTEE PROCESS

* * * * *

(j) Trustee Process Against Earnings.

* * * * *

(3) *Notice.* The judgment creditor's attorney shall file a motion for trustee process describing in detail the grounds for the motion, the amount alleged to be unpaid, and the source of earnings of the judgment debtor. Upon receipt of the motion, the clerk shall notify the parties of the date and time of hearing on the motion. The judgment creditor's attorney shall prepare a summons on a form provided by the court, a disclosure form, and a list of exemptions and shall serve them and the motion on the trustee and any judgment debtor against whom judgment was issued by default in the manner provided by Rule 4. Service shall be completed at least fourteen (14) days prior to the date set for hearing by the clerk. The trustee shall appear at the hearing or shall serve a disclosure under oath at least ~~three~~ 5 days before the hearing. If the judgment is satisfied prior to the date set for hearing, the judgment creditor shall notify the clerk. The Presiding Judge shall thereupon cancel the summons, and the clerk shall cancel the hearing, notifying the trustee and judgment debtor in the manner provided by Rule 77(d) for notification of a party.

Reporter's Notes—2015 Amendment

Rule 4.2(j)(3) is amended to conform its 3-day time period to the simultaneous amendment of V.R.C.P. 6(a).

5. That Rules 6(a), (b), (d) and (e) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 6. TIME

(a) ~~Computation.~~ ~~In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the~~

~~designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a State or federal legal holiday, or, when the act to be done is the filing of a document in court, a day on which weather or other conditions have made the office of the clerk inaccessible or the court's electronic filing system is unavailable, in which event the period runs until the end of the next day which is not one of the aforementioned days. Intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation, when the period of time prescribed or allowed, not including any calendar days added in accordance with subdivision (c) of this rule, is less than 11 days.~~

Computing Time. The following rules apply in computing any time period specified in these rules, in any court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and state or federal legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or state or federal legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or state or federal legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office or the court's electronic filing system is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or state or federal legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or state or federal legal holiday.

(4) "Last Day" Defined. Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under ~~Rule 60(b), except to the extent and under the conditions stated therein, and it may extend the time for taking any action under~~ Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), 60(b), and 80.1(m) ~~no more than 20 additional days unless the specific rule otherwise provides.~~

(c) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

(d) Affidavits on Motions. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rules 56(e)(b) and 59(c) opposing affidavits may be served not later than ~~one~~ 7 days before the hearing, unless the court permits them to be served at some other time.

~~**(e) Additional Time After Service Under Rule 5(b)(2) or (3).** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party under Rule 5(b)(2) or (3), three calendar days shall be added to the prescribed period after that period has been computed pursuant to subdivision (a) of this rule unless the notice or other document is served by the court or unless a document served other than by electronic means is received by the party on the date of service.~~

Reporter's Notes—2015 Amendment

Rule 6(a) is amended to adopt the “day is a day” rule, a simplified method of computing time periods by incorporating, with minor changes, the language of a 2009 amendment to F.R.C.P. 6(a). The amendment serves the purposes of both achieving simplicity and maintaining uniformity with the federal practice. By simultaneous amendment, other time provisions of the civil and appellate rules have been made consistent with the new computation method. The Advisory Committee and Reporter particularly wish to express their gratitude to Elizabeth Tisher, J.D., now a Vermont Supreme Court law clerk, for her essential preliminary drafting of this and other necessary amendment orders.

As the Federal Advisory Committee's Notes point out, this computation method does not apply when a court order has established a specific date as a deadline or when a statute prescribes a specific method for computing time. The Advisory Committee's Notes provide a helpful further explanation of the change:

Under former Rule 6(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 6(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day—and the 10-day period not infrequently ended later than the 14-day period....

Under [the amended rule], all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days—including intermediate Saturdays, Sundays, and legal holidays—are counted, [except that if] the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday.

Of course, if the clerk's office is inaccessible or the electronic filing system unavailable on the last day or the day to which the period has been extended, the deadline falls on the next accessible or available day. Note that “act, event, or default” has been changed to “event” for brevity and simplicity. The change is not intended as a change in meaning.

Periods of less than 11 days in other provisions of the rules would be shortened by the inclusion of intermediate Saturdays, Sundays, and legal holidays. Accordingly, shorter time periods in other rules are being extended by simultaneous amendments, generally following guidelines stated in the Federal Advisory Committee's Notes:

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method—two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period—the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting 7-day periods to replace some of the periods set at less than 10 days, and 21-day periods to replace 20-day periods.

Thirty-day time periods remain unchanged. Several 10-day time periods were changed to 28 days for consistency with the new federal standard for motion practice. Forty-five and 50-day periods, not found in the Federal Rules, have been changed to 42 and 49 days, consistent with the “multiple of 7” simplification adopted in the Federal Rules.

Note that time periods may be either forward-looking or backward-looking. Thus, Rule 59(b) is forward-looking, requiring a motion for new trial to be filed “not later than 10 days after the entry of judgment.” Rule 68 is backward-looking, requiring service of an offer of judgment “[a]t any time more than 10 days before the trial begins” unless the court approves a shorter time. The last day of a period ending on a weekend or holiday should be determined by counting in the same direction that the time period runs. For example, the Federal Advisory Committee's Notes suggest, that if

a filing is due within 30 days after an event, and the thirtieth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 21 days before an event, and the twenty-first day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk's office is inaccessible on August 31, then [the rule] extends the filing deadline forward to the next accessible day that is not a Saturday,

Sunday, or legal holiday—no later than Tuesday, September 4.

In either the “after” or “before” situation, if the clerk’s office were inaccessible on Tuesday, September 4, the extension would continue until the office was accessible.

Rules 6(b) and (d) are amended in minor ways for consistency with other amendments. The one-day time period in Rule 6(d) for service of opposing affidavits on motions is changed to 7 days.

Rule 6(e), providing an additional three days for actions required after service under V.R.C.P. 5(b)(2) or (3), has been deleted. The provision is unduly complicated in application and is inconsistent with the overall purpose of the simplification provided by the day-is-a-day rule. Moreover, it will become unnecessary as most service in practice is increasingly made by email.

6. That Rule 7(b)(4) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS

* * * * *

(b) Motions and Other Papers.

* * * * *

(4) When a moving party wishes to request an opportunity to present evidence pursuant to Rule 78(b), that request shall be submitted with the motion to which it applies or within ~~five~~7 days of service of the memorandum in opposition. Where this rule requires a motion to be in writing, the request for an opportunity to present evidence shall be in writing. The request for an opportunity to present evidence shall include a statement of the evidence which the party wishes to offer.

Reporter’s Notes—2015 Amendment

Rule 7(b)(4) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

7. That Rule 12 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 12. DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED—BY PLEADINGS OR MOTION—MOTION FOR JUDGMENT ON THE PLEADINGS

(a) When Presented.

(1) A defendant shall serve an answer

(A) within ~~20~~ 21 days after being served with the summons and complaint, unless the court directs otherwise when service of process is made pursuant to an order of court under Rule 4(d) or 4(g), and provided that a defendant served pursuant to Rule 4(e), 4(f), or 4(k) outside the continental United States or Canada may serve an answer at any time within ~~50~~ 49 days after such service; or

(B) if service of the summons has been timely waived on request under Rule 4(l), within 60 days after the date when the request for waiver was sent, or within 90 days if the defendant was addressed outside any state or territory of the United States.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within ~~20~~ 21 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within ~~20~~ 21 days after service of the answer or, if a reply is ordered by the court, within ~~20~~ 21 days after service of the order, unless the order otherwise directs.

(3) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ~~10~~ 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement the responsive pleading shall be served within ~~10~~ 14 days after the service of the more definite statement.

* * * * *

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ~~10~~ 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within ~~20~~ 21 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Reporter's Notes—2015 Amendment

Rule 12 is amended to conform its 10-day, 20-day, and 50-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

8. That Rule 13(j) of the Vermont Rules of Civil Procedure be abrogated.

RULE 13. COUNTERCLAIM AND CROSS-CLAIM

* * * * *

~~(j) **Appealed and Transferred Actions.** When an action is entered in a superior court on appeal from a justice's court or by transfer from the District Court, any counterclaim made compulsory by subdivision (a) of this rule shall be stated as an amendment to the pleading within 20 days after such entry or within such further time as the court may allow; and other counterclaims and cross-claims shall be permitted as in an original action in a superior court. Upon entry of any such action in a superior court, the clerk shall forthwith notify all parties of the provisions of this subdivision.~~

Reporter's Notes—2015 Amendment

Rule 13(j) is abrogated because justices' courts were eliminated and their functions transferred to the District Court by Act No. 249 of 1973 (Adj. Sess.), and the former District Court was redesignated as the criminal division of the superior court and its civil jurisdiction transferred to that court by Act No. 154 of 2009 (Adj. Sess.), §§ 7c, (codified at 4 V.S.A. § 32) 237(b)(3) (effective July 1, 2010).

9. That Rule 15(a) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within ~~20~~ 21 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ~~10~~ 14 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Reporter's Notes—2015 Amendment

Rule 15(a) is amended to conform its 10-day and 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

10. That Rules 16.1(b)(3) and (4) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 16.1. COMPLEX ACTIONS

* * * * *

(b) Procedure. When the Presiding Judge has designated an action as a complex action, the Presiding Judge shall forthwith notify the Administrative Judge, who shall advise the Presiding Judge of approval or disapproval as soon as practicable after receipt of such notification. If the Administrative Judge approves the designation, the following procedure shall thereafter be observed with respect to the action:

* * * * *

(3) No complex action shall be assigned for trial until a pretrial conference has been held in such action pursuant to Rule 16 of these rules. At any time more than ~~ten~~ 14 days after approval of the designation by the Administrative Judge, the court may order the parties to appear for a pretrial conference. The court may require written submissions by the parties pertaining to any of the matters specified in Rule 16(1)-(6), or to specified factual or legal issues. Within ~~ten~~ 14 days after such conference, the court shall make an order as provided in Rule 16.

(4) The action shall, unless all parties consent otherwise, be assigned for trial to commence on a date certain, at least 30 days after the conclusion of the first pretrial conference. Notification of the trial date shall be mailed to all counsel of record at least ~~two weeks~~ 14 days before the date.

Reporter's Notes—2015 Amendment

Rules 16.1(b)(3) and (4) are amended to conform its 10-day time periods to their simultaneous amendment of V.R.C.P. 6(a).

11. That Rule 16.3 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 16.3. ALTERNATIVE DISPUTE RESOLUTION

* * * * *

(c) Stipulation for Alternative Dispute Resolution. In every action in which alternative dispute resolution is required under subdivision (a) of this rule, the parties must file a stipulation for alternative dispute resolution and proceed as provided in this subdivision, or the parties will be required to engage in preliminary evaluation as provided in subdivision (d).

* * * * *

(3) *Selection of Neutral*. When a stipulation for alternative dispute resolution is filed pursuant to paragraphs (1) and (2) of this subdivision, if the parties have not agreed on a specific individual to serve as neutral, the clerk will send them copies of the referral list established as provided in paragraph (e)(4) of this rule. If the parties have not agreed on a name from that list, or on another available neutral, within ~~7~~ 14 days after the list is sent, they must engage in preliminary evaluation as provided in subdivision (d).

* * * * *

(6) *Report*. Within ~~15~~ 14 days after the conclusion of an alternative dispute resolution proceeding other than binding arbitration, the neutral must report the results of the process to the court in writing. The report may not disclose the neutral's assessment of any aspect of the case or substantive matters discussed during the session, except as is required to report the information required by this paragraph. The report must contain the following items:

* * * * *

(d) Preliminary Evaluation.

(1) *Scheduling; Choice of Preliminary Evaluator*. In any action in which a stipulation for alternative dispute resolution has not been filed by the date provided in paragraph (c) (1) of this rule, or the parties have not agreed on a neutral as provided in paragraph (c)(3) or (e)(5), the clerk will schedule a preliminary evaluation session to be held within 60 days after the date specified for filing or agreement. The clerk will notify the parties of the date of the session and will send them a list of three preliminary evaluators selected by the clerk from a panel established as provided in paragraph (e)(3). If the parties have not agreed on a name from that list, or on another available evaluator, within ~~seven~~ 14 days after the list is sent, the clerk will designate the evaluator from those on the list.

(2) *Preliminary Evaluation Session*. Prior to a preliminary evaluation session scheduled pursuant to paragraph (1) of this subdivision, the parties must submit to the evaluator statements setting forth the issues and their evidentiary positions on each. All parties and counsel must participate in the session in the manner provided in paragraph (c)(5) of this rule. At the session, the evaluator will assist the parties to evaluate the respective strengths of their positions and, through informal mediation, may encourage them to settle the case on the merits or to agree to enter a stipulation for alternative dispute resolution. If the parties agree to stipulate, the action will go forward as provided in subparagraph (c)(1)(C). If no settlement or stipulation for alternative dispute resolution can be agreed upon, the evaluator will encourage the parties to enter a stipulation resolving pretrial issues, and the action will go forward as provided in paragraph (c)(7). The evaluator will file a report with the court within ~~15~~ 14 days after the session in the manner provided in paragraph (c)(6).

(e) Neutrals. The following provisions apply to neutrals in all alternative dispute resolution proceedings held as provided in this rule:

* * * * *

(5) *Impartiality; Disclosure; Conflict of Interest.* A neutral selected by the parties or designated by the clerk must not accept the assignment, or must withdraw, if the neutral does not reasonably believe that the assignment can be undertaken impartially. If the neutral accepts the assignment, the neutral must disclose at any time to the parties any interest or relationship likely to affect the neutral's impartiality or to create an appearance of partiality or bias. If a neutral selected by the parties does not accept the assignment or withdraws, or if any party objects on grounds of conflict of interest to such a neutral, unless otherwise provided by the agreement or by law the parties must agree on another neutral within ~~seven~~ 14 days or the action will proceed to preliminary evaluation in accordance with subdivision (d). A preliminary evaluator designated by the clerk may be disqualified only by the court for cause. Within ~~seven~~ 14 days after an order of disqualification, the clerk will select another evaluator and may set a new date for the preliminary evaluation session if necessary.

Reporter's Notes—2015 Amendment

Rule 16.3 is amended to conform its 7-day and 15-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

12. That Rule 17(c) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

* * * * *

(c) **Subrogated Insurance Claims.** No claim or counterclaim shall be asserted on behalf of an insurer in the name of the assured for damages resulting from alleged wrongful acts, claimed by right of subrogation or assignment, unless at least ~~10~~ 14 days prior to asserting such claim the insurer gives notice in writing to the assured of its intention to do so. Such notice shall be served in the manner provided for service of summons in Rule 4 or by registered or certified mail, return receipt requested, with instructions to deliver to addressee only. There shall be attached to the pleading asserting such subrogation claim a copy of the notice together with either the return of the person making the service or the return receipt. If the assured or any party suing in the assured's right desires to assert a claim arising out of the same transaction or occurrence, the assured or party shall notify the insurer or its attorney in writing within ~~10~~ 14 days after receipt of such notice.

Reporter's Notes—2015 Amendment

Rule 17(c) is amended to conform its 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

13. That Rule 23(f) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 23. CLASS ACTIONS

* * * * *

(f) Appeals. The Supreme Court may in its discretion permit an appeal from an order of the Superior Court granting or denying class action certification under this rule if application is made to it within ~~ten~~ 14 days after entry of the order. An appeal does not stay proceedings in the Superior Court unless the trial judge or the Supreme Court so orders.

Reporter's Notes—2015 Amendment

Rule 23(f) is amended to conform its 10-day time period to the simultaneous amendment of V.R.C.P. 6(a).

14. That Rule 26(f) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

* * * * *

(f) Discovery Conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery.

* * * * *

Each party and each party's attorney ~~are~~ is under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be filed not later than ~~15~~ 14 days after service of the motion.

Reporter's Notes—2015 Amendment

Rule 26(f) is amended to conform its 15-day time period to the simultaneous amendment of V.R.C.P. 6(a).

15. That Rule 27(a)(2) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 27. DISCOVERY BEFORE ACTION OR PENDING APPEAL

(a) Before Action.

* * * * *

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least ~~20~~ 21 days before the date of hearing the notice shall be served either within or without the state in the manner provided in Rule 4(d), (e), or (k), for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), (e), or (k), an attorney who shall represent them and whose services shall be paid for by the petitioner in an amount fixed by the court, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(b) apply.

Reporter's Notes—2015 Amendment

Rule 27(a)(2) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

16. That Rules 30(b)(1) and (5) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

* * * * *

(b) Notice of Examination: General Requirements; Special Notice; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least ~~ten~~ 14 days before the time of taking the deposition, but any Superior Judge on an ex parte application and for good cause shown may prescribe a shorter notice. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

* * * * *

(5) The notice to a party deponent may be accompanied by a request that the party at the taking of the deposition produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of Rule 26(b). The party deponent may, within ~~five~~ 7 days after service of the notice, serve upon the party taking the deposition written objection to inspection or copying of any

or all of the designated materials. If objection is made, the party taking the deposition shall not be entitled to inspect the materials except pursuant to an order of any Superior Judge. The party taking the deposition may move at any time for an order under Rule 37(a) with respect to any objection to the request or any part thereof, or any failure to produce or permit inspection as requested.

Reporter's Notes—2015 Amendment

Rules 30(b)(1) and (5) are amended to conform their 5-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

17. That Rule 32(d)(3)(C) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

* * * * *

(d) Effect of Errors and Irregularities in Depositions.

* * * * *

(3) As to Taking of Deposition.

* * * * *

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within ~~five~~ 7 days after service of the last questions authorized.

Reporter's Notes—2015 Amendment

Rule 32(d)(3)(C) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

18. That Rule 33(a) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 33. INTERROGATORIES TO PARTIES

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of

court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The interrogatory being answered, or objected to, shall be reproduced before the answer or objection. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within ~~45~~ 42 days after service of the summons and complaint upon that defendant. Any Superior Judge may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

Reporter's Notes—2015 Amendment

Rule 33(a) is amended to conform its 45-day time period to the simultaneous amendment of V.R.C.P. 6(a).

19. That Rule 34(b) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

* * * * *

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

The party upon whom a request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within ~~45~~ 42 days after service of the summons and complaint upon that defendant. Any Superior Judge may allow a shorter or longer time.

* * * * *

Reporter's Notes—2015 Amendment

Rule 34(b) is amended to conform its 45-day time period to the simultaneous amendment of V.R.C.P. 6(a).

20. That Rule 36(a) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 36. REQUESTS FOR ADMISSION

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as a Superior Judge may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the judge shortens the time, a defendant shall not be required to serve answers or objections before the expiration of ~~45~~ 42 days after service of the summons and complaint upon that defendant.

* * * * *

Reporter's Notes—2015 Amendment

Rule 36(a) is amended to conform its 45-day time period to the simultaneous amendment of V.R.C.P. 6(a).

21. That Rules 38(b) and (c) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 38. JURY TRIAL OF RIGHT

* * * * *

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ~~40~~ 14 days after the service of the last pleading directed to such issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

(c) Same: Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within ~~40~~ 14 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

Reporter's Notes—2015 Amendment

Rules 38(b) and (c) are amended to conform their 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

22. That Rules 40(a)(1) and (b) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 40. CALENDAR; ASSIGNMENT; CONTINUANCES; DISQUALIFICATION

(a) Hearing Calendar; Assignments; Trial List.

(1) Subject to the direction of the court, the clerk shall maintain a hearing calendar, copies of which shall be posted on the court's website and distributed electronically to the attorneys having actions listed thereon ~~20~~ 21 days before the commencement of a term. The clerk shall routinely list upon the hearing calendar all actions in which the pleadings are complete or the time for filing the last required pleading has passed. Upon request of a party, the Presiding Judge may at any time advance or specially assign an action for hearing. All actions not advanced or specially assigned will be heard in the sequence in which listed unless previously continued by agreement of the parties or order of court.

* * * * *

(b) Progress Calendar. ~~Twenty~~ Twenty-one days before the commencement of a term, the clerk shall prepare and distribute electronically to the attorneys having cases thereon a progress calendar, listing all actions ripe for dismissal under Rule 41(b)(1).

Reporter's Notes—2015 Amendment

Rules 40(a)(1) and (b) are amended to conform their 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

23. That Rules 50(b) and (c)(2) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 50. JUDGMENT AS A MATTER OF LAW IN ACTIONS TRIED BY A JURY;
ALTERNATIVE MOTIONS FOR NEW TRIAL; CONDITIONAL RULINGS**

* * * * *

(b) Renewal of Motion for Judgment After Trial; Alternative Motion for New Trial. Whenever a motion for judgment as a matter of law made under subdivision (a) is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by filing not later than ~~10~~ 28 days after entry of judgment or, if the motion addresses a jury issue not decided by a verdict, no later than ~~10~~ 28 days after the jury was discharged. Renewal of the motion is necessary to appeal from a

denial of or a failure to grant a motion for judgment as a matter of law. A motion for a new trial under Rule 59 may be joined with renewal of the motion, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(c) Same: Conditional Rulings on Grant of Motion for Judgment as a Matter of Law.

* * * * *

(2) The party against whom judgment as a matter of law has been granted may file a motion for a new trial pursuant to Rule 59 not later than ~~10~~ 28 days after entry of the judgment.

Reporter's Notes—2015 Amendment

Rule 50 is amended for consistency with the new federal standard for motion practice, which was expanded from 10 days to 28 days.

24. That Ruled 52(a) and (b) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 52. FINDINGS BY THE COURT

(a) Findings and Conclusions.

(1) *Procedure.* In all actions tried upon the facts without a jury or with an advisory jury, the court shall, upon request of a party participating in the trial made on the record or in writing within ~~5~~ 7 days after notice of the decision, or may upon its own initiative, find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. The court may set a date subsequent to the close of the evidence by which requests for findings must be submitted.

* * * * *

(3) *Other Required Findings.* In all determinations of motions in which (a) the decision of the court is based upon a contested issue of fact, (b) the decision is or could be dispositive of a claim or action, and (c) a party has, within ~~five~~ 7 days of the notice of decision, requested findings of fact and conclusions of law, the court shall, on the record or in writing, find the facts and state its conclusions of law.

(b) Amendment. Upon motion of a party filed not later than ~~10~~ 28 days after entry of judgment the court may amend its findings or make additional findings and may amend the

judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the superior court an objection to such findings or has made a motion to amend them or a motion for judgment.

* * * * *

Reporter's Notes—2015 Amendment

Rule 52(a) is amended to conform its 5-day time periods to the simultaneous amendment of V.R.C.P. 6(a). Rule 52(b) is amended for consistency with the new federal standard for motion practice, which was expanded from 10 days to 28 days.

25. That Rules 53(d) and (e)(2) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 53. MASTERS

* * * * *

(d) Proceedings.

(1) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within ~~20~~ 21 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make a report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

* * * * *

(e) Report.

* * * * *

(2) *In Non-Jury Actions.* (i) In an action where there has been a reference by agreement, the master's conclusions of law and findings of fact shall be conclusive unless the order of reference reserves to the parties the right to object to acceptance of the master's report. If such right is so reserved, the court shall accept the master's findings of fact unless clearly erroneous. (ii) In any other non-jury action the court shall accept the master's findings of fact unless clearly erroneous. (iii) Except where the reference is by

agreement without reservation of the right to object, any party may, within ~~10~~ 21 days after being served with notice of the filing of the report, serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). Except as otherwise provided in this paragraph (2), the court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

Reporter's Notes—2015 Amendment

Rule 53(d) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a). Rule 53(e) is amended for consistency with F.R.C.P. 53(f)(2).

26. That Rule 55(b)(4) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 55. DEFAULT

* * * * *

(b) Judgment.

* * * * *

(4) *By the Court When the Defendant Has Appeared.* If the party against whom judgment by default is sought has appeared in the action judgment may be entered after hearing, upon at least ~~3~~ 5 days' written notice served by the clerk.

Reporter's Notes—2015 Amendment

Rule 55(b)(4) is amended to conform its 3-day time period to the simultaneous amendment of V.R.C.P. 6(a).

27. That Rule 58(d) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 58. ENTRY OF JUDGMENT

* * * * *

(d) Form of Judgment. Attorneys shall submit forms of judgment upon direction of the Presiding Judge. A form of judgment submitted in accordance with this rule shall be served upon all opposing parties, who shall file any objections to the judgment proposed within ~~five~~ 7 days of service upon them unless the Presiding Judge orders such objections to be filed earlier.

Reporter's Notes—2015 Amendment

Rule 58(d) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

28. That Rule 59 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

* * * * *

(b) Time for Motion. A motion for a new trial shall be filed not later than ~~40~~ 28 days after the entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be filed with the motion. The opposing party has ~~40~~ 14 days after service of the motion within which to file opposing affidavits, which period may be extended for an additional period not exceeding ~~20~~ 14 days either by the court before which the action has been tried for good cause shown or by the parties by written stipulation. Such court may permit reply affidavits.

(d) On Initiative of Court. Not later than ~~40~~ 28 days after entry of judgment the court before which the action has been tried of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, such court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be filed not later than ~~40~~ 28 days after entry of the judgment.

* * * * *

Reporter's Notes—2015 Amendment

Rule 59 is amended to conform its 10-day time period to the simultaneous amendment of V.R.C.P. 6(a). Rule 59(b) is amended for consistency with the new federal standard for motion practice, which was expanded from 10 days to 28 days. The 20-day time period in Rule 59(c) is reduced so that the total time for filing and serving affidavits may not exceed 30 days.

29. That Rule 62(a)(3)(A)-(B) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay Prior to Appeal; Exceptions.

* * * * *

(3) Orders for Possession.

(A) No order for possession shall issue upon a final judgment for possession of a chattel, nor shall proceedings be taken for enforcement of the judgment for ~~10~~ 14 days after its entry; provided that on motion made during the ~~10-day~~ 14-day period the court may stay any such writ for a further period of ~~20~~ 21 days or until the time for appeal from the judgment as extended by Appellate Rule 4 has expired.

(B) A writ of possession shall issue on the date on which a final judgment for possession of real estate is entered, provided that on motion made within ~~10~~ 14 days after entry of judgment the court may stay any such writ for a period of ~~20~~ 21 days or until the time for appeal from the judgment as extended by Rule 80.1(m) or Appellate Rule 4 has expired.

Reporter’s Notes—2015 Amendment

Rule 62(a)(3)(A)-(B) is amended to conform its 10-day and 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

30. That Rule 64(b)(2) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 64. REPLEVIN

* * * * *

(b) Writ of Replevin: Issuance.

* * * * *

(2) Except as provided in paragraph (3) of this subdivision, an order of approval may be issued only upon motion after ~~five~~ 7 days’ notice to the defendant, or on such shorter notice as the judge may prescribe for good cause shown, and upon hearing and findings by the court that there is a reasonable likelihood that the plaintiff will prevail in the replevin action, that the bond required by law has been given by plaintiff, that the amount of the bond is based upon a reasonable valuation for the property of which replevin is sought, and that the amount of the valuation is within the jurisdiction of the superior court. The motion shall be filed with the complaint and shall be supported by an affidavit or affidavits meeting the requirements set forth in Rule 4.1(i). The motion and affidavit or affidavits, together with the notice of hearing thereon, shall be served upon the defendant

in the manner provided in Rule 4 at the same time that the summons and complaint are served upon the defendant.

Reporter's Notes—2015 Amendment

Rule 64(b)(2) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

31. That Rule 65(a) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 65. INJUNCTIONS

(a) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition. The verification of such affidavit or verified complaint shall be upon the affiant's own knowledge, information or belief; and, so far as upon information and belief, shall state that the affiant believes this information to be true. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ~~10~~ 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period. An order so extended may be further extended to the earliest available hearing date upon a showing by the plaintiff that the plaintiff has not, with due diligence, been able to obtain a hearing within the period. The court at the hearing may extend the order for a further period not to exceed ~~10~~ 14 days, if necessary for the hearing and determination of the motion. No other extensions shall be allowed unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Reporter's Notes—2015 Amendment

Rule 65(a) is amended to conform its 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

32. That Rule 68 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 68. OFFER OF JUDGMENT

At any time more than ~~10~~ 14 days before the trial begins or within such shorter time as the court may approve, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within ~~10~~ 14 days after the service of the offer or within such shorter time as the court may order the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ~~10~~ 14 days, or such shorter time as the court may approve, prior to the commencement of hearings to determine the amount or extent of liability.

Reporter's Notes—2015 Amendment

Rule 68 is amended to conform its 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

33. That Rules 72(a) and (f)(1) and (2) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 72. APPEALS FROM THE PROBATE DIVISIONS

(a) Notice of Appeal; Appellee's Appearance. Any party entitled thereto by law may appeal to the civil division of the superior court from a decision of the probate division by filing with the register of the probate division a notice of appeal in the manner and within the time provided in Rules 3 and 4 of the Rules of Appellate Procedure as modified herein. The appellant shall serve a copy of the notice upon each person who is considered a party at the time of commencement of the proceeding pursuant to Rule 17 of the Vermont Rules of Probate Procedure and shall transmit a copy of the notice to the clerk of the superior court for the civil division in the unit in which the appeal is taken. The running of the time for filing a notice of appeal is terminated by a timely motion pursuant to a Rule of Probate Procedure equivalent to those Rules of Civil Procedure listed in Rule 4 of the Rules of Appellate Procedure. The appellee and any other party shall cause that party's appearance to be entered with the clerk of the superior court for the civil division within ~~20~~ 21 days after service of the notice of appeal.

* * * * *

(f) Appeal of Interlocutory Order by Permission under 14A V.S.A. § 201(d).

(1) *Motion for Permission To Appeal.* Upon motion of any party in a probate action concerning the administration of a trust under Title 14A of the Vermont Statutes Annotated, the presiding probate judge shall permit an appeal to be taken to the civil division of the superior court from any interlocutory order or ruling if the judge finds that the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation. The motion shall be filed and served upon each person who is considered a party at the time of commencement of the proceeding pursuant to Rule 17 of the Vermont Rules of Probate Procedure within ~~10~~ 14 days after the entry of the order or ruling appealed from. The appeal shall be limited to questions of law. The order permitting or denying appeal shall contain a statement of the grounds upon which appeal has been permitted or denied.

(2) *Review by Civil Division of Denial of Motion.* If the motion is denied, the moving party may, within ~~10~~ 14 days after the entry of the order of denial, file the motion in the civil division, together with a statement setting forth the question of law asserted to be controlling, the facts necessary to an understanding of the question, and the reasons why an interlocutory appeal should be permitted. Copies of the motion and statement shall be served upon all parties upon whom the original motion was served. The order from which an appeal is sought, and the order of denial, shall be filed and served with the motion or as soon thereafter as is practicable. Within ~~5~~ 7 days after service of the motion, an adverse party may file and serve an answer in opposition to the motion. The matter shall be determined upon the motion and answer without oral argument unless the civil division otherwise orders.

Reporter's Notes—2015 Amendment

Rules 72(a) and (f)(1) and (2) are amended to conform their 5-day, 10-day and 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

34. That Rule 74(b) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 74. APPEALS FROM DECISIONS OF GOVERNMENTAL AGENCIES

* * * * *

(b) Notice of Appeal; Appellee's Appearance. An appeal or review under this rule shall be taken by filing with the clerk of the administrative body described in subdivision (a) or other appropriate officer a notice of appeal in the manner and within the time provided in Rules 3 and 4 of the Rules of Appellate Procedure. If a notice of appeal is mistakenly filed in the superior court, the clerk of the superior court shall note thereon the date on which it was received and shall promptly transmit it to the clerk of the administrative body or other appropriate officer, and it shall be deemed filed with the administrative body on the date so noted. Upon the filing of the notice of appeal, the clerk of the administrative body or other appropriate officer shall provide to the appellant a list of all interested persons, with instructions to serve a copy of the notice upon

each of them as provided in Rule 3(b) of the Rules of Appellate Procedure. A copy of the notice shall thereupon be served by the appellant upon the clerk of the superior court and upon each of the interested parties in accordance with that rule. Each appellee shall cause that appellee's appearance to be entered with the clerk of the superior court within ~~20~~ 21 days after the service of the notice of appeal.

Reporter's Notes—2015 Amendment

Rule 74(b) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

35. That Rule 78(b)(1) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 78. MOTION DAY

* * * * *

(b) Disposition of Written Motions With or Without Hearing.

(1) *Memorandum in Opposition.* Any party opposed to the granting of a written motion shall file a memorandum in opposition thereto, not more than ~~15~~ 14 days after service of the motion, unless otherwise ordered by the court. If a memorandum in opposition is not timely filed when required under this rule, the court may dispose of the motion without argument. Any party may file a reply to a memorandum in opposition within ~~ten~~ 14 days after service of the memorandum. Any request for an opportunity to present evidence pursuant to paragraph (2) of this subdivision shall be submitted with the memorandum in opposition or reply.

Reporter's Notes—2015 Amendment

Rule 78(b)(1) is amended to conform its 10-day and 15-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

36. That Rule 79.1(b) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 79.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

* * * * *

(b) Same: Form; Service. An attorney's signature to a pleading shall constitute an appearance. Otherwise an attorney who wishes to participate in any action must appear in open court, or file notice in writing with the clerk, which shall be served pursuant to Rule 5. Appearances entered in open court shall be confirmed in writing and served within ~~five~~ 7 days. An appearance, whether by pleading or formal written appearance, shall be signed by an attorney in the attorney's individual name and shall state the attorney's office address.

Reporter's Notes—2015 Amendment

Rule 79.1(b) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

37. That Rule 80.1 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 80.1. FORECLOSURE OF MORTGAGES AND JUDGMENT LIENS

* * * * *

(c) Summary Judgment; Default. If within the time allowed under Rule 12(a) a party defendant files a verified answer or answer supported by affidavits, disclosing facts alleged to constitute a defense to plaintiff's claim, plaintiff may within ~~10~~ 14 days after service of the answer move for summary judgment. The complaint shall be treated as though supported by affidavit and the matter shall proceed as provided in Rule 56. The clerk shall enter a default, in accordance with Rule 55(a), against any defendant who fails to file such answer.

* * * * *

(f) Accounting; Attorney's Fees. If default has been entered as provided in subdivision (c) and the parties have not agreed upon the sum due and included it in a form of judgment, the clerk, upon request of the plaintiff accompanied by an affidavit as to the amount due and upon ~~six~~ 7 days' notice to all parties who have appeared, shall proceed to take an accounting and find the amount of principal, interest to date, and costs due. Such accounting shall be made upon forms furnished by the state. If defendant is an infant or incompetent person, a plaintiff entitled to judgment by default shall proceed as provided in Rule 55(b)(2). If the entry is not by default, an accounting shall be taken at such time and in such manner as the court may order. Reasonable attorney's fees claimed by the plaintiff under the mortgage or other instrument evidencing indebtedness in an amount not exceeding two percent of the total of principal, interest, and costs due, or in a greater amount expressly agreed upon in the mortgage or other instrument, shall be allowed and included in the amount found due to the accounting without hearing, unless defendant objects, or plaintiff claims a higher fee in the demand for judgment. Upon such objection or claim, attorney's fees shall be set by the court after notice and hearing.

(g) Judgment.

(1) *Form; Entry.* Plaintiff shall file and serve upon all named defendants who have appeared a form of judgment together with a copy of any accounting taken in accordance with subdivision (f) of this rule, within 30 days after the entry of default or, if the case has been heard, within such time as the court may order. The court shall thereupon proceed in accordance with Rule 58 to approve and sign the form of judgment, and the clerk shall enter it. The judgment shall set forth the amount agreed to be due by the parties or found due at the accounting. The amount necessary to redeem the mortgaged premises shall include interest on the amount, exclusive of interest, found due at the accounting from the

date of the accounting until the date of redemption. Such interest shall be calculated at the rate provided in the mortgage or other evidence of indebtedness, or at the rate allowed on judgments by law, whichever is higher. The form of judgment must contain the following statement in bold print: **“If you wish to appeal this judgment, you must request permission to appeal by motion filed with the Court within ~~ten~~ 14 calendar days of the date of entry of the judgment ~~not including that date or Saturdays, Sundays, or legal holidays.~~”**

* * * * *

(m) Permission to Appeal. When the judgment is for foreclosure of the mortgage, the permission to appeal, required by law, shall be requested by motion filed within ~~10~~ 14 days of the date of the entry of the judgment or order to be appealed from. The running of the time for filing a motion is terminated to the extent provided, and for the reasons stated, in V.R.A.P. 4. The running of the time of redemption shall be tolled and the effectiveness of the judgment shall be stayed when a motion is filed under this subdivision and continue until the motion to appeal is decided adversely to the moving party or until the appeal is decided. The court may condition the appeal or the stay under this subdivision upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Reporter’s Notes—2015 Amendment

Rule 80.1 is amended to conform its 6-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

38. That Rule 80.2(a) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 80.2. NATURALIZATION OF ALIENS

(a) Petition. Proceedings for naturalization of aliens shall be by petition setting forth all pertinent facts concisely and briefly. Such petitions shall be filed at least ~~20~~ 21 days before the commencement of the term of court at which they are to be heard.

Reporter’s Notes—2015 Amendment

Rule 80.2(a) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

39. That Rules 80.5(a) and (i) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 80.5. ~~DISTRICT COURT~~ CRIMINAL DIVISION PROCEDURES FOR CIVIL LICENSE SUSPENSIONS AND PENALTIES FOR DWI

(a) Applicability of Rule. This rule applies to the summary civil court proceedings held in the ~~District Court~~ criminal division pursuant to 23 V.S.A. § 1205.

* * * * *

(i) Time. In computing any period of time prescribed or allowed by 23 V.S.A. § 1205 and this rule, Rule 6(a) shall apply ~~except that intermediate Saturdays, Sundays and state or federal legal holidays shall be included in the computation.~~

Reporter's Notes—2015 Amendment

The title of Rule 80.5 and the language of Rule 80.5(a) are amended to reflect the redesignation of the former district court as the criminal division of the superior court by Act No. 154 of 2009 (Adj. Sess.), § 237(b)(3) (effective July 1, 2010). Rule 80.5(i) is amended to conform to the simultaneous amendment of V.R.C.P. 6(a).

40. That Rules 80.6(c)(3), (e)(1) and (5) and ~~(f)(1)~~ of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 80.6. JUDICIAL BUREAU PROCEDURES

* * * * *

(c) Summons; Complaint; Answer. An action is commenced by filing with the judicial bureau or serving upon the defendant a complaint against a single defendant. If the action is commenced by filing, the complaint shall be served upon the defendant within 30 days. If the action is commenced by service upon the defendant, the complaint shall be filed within 30 days.

* * * * *

(3) A defendant shall file with the judicial bureau an answer within ~~twenty~~ 21 days after service of the summons and complaint upon the defendant.

* * * * *

(e) Default; Execution on Default Judgment.

(1) If a defendant fails to answer a complaint within ~~20~~ 21 days after service, the judicial bureau clerk shall enter a default judgment against the defendant. No motion for default judgment or affidavit of amount due is required.

* * * * *

(i) Appeal.

* * * * *

(5) ~~Fifteen~~ Fourteen days after the entry of judgment in the district court, if no request for permission to appeal to the supreme court has been filed, or ~~five~~ 7 days after permission to appeal has been denied, the clerk shall certify the decision of the district court to the judicial bureau, returning therewith any original document transmitted as part of the record on appeal. Upon receipt of such certificate, the same proceedings shall be had in the judicial bureau as though the decision had been made there.

* * * * *

(l) Legal Guardian of Minor Defendant.

(1) *Notice of Filing.* If a defendant is under 18 years of age, the clerk, within ~~10~~ 14 days after the filing of the complaint, shall deliver to the legal guardian of the defendant a copy of the summons and complaint or shall deliver a notice of the filing on a form provided by the Court Administrator containing a brief description of the alleged violation, the name of the municipality where the alleged violation occurred, the date of the alleged violation, the name of the issuing officer, and the name of that officer's department or agency. Notice shall be delivered in person or by first class mail to the legal guardian by name if known or, if unknown, by first class mail to "Parent or Legal Guardian of [defendant]." Notice by mail shall be sent to the legal guardian's last known address or, if no address is known, to the defendant's last known address. Failure to give notice under this paragraph shall not result in dismissal of the complaint.

* * * * *

Reporter's Notes—2015 Amendment

Rules 80.6(c)(3), (e)(1) and (5), and (l)(1) are amended to conform their 5-day, 10-day, and 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

41. That Rules 80.7(c)(2)(C) and (d)(1)-(3) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 80.7. PROCEDURES FOR IMMOBILIZATION OR FORFEITURE HEARINGS
PURSUANT TO 23 V.S.A. § 1213C**

* * * * *

(c) Notice Upon Filing of Complaint.

* * * * *

(2) *Content.* The notice shall be on a form approved by the Court Administrator and shall contain a description of the motor vehicle, including vehicle identification number, make, model, and year, and the name of the registered owner or owners, lienholder, and any other person appearing to be an innocent owner or operator as described in 23 V.S.A. § 1213c(g). The notice shall be accompanied by a copy of the complaint and shall state:

* * * * *

(C) That any recipient of the notice who wishes to receive notice of further proceedings on the motion must file with the court within ~~10~~ 14 days after service of the notice a writing containing the recipient's current mailing address; and

* * * * *

(d) Date and Notice of Hearing; Response.

(1) *Hearing Date.* Upon a verdict, finding, or plea of guilty, if the court determines the defendant is guilty of a criminal offense upon which a motion for immobilization or forfeiture is based, the court, on the request of the state, shall set a date for hearing on the motion which shall be at the time set for sentencing or any continuation thereof. If no motion has been filed, the state, upon request, shall have ~~five~~ 7 days from the determination of guilt to file a motion. The court may sentence the defendant prior to the filing of the motion or any hearing thereon, but shall continue the sentencing hearing, upon request of the state, to allow time for the filing of the motion and the holding of a hearing. If the court finds the defendant not guilty of the offense, or if the state does not file a request for hearing within ~~five~~ 7 days after a determination of guilt, the motion for immobilization or forfeiture will be deemed withdrawn, and the complaint will be dismissed.

(2) *Notice of Hearing.* At least ~~10~~ 14 days prior to the date set for hearing, the court shall send notice of the time and place of the hearing by first-class mail to all persons-to whom notice must be given under 23 V.S.A. § 1213c(a). Notice shall be deemed received on the third day after mailing. It shall be sufficient to mail the notice to the address provided by the recipient for that purpose pursuant to subparagraph (c)(2)(C) of this rule or, if the recipient has not provided an address, to the address shown on the records of the department of motor vehicles in the state in which the vehicle is registered or titled. The notice shall contain a statement informing recipients that if they wish to be heard in opposition to the motion they must proceed as provided in paragraph (3) of this subdivision.

(3) *Response.* Any recipient of the notice who wishes to be heard in opposition to the motion must file with the court within ~~5~~ 7 days after receipt of the notice a written statement setting forth the grounds upon which granting of the motion is opposed.

Reporter's Notes—2015 Amendment

Rules 80.7(c)(2)(C) and (d)(1)-(3) are amended to conform their 5-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

42. That Rule 80.9(b)(3) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 80.9. PROCEDURES IN THE SUPERIOR COURT, CRIMINAL DIVISION, FOR ENFORCEMENT OF MUNICIPAL PARKING VIOLATIONS

* * * * *

(b) Summons; Complaint; Answer.

* * * * *

(3) The defendant shall file an answer with the Criminal Division and serve it upon the municipality within ~~20~~ 21 days after service of the summons and complaint.

Reporter's Notes—2015 Amendment

Rule 80.9(b)(3) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

43. That Rule 80.10(e) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 80.10. ORDERS AGAINST STALKING OR SEXUAL ASSAULT

* * * * *

(e) Denial of Ex Parte Temporary Orders. When a judge denies an application for temporary order under this rule, the judge shall record the reasons for the denial in writing and shall give the written denial to the plaintiff. In addition, any denial in whole or in part shall inform the plaintiff that he or she may request that the court hold a hearing on the complaint after notice to the defendant. Any such hearing shall be scheduled no more than ~~ten~~ 14 days from the date of the request.

Reporter's Notes—2015 Amendment

Rule 80.10(e) is amended to conform its 10-day time period to the simultaneous amendment of V.R.C.P. 6(a).

44. That Form 1 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

FORM 1. SUMMONS

* * * * *

2. YOU MUST REPLY WITHIN ~~20~~ 21 * DAYS TO PROTECT YOUR RIGHTS.
You must give or mail the Plaintiff a **written response** called an Answer within ~~20~~ 21* days of

the date on which you received this Summons. You must send a copy of your Answer to the [Plaintiff][Plaintiff's attorney] located at:

* * * * *

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT. If you do not Answer within ~~20~~ 21^{*} days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint.

Reporter's Notes—2015 Amendment

Form 1 is amended to conform its 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

45. That Form 1A of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

FORM 1A. SUMMONS AND ORDER OF PUBLICATION

* * * * *

3. YOU MUST REPLY WITHIN ~~41~~ 42 DAYS TO PROTECT YOUR RIGHTS. You must give or mail the Plaintiff a written response called an Answer within ~~41~~ 42 days after the date on which this Summons was first published, which is _____, 20___. You must send a copy of your Answer to the Plaintiff or the Plaintiff's attorney located at:

* * * * *

5. YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT. If you do not send the Plaintiff your Answer within ~~41~~ 42 days after the date on which this Summons was first published and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint.

Reporter's Notes—2015 Amendment

Form 1A is amended to conform its 41-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

46. That Form 15 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

FORM 15. INSURER'S NOTICE OF SUBROGATION CLAIM UNDER RULE 17(c)

* * * * *

You are hereby notified that the undersigned intends to (commence an action) (assert a counterclaim) in your name for damages sustained by you on _____ (date) _____, and for which you have been wholly or partially reimbursed by the undersigned. If you, your spouse, or minor dependents sustained personal injury or other loss as the result of said occurrence and you wish to file suit therefor, Rule 17(c) of the Vermont Civil Procedure requires you to notify the undersigned in writing of your intention to do so within ~~10~~ 14 days of the date of your receipt of this notice.

* * * * *

Reporter's Notes—2015 Amendment

Form 15 is amended to conform its 10-day time period to the simultaneous amendment of V.R.C.P. 6(a).

47. That Rule Form 22 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

FORM 22. SUMMONS AND COMPLAINT AGAINST THIRD-PARTY DEFENDANT

* * * * *

You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is _____, and upon _____, who is attorney for C.D., defendant and third-party plaintiff, whose address is _____, * an answer to the third-party complaint which is herewith served upon you within ~~20~~ 21 days after service of this summons upon you exclusive of the day of service.

* * * * *

Reporter's Notes—2015 Amendment

Form 22 is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

48. That these rules and forms, as added or amended, are prescribed and promulgated effective _____. The Reporter's Notes are advisory.

49. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

ORDER PROMULGATING AMENDMENTS TO THE
VERMONT RULES OF APPELLATE PROCEDURE

Pursuant to the Vermont Constitution, Chapter II, Section 37 and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3(e) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 3. APPEAL AS OF RIGHT—HOW TAKEN

* * * * *

(e) **Docketing Statements.** After taking an appeal the parties must each file a docketing statement with the Supreme Court clerk using a form prescribed by the clerk. Appellant's docketing statement must be filed and served within ~~10~~ 14 days of taking the appeal. Appellee's docketing statement must be filed and served within ~~10~~ 14 days thereafter.

Reporter's Notes—2015 Amendment

Rule 3(e) is amended to conform its 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a). See Reporter's Notes to that amendment.

2. That Rules 4(b)(7), 4(c)(1), and 4(d)(3) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 4. APPEAL AS OF RIGHT—WHEN TAKEN

* * * * *

(b) **Tolling.** If a party timely files in the superior court any of the motions referenced below, the full time for appeal begins to run for all parties from the entry of an order disposing of the last remaining motion:

* * * * *

(7) granting or denying a motion for relief under V.R.C.P. 60 if the motion is filed no later than ~~10~~ 28 days after the entry of judgment. If, however, the order is one denying a motion under V.R.C.P. 60(b) for relief from a default judgment, the motion need only be timely under that rule;

(c) Reopening the Time To File an Appeal Based on Lack of Notice. In a civil action, the superior court may, upon motion, reopen the time to file an appeal for 14 days after the date when its order to reopen is entered if:

(1) the reopening motion is filed within 90 days of entry of the judgment or order or within 7 14 days of receipt of notice of the judgment or order, whichever is earlier; and

(d) Motion for Extension of Time To File Notice of Appeal.

(3) No extension under this subdivision may exceed 30 days after the time originally prescribed by Rule 4(a) or ~~10~~ 14 days after the date the order granting the motion is entered, whichever is later.

Reporter's Notes—2015 Amendment

Rule 4(b)(7) is amended for internal consistency with V.R.C.P. 50 and 52.

Rules 4(c)(1) and 4(d)(2) are amended to conform their 7-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

3. That Rules 5(b)(5)(A) and 5(b)(7)(A) and (C) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 5. APPEALS BEFORE FINAL JUDGMENT

(b) Appeal of Interlocutory Order by Permission.

(5) Timing of Motion and Content of Order.

(A) The motion must be filed within ~~10~~ 14 days after entry of the order or ruling appealed from, but the State's motion in a criminal action must be filed within 7 days after the decision, judgment, or order appealed from.

(7) *Permission To Appeal Denied.*

(A) If the superior court denies the request for permission to appeal, the moving party may, within ~~10~~ 14 days after entry of the order of denial, file the motion in the Supreme Court with a statement containing:

* * * * *

(C) Within ~~5~~ 14 days after service of the motion, an adverse party may file and serve an opposition.

* * * * *

Reporter's Notes—2015 Amendment

Rules 5(b)(5)(A) and 5(b)(7)(A) and (C) are amended to conform their 5-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a) and for internal consistency with appellate motion practice.

4. That Rules 5.1(a)(2) and 5.1(b)(2) and (4) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 5.1. COLLATERAL FINAL ORDER APPEALS

(a) Motion for Permission To Appeal.

* * * * *

(2) A request for permission to appeal must be filed within ~~10~~ 14 days after entry of the order or ruling appealed from.

* * * * *

(b) Motion for Permission Denied.

* * * * *

(2) If the motion is denied, the moving party may, within ~~10~~ 14 days after entry of the denial, file the motion in the Supreme Court with a statement containing:

* * * * *

(4) Within ~~5~~ 14 days after service of the motion, an adverse party may file and serve an answer in opposition to the motion.

* * * * *

Reporter's Notes—2015 Amendment

Rules 5.1(a)(2) and 5(b)(2) and (4) are amended to conform their 5-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a) and for internal consistency with appellate motion practice.

5. That Rules 6(a)(1), (4) and (6), and Rules 6(b)(2) and (10)(B) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 6. DISCRETIONARY APPEALS

(a) Appeals from Final Judgment Based on Superior Court Permission.

(1) When an appeal from a final judgment may be taken only with the superior court's permission, the party seeking the appeal must file a motion for permission to appeal with the clerk within ~~10~~ 14 days of the date of the entry of the judgment or order to be appealed from. The running of the time for filing a motion for permission is tolled to the extent provided, and for the grounds stated, in Rule 4(b).

* * * * *

(4) If the superior court denies permission to appeal, the party seeking permission may, within ~~10~~ 14 days after entry of the order of denial, file a motion in the Supreme Court with a statement containing:

* * * * *

(6) Within ~~5~~ 14 days after service of the motion, an adverse party may file and serve an answer in opposition to the motion.

* * * * *

(b) Appeals from Final Judgment Based on Supreme Court Permission.

* * * * *

(2) The request for permission must be filed within ~~10~~ 14 days of the date of the entry of the judgment or order to be appealed from, except that the running of the time for filing a request for permission is terminated to the extent provided, and for the grounds stated, in Rule 4.

* * * * *

(10) If the Supreme Court grants permission:

* * * * *

(B) the appellant must pay to the superior court clerk the entry fee required under 32 V.S.A. § 1431 within ~~10~~ 14 days after the decision is entered in the superior court; and

* * * * *

Reporter's Notes—2015 Amendment

Rules 6(a)(1), (4) and (6), and Rules 6(b)(2) and (10)(B) are amended to conform their 5-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a) and for internal consistency with appellate motion practice.

6. That Rules 10(b)(1), (3), and (5) and Rule 10(d) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 10. THE RECORD ON APPEAL

* * * * *

(b) Transcript.

(1) *Appellant's Responsibility.* The appellant must either file and serve a statement that no transcript is necessary or order from a Court-approved transcription service a transcript, or a video recording if paragraph (c)(2) applies, of all parts of the proceedings relevant to the issues raised by the appellant and necessary to demonstrate how the issues were preserved. Except as provided in paragraphs (b)(3) and (4), the statement or order must be filed within ~~10~~ 14 days of filing the notice of appeal. By failing to order a transcript, the appellant waives the right to raise any issue for which a transcript is necessary for informed appellate review.

* * * * *

(3) *Life Imprisonment Cases.* In any criminal case resulting in a sentence of life imprisonment where the defendant has not waived appeal, the superior court clerk must, within ~~10~~ 14 days of the entry of judgment, order from a Court-approved transcription service a complete transcript of the proceedings.

* * * * *

(5) *Appellee's Responsibility.* If the appellee deems a transcript of other parts of the proceedings necessary, the appellee must, within ~~10~~ 14 days after service of the appellant's transcript order and docketing statement, file and serve a designation of additional parts to be included. If, within ~~10~~ 14 days after service of that designation, the

appellant has not ordered those parts, the appellee may, within the following ~~10~~ 14 days, either order the parts at the appellee's own expense or request a prehearing conference.

* * * * *

(d) When the Transcript Is Unavailable. If a transcript is unavailable, the appellant may prepare a statement of the evidence from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within ~~10~~ 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the superior court for settlement and approval. As settled and approved, the statement will be included by the superior court clerk in the record on appeal.

Reporter's Notes—2015 Amendment

Rules 10(b)(1), (3) and (5) and 10(d) are amended to conform their 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

7. That Rules 11(a)(2) and (b)(1) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 11. FORWARDING THE RECORD

(a) Time for Forwarding: Appellant's Duty.

* * * * *

(2) If there are multiple appeals from a judgment or order, each appellant must comply with the provisions of Rule 10(b) and this subdivision, and the clerk must forward a single record within ~~15~~ 14 days after the last notice of appeal is filed.

(b) Clerk's Duty To Forward the Record; Transcript.

(1) Within ~~15~~ 14 days after filing of the notice of appeal, the superior court clerk must forward any entry fee, and the record on appeal, including necessary exhibits, but not including the transcript, to the Supreme Court, unless the time is shortened or extended under Rule 11(d). When the superior court clerk receives a statement to be filed under Rule 10(c) or (d), the superior court clerk must forward that statement to the Supreme Court clerk.

* * * * *

Reporter's Notes—2015 Amendment

Rules 11(a)(2) and (b)(1) are amended to conform their 14-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

8. That Rule 26 of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 26. COMPUTING AND EXTENDING TIME

(a) Computing Time. V.R.C.P. 6(a) governs the computation of any period of time prescribed by these rules, by any applicable statute, or by court order.

(b) Extending Time. For good cause, the Supreme Court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the Court may not extend the time for filing:

(1) a notice of appeal or a motion for permission to appeal, unless specifically authorized by law or by these rules; or

(2) materials in appeals under Chapters 51 and 53 of Title 33, absent extraordinary circumstances.

~~**(c) Additional Time After Service.** When a party is required or permitted to act within a prescribed period after a paper is served on that party under V.R.C.P. 5(b)(2) or (3), three calendar days are added to the prescribed period after the period has been computed under Rule 26(a), unless:~~

~~(1) the Court serves the paper; or~~

~~(2) a party receives a paper served by non-electronic means on the date of service.~~

* * * * *

~~(d)~~ (e) Stipulation To Extend Time on Appeal.

(1) Subject to the provisions of Rules 12(c), 26(e), and 42(b), the parties may extend any period of time prescribed by these rules by filing a stipulation. But the parties may not by stipulation extend the period to file:

(A) a notice of appeal or a request for permission to appeal; or

(B) materials in appeals in proceedings under Chapters 51 and 53 of Title 33.

(2) The stipulation must be signed by all counsel of record and must set forth in clear and specific terms:

(A) the period being extended;

(B) the date to which the period is extended; and

(C) the reason for the extension.

(3) Filing procedure.

(A) If filed before the record on appeal is sent to the Supreme Court, the stipulation must be filed with the superior court clerk.

(B) If filed after the record on appeal is sent to the Supreme Court, the stipulation must be filed with the Supreme Court clerk.

(e d) Stipulations Limited. No stipulated extension of time may exceed 30 days for appellant or 21 days for appellee. Only one Rule 26(d) extension may be filed for the appellant's brief and printed case and the appellee's brief.

Reporter's Notes—2015 Amendment

Rule 26 is amended to incorporate a specific reference to the simultaneous amendment of V.R.C.P. 6(a) and to delete V.R.A.P. 26(c) for consistency with the simultaneous deletion of V.R.C.P. 6(e). V.R.A.P. 6(d) and (e) are redesignated as 6(c) and (d).

9. That Rule 27(a)(3) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 27. MOTIONS

(a) In General.

* * * * *

(3) *Response.* Except as provided in Rule 40 and Rule 27(b), any party may file a response to a motion within 7 ~~14~~ days after service of the motion, unless the Court shortens or extends the time.

Reporter's Notes—2015 Amendment

Rule 27(a)(3) is amended to conform its 7-day time period to the simultaneous amendment of V.R.C.P. 6(a).

10. That Rule 28(i)(2) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 28. BRIEFS

* * * * *

(i) Length of Briefs.

* * * * *

(2) A request for permission to exceed these limits must specify the number of additional words requested, and must be filed no later than ~~5~~ 7 days before the filing deadline for the brief involved.

Reporter's Notes—2015 Amendment

Rule 28(i)(2) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

11. That Rule 31(a)(3) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 31. SERVING AND FILING BRIEFS

(a) Filing Deadlines.

* * * * *

(3) *Reply Brief.* The appellant may serve and file a reply brief within ~~10~~ 14 days after service of the appellee's brief. In a case with a cross-appeal, the appellee may serve and file a reply brief in accordance with Rule 28(c) within ~~10~~ 14 days after service of the appellant's reply brief.

Reporter's Notes—2015 Amendment

Rule 31(a)(3) is amended to conform its 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

12. That Rules 33.1(b)(2) and (3) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 33.1 SUMMARY PROCEDURES ON APPEAL

* * * * *

(b) Oral Argument.

* * * * *

(2) *Argument by Video Conference.* Parties may present oral argument either in person or by video conference. Parties intending to present oral argument by video conference must notify the Court no later than ~~three-business~~ 7 days before the scheduled argument date.

* * * * *

(3) *Argument by Telephone.* Incarcerated parties may present oral argument by

telephone as long as the telephone conference can be arranged at the place of incarceration. Incarcerated parties must notify the Court no later than three business days before the scheduled argument date. Other parties may present oral argument by telephone with the Court's permission, which must be requested at least ~~three business~~ 7 days before the scheduled argument date.

* * * * *

Reporter's Notes—2015 Amendment

Rules 33.1(b)(2) and (3) are amended to conform their 3-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

13. That Rules 39(d)(2)(B) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 39. COSTS

* * * * *

(d) Bill of Costs: Objections; Insertion in Mandate.

* * * * *

(2) Objections must be filed within ~~10~~ 14 days ~~after~~ after service of the bill of costs, unless the Court extends the time.

* * * * *

(B) ~~The~~ deputy clerk will determine all questions that arise concerning unnecessary matter, subject to review by the justice who signed the opinion if that review is requested within ~~7~~ 14 days after costs are taxed.

Reporter's Notes—2015 Amendment

Rules 39(d)(2)(B) are amended to conform their 7-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

14. That Rule 45.1(e)(3) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 45.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

* * * * *

(e) Withdrawal: In General.

* * * * *

(3) The Court will not consider a motion to withdraw until the clerk has given

notice to the party of the motion with either the date and time of hearing thereon, or at least 7 14 days to file a written response to the motion.

Reporter's Notes—2015 Amendment

Rule 45.1(e)(3) is amended to conform its 7-day time period to the simultaneous amendment of V.R.C.P. 6(a).

15. That these rules and forms, as added or amended, are prescribed and promulgated effective _____. The Reporter's Notes are advisory.

16. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

