**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**APRIL TERM, 2017**

**Order Promulgating Emergency Amendments to Rule 77(e) of the Vermont Rules of Civil Procedure and Rule 6(b) of the Rules for Public Access to Court Records**

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

1. That Rule 77(e) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 77. SUPERIOR COURTS AND CLERKS**

(e) **Confidentiality of Records.** ~~The clerk shall not disclose the filing of an action or release any records, proceedings, or minutes pertaining to it unless; (i) the action has been finally disposed of; or (ii) at least one defendant has actual notice of the pendency of the action by service or otherwise, and the time for service upon any defendants without notice, including any extension of that time ordered by the court, has expired. Nor shall the~~ The clerk shall not disclose any materials or information required by law to be kept confidential.

**Notes—2017 Emergency Amendment**

Rule 77(e) of the Vermont Rules of Civil Procedure was promulgated in 1984 to align the Rules of Civil Procedure with the existing confidentiality provision set forth in 4 V.S.A. § 652(4), enacted in 1972. With the legislative repeal of 4 V.S.A. § 652(4) in 2013, the residual confidentiality provision of Rule 77(e), which precluded disclosure of records pertaining to the filing of an action until the action was disposed or at least one defendant was served, is superfluous, and is therefore removed.

2. That Rule 6(b) of the Rules for Public Access to Court Records be amended to read as follows (deleted matter struck through; new matter underlined):

**§ 6. Case Records**

(b) *Exceptions*. The public shall not have access to the following judicial branch records:

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~~(25) Records filed or generated in connection with the filing of a civil action prior to service or disposition as provided in Rule 77(e) of the Vermont Rules of Civil Procedure.~~

(~~26~~25) A will deposited with the probate court for safekeeping, and indices thereof, as provided by 14 V.S.A. § 2 and Rule 77(e) of the Vermont Rules of Probate Procedure;

(~~27~~26) The complaint and affidavit filed pursuant to 15 V.S.A. §§ 1103, 1104, or 12 V.S.A. §§ 5133, 5134, but not a temporary order, until the defendant has an opportunity for a hearing pursuant to 15 V.S.A. §§ 1103(b) or 1104(b) or 12 V.S.A. §§ 5133(b) or 5134(b);

(~~28~~27) Records of criminal proceedings involving participants in an adult diversion program sealed pursuant to 3 V.S.A. § 164(e);

(~~29~~28) Records containing a social security number of any person, but only until the social security number has been redacted from the copy of the record provided to the public;

(~~30~~29) Records with respect to jurors or prospective jurors as provided in the Rules Governing Qualification, List, Selection and Summoning of All Jurors;

(~~31~~30) Any transcript, court reporter's notes, or audio or videotape of a proceeding to which the public does not have access;

(~~32~~31) Any evidence introduced in a proceeding to which the public does not have access; and

(~~33~~32) Affidavits of income and assets as provided in 15 V.S.A. § 662 and Rules 4.0-4.2 of the Vermont Rules for Family Proceedings.

(~~34~~33) Records from a juvenile proceeding that are filed with the court or admitted into evidence in a divorce or parentage proceeding.

(~~35~~34) Records containing information obtained from a person during his or her risk assessment or needs screening pursuant to 13 V.S.A. § 7554c.

(~~36~~35) Any other record to which public access is prohibited by statute.

**Notes—2017 Emergency Amendment**

Rule 6(b)(25), which excluded from public access records related to the filing of a civil action prior to service, is removed to conform with the removal of the referenced confidentiality provision in Rule 77(e) of the Rules of Civil Procedure. Former paragraphs (26) to (36) have been renumbered (25) to (35).

3. That the Court finds that these amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11 for the purpose of bringing court procedure immediately into conformity with the policies underlying the Rules for Public Access to Court Records.

4. That these rules, as added or amended, are prescribed and promulgated effective April 24, 2017.

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 20th day of April, 2017.

Paul L. Reiber, Chief Justice

Marilyn Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr. Associate Justice

**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**DECEMBER TERM, 2016**

**Order Amending Rule 5 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 5 of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

## RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) **Service: When Required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless a Superior Judge otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except as provided in Rule 62(b) and except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) **Same: How Made.** Whenever under Rule 5(a) or 77(d) service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney or party's last known address or, if no address is known, by leaving it with the clerk of the court.

(1) *Delivery.* Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(2) *Mailing.* Mailing of a copy within this rule means: sending by ordinary first-class mail; sending by third-party commercial carrier; ~~and~~ or, if required or permitted by ~~the Vermont Rules for Electronic Filing~~ paragraph 4, ~~transmission~~ sending by electronic means. Service by mail or by commercial carrier is complete upon mailing or delivery to the carrier. Service by electronic means is complete upon transmission, provided that such service is not effective if the party making service learns that the attempted service did not reach the party to be served.

(3) *Leaving with the Clerk.* Leaving a copy with the clerk of the court within this rule means delivering or mailing the copy to the clerk by any means permitted or required for the filing of papers with the clerk under subdivision (e) of this rule.

(4) *Sending by Electronic Means.*

(A) Documents must be sent by electronic means if required by the Vermont Rules for Electronic Filing.

(B) Documents may be sent by electronic means when not required by the Vermont Rules for Electronic Filing if the sending and receiving parties agree to electronic transmission in a writing filed with the court that specifies the type of electronic transmission to be used.

(C) The sender of any document by electronic means under this rule must follow any applicable standards regarding electronic transmission of confidential documents.

(D) Any e-mail address or addresses used under subparagraph (A) or (B) must match those that the attorney or party has registered under the judiciary's electronic filing system, and the registration information must be provided in all pleadings and other papers served or filed by the attorney or party.

(E) All attorneys and parties must immediately notify other attorneys and parties of any e-mail address change during the pendency of the action or proceeding.

* * * * * *

(e) **Filing With the Court Defined.**

(1) The filing of documents with the court as required by these rules shall be made by filing them with the clerk of the court, except that a judge may permit them to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing may be accomplished by delivery; by sending the papers by ordinary first-class mail or by third-party commercial carrier addressed to the clerk; ~~and~~ or by sending by electronic means, if required or permitted by the Vermont Rules for Electronic Filing~~;~~ or, if not required or permitted by those rules, with the court's prior approval ~~transmission by electronic means~~.

(3) Filing by mail, commercial carrier, or electronic means shall not be timely unless the material filed is received within the time fixed for filing. Filing with a judge may be accomplished by any method permitted by the judge.

(4) The clerk shall not refuse to accept for filing any document presented for that purpose solely because it is not presented in proper form as required by these rules.

(f) **Form of Papers and Documents.**

(1) All original papers shall be eight and one-half by eleven inches in size, indorsed with the name and docket number of the case, the court and county where pending, the name of the paper, and the name and address of the person or attorney filing it and shall comply with applicable format provisions of the Vermont Rules for Electronic Filing.

(2) A paper served or filed electronically in compliance with this rule is a written paper or in writing for purposes of these rules.

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**Reporter's Notes—2017 Amendment**

Rule 5 is amended to establish procedures for service and filing of documents under the rule by electronic means in all divisions and units of the superior court. The amended rule is incorporated by reference in V.R.A.P. 25(b), V.R.Cr.P. 49(b), V.R.F.P. 4.0(a)(2)(A), and V.R.E.C.P. 3, 4(a), and 5(a)(2). Conforming amendments will be made to V.R.P.P. 5. Service by e-mail was originally provided for in the 2006 amendments to the rules and eliminated in 2010 with the adoption of the Vermont Rules for Electronic Filing. It is anticipated that once the Vermont Rules for Electronic Filing become effective in all divisions and units, the rule will be amended again to conform to that change. As used in this rule, sending by e-mail attachment has the same meaning as service by electronic means.

Under new Rule 5(b)(4)(A), documents must be sent by electronic means if required by the Vermont Rules for Electronic Filing. New paragraph (4)(B) provides that in all other cases documents may be served by electronic means to the extent that the parties have agreed in writing. The writing must be filed with the court to make clear the terms of the agreement for purposes of filing under amended Rule 5(e). The requirement of a writing is consistent with the provisions of Federal Civil Rule 5(b)(2)(E). It is contemplated that counsel and parties may elect to file a "standing" consent with the court to receive service of documents by electronic means in all matters before the court, obviating the need for a multiplicity of additional written filings for each case. Provision for a "standing" consent for electronic service is also fully consistent with existing widespread practice among counsel to provide copies of case documents to other parties by e-mail. Unless required by the Vermont Rules for Electronic Filing, a party may withdraw, or qualify a "standing" consent to receive service of documents by electronic means by writing filed with the court as well.

The use of electronic transmission is subject to new subparagraph (C) requiring observation of confidentiality standards that may exist for documents in such matters as mental health proceedings or transactions recommended by the Consumer Financial Protection Bureau. New subparagraph (D) requires the use of registered e-mail addresses for service under the rule, because it is simpler and in accord with evolving practice. The current provisions for registration are found in Rule 3 of the Vermont Rules for Electronic Filing and Administrative Order No. 44. Subparagraph (E) makes clear that attorneys and parties are responsible for notifying others of changes in any e-mail address used, as required by V.R.E.F. 3(b).

Rules 5(e) and (f) are divided into numbered paragraphs for clarity. Rule 5(e)(2) is amended for conformity with new Rule 5(b)(4). In a case not governed by the Vermont Rules for Electronic Filing, documents may be filed electronically only with the court's prior approval. New Rule 5(f)(2) makes clear that a paper served or filed electronically in compliance with this rule is a written paper or in writing for purposes of the rules. Cf. Federal Civil Rule 5(d)(3).

2. That this rule as amended is prescribed and promulgated effective February 20, 2017. 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 15th day of December, 2016.

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**
**JANUARY TERM, 2017**

**Order Promulgating Amendments to Rule 43(e) of the Vermont Rules of Probate Procedure, Rule 43(f) of the Vermont Rules of Civil Procedure, and Rule 28 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 43(e) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 43. EVIDENCE**

(e) **Interpreters Services.** The court ~~may appoint an~~ must provide competent interpreter services ~~or an assistant for persons with hearing disorders or other communications disabilities,~~ when such services are necessary to ensure meaningful access to all court proceedings and court-managed functions in or related to probate proceedings for a party, witness, or other person whose presence or participation is necessary or appropriate and who is a person with limited English proficiency, hearing impairment, or other disability which results in the need for interpreter services. The court ~~and may fix a~~ must determine reasonable compensation for the interpreter services for court proceedings and court-managed functions. The compensation must be paid by the State of Vermont.

**Reporter's Notes—2017 Amendment**

Rule 43(e) is amended, contemporaneously with conforming amendments to V.R.Cr.P. 28 and V.R.C.P. 43(f), to make clear that the requirements in proceedings in the Probate Division of the Superior Court for court provision of interpreter services for persons with limited English proficiency (LEP), hearing impairments, or other disability resulting in the need for interpreter services 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 42 U.S.C. § 2000d et seq.; 42 U.S.C. § 3789d(c); 28 C.F.R. §§ 42.104(b)(2), 42.203(e); 67 Fed. Reg. 41,455, 41,462, 41,471 (June 18, 2002). 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, p. 2.

While the Vermont Judiciary's current policy is in basic compliance with the DOJ Guidance and Letter, existing Rule 43(e) does not reflect it. The specific language of the amended rule is intended to address that problem. Thus, "other person" in the amended rule includes LEP nonparties "whose presence or participation is necessary or appropriate," such as parents or guardians of minors. 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 probate proceedings." 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 counsel and guardians ad litem. Id. at 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 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. 35,694 (July 26, 1991), entitles deaf participants in court activities to "[a]uxiliary 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. 35,705-35,706. See generally http://www.nad.org/issues/justice/courts/communication-access-state-and-local-courts [http://perma.cc/2DNC-54DT].

The amended rule extends to a person with an "other disability which results in the need for interpreter services," in recognition that disabilities other than hearing impairment may result in an inability to speak and may require interpreter services. The trial court has always had authority and responsibility for determination of the competency and accuracy of an interpreter's services and the mode of interpretation. This provision of the amended rule is addressed to language interpretation needs and does not reach other circumstances in which support services may be necessary to facilitate a disabled person's access to, presence at, and participation in, judicial proceedings, which are a separate concern and obligation of the judiciary.

In Vermont, 1 V.S.A. § 332 provides that "Any person who is deaf or hard of hearing who is a party or 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" (e.g., the judge in a court proceeding) is to appoint the interpreter. Section 335 provides that "[i]n civil proceedings, the Court may order that" the interpreter's fees and expenses "be paid by a party, as justice may require, or it may order that the costs 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. Rule 43(e) as amended extends these statutory provisions and makes the Vermont process consistent with federal requirements.

The present amendments govern provision of interpreter services in judicial proceedings, essentially in the courtroom and in those matters and circumstances directly related thereto. They are intended to supplement the Vermont Judiciary Language Access Plan dated December 30, 2016 and as amended from time to time, and such administrative directives and procedures as are adopted by the State Court Administrator that independently make provision for access to court documents and services associated with the filing, maintenance, and participation in judicial proceedings and related matters. In particular, in determining the competency of interpretation services, courts should consider the guidelines in the Vermont Judiciary Language Access Plan.

2. 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 Services.** The court ~~may appoint an~~ must provide competent interpreter services ~~of its own selection~~ when such services are 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, hearing impairment, or other disability which results in the need for interpreter services. The court ~~and may fix~~ must determine the ~~interpreter's~~ reasonable compensation for the interpreter services for court proceedings and court-managed functions. The compensation ~~shall~~ must 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—2017 Amendment

Rule 43(f) is amended, contemporaneously with conforming amendments to V.R.Cr.P. 28 and V.R.P.P. 43(e), to make clear that the requirements in actions in all divisions of the Superior Court for court provision of interpreter services for persons with limited English proficiency (LEP), hearing impairments, or other disability resulting in the need for interpreter services comply with federal law. The amended civil and criminal rules 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), 4.0(a)(2) (Family Division juvenile and civil proceedings); V.R.E.C.P. 3, 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(a) (Supreme Court suspension of the rules, actions for extraordinary relief).

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 42 U.S.C. § 2000d et seq.; 42 U.S.C. § 3789d(c); 28 C.F.R. §§ 42.104(b)(2), 42.203(e); 67 Fed. Reg. 41,455, 41,462, 41,471 (June 18, 2002). 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, p. 2.

While the Vermont Judiciary's current policy is in basic compliance with the DOJ Guidance and Letter, existing Rule 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 person" 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 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 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. 35,705-35,706. See generally http://www.nad.org/issues/justice/courts/communication-access-state-and-local-courts [http://perma.cc/2DNC-54DT].

The amended rule extends to a person with an "other disability which results in the need for interpreter services," in recognition that

disabilities other than hearing impairment may result in an inability to speak and may require interpreter services. The trial court has always had authority and responsibility for determination of the competency and accuracy of an interpreter's services and the mode of interpretation. This provision of the amended rule is addressed to language interpretation needs and does not reach other circumstances in which support services may be necessary to facilitate a disabled person's access to, presence at, and participation in, judicial proceedings, which are a separate concern and obligation of the judiciary.

In Vermont, 1 V.S.A. § 332 provides that "Any person who is deaf or hard of hearing who is a party or 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" (e.g., the judge in a court proceeding) is to appoint the interpreter. Section 335 provides that "[i]n civil proceedings, the Court may order that" the interpreter's fees and expenses "be paid by a party, as justice may require, or it may order that the costs 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. Rule 43(f) as amended extends these statutory provisions and makes the Vermont process consistent with federal requirements.

The present amendments govern provision of interpreter services in judicial proceedings, essentially in the courtroom and in those matters and circumstances directly related thereto. They are intended to supplement the Vermont Judiciary Language Access Plan dated December 30, 2016 and as amended from time to time, and such administrative directives and procedures as are adopted by the State Court Administrator that independently make provision for access to court documents and services associated with the filing, maintenance, and participation in judicial proceedings and related matters. In particular, in determining the competency of interpretation services, courts should consider the guidelines in the Vermont Judiciary Language Access Plan.

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

**RULE 28. INTERPRETERS SERVICES**

The court ~~may appoint an~~ must provide competent interpreter services ~~of its own selection~~ when such services are necessary to ensure meaningful access to all court proceedings and court-managed functions in or related to criminal 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, hearing impairment, or other disability which results in the need for interpreter services. The court must determine the reasonable compensation ~~of such interpreter~~ for the interpreter services for court proceedings and court-managed functions. ~~Such~~ The compensation ~~shall~~ must be paid ~~out of funds as provided by law for costs of prosecution~~ by the State of Vermont.

**Reporter's Notes—2017 Amendment**

Rule 28 is amended, contemporaneously with conforming amendments of V.R.C.P. 43(f) and V.R.P.P. 43(e), to make clear that the requirements in actions in all Divisions of the Superior Court for court appointment of interpreter services for persons with limited English proficiency (LEP), hearing impairments, or other disability resulting in the need for interpreter services 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 42 U.S.C. § 2000d et seq.; 42 U.S.C. § 3789d(c); 28 C.F.R. §§ 42.104(b)(2), 42.203(e); 67 Fed. Reg. 41,455, 41,462, 41,471 (June 18, 2002). 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, p. 2.

While the Vermont Judiciary's current policy is in basic compliance with the DOJ Guidance and Letter, existing Rule 28 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 person" 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. "Other person" would also include a victim of a criminal offense, not only in the capacity of a witness, but victims and those with derivative rights exercising specified rights of participation pursuant to 13 V.S.A. chapter 165. 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 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 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. 35,694 (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. 35,705-35,706. See generally http://www.nad.org/issues/justice/courts/communication-access-state-and-local-courts [http://perma.cc/2DNC-54DT].

The amended rule extends to a person with an "other disability which results in the need for interpreter services," in recognition that disabilities other than hearing impairment may result in an inability to speak and may require interpreter services. The trial court has always had authority and responsibility for determination of the competency and accuracy of an interpreter's services and the mode of interpretation. This provision of the amended rule is addressed to language interpretation needs and does not reach other circumstances in which support services may be necessary to facilitate a disabled person's access to, presence at, and participation in, judicial proceedings, which are a separate concern and obligation of the judiciary.

In Vermont, 1 V.S.A. § 332 provides that "Any person who is deaf or hard of hearing who is a party or 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" (e.g., the judge in a court proceeding) is to appoint the interpreter. Section 335 provides that "[i]n civil proceedings, the Court may order that" the interpreter's fees and expenses "be paid by a party, as justice may require, or it may order that the costs 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. Rule 28 as amended extends these statutory provisions and makes the Vermont process consistent with federal requirements.

Rule 28 as amended, which governs actions in the Criminal Division of the Superior Court, will apply in the Civil and Probate Divisions by virtue of conforming changes to be made in the comparable provisions of the Vermont Rules of Civil Procedure and the Vermont Rules of Probate Procedure. See V.R.C.P. 43(f) and V.R.P.P. 43(e). The civil and criminal rules as amended will apply in certain other proceedings by virtue of their incorporation in the rules governing those proceedings. See V.R.F.P. 1(a), 2(a), 4.0(a)(2) (Family Division juvenile and civil proceedings); V.R.E.C.P. 3, 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(a) (Supreme Court suspension of the rules, actions for extraordinary relief).

The present amendments govern provision of interpreter services in judicial proceedings, essentially in the courtroom and in those matters and circumstances directly related thereto. They are intended to supplement the Vermont Judiciary Language Access Plan dated December 30, 2016 and as amended from time to time, and such administrative directives and procedures as are adopted by the State Court Administrator that independently make provision for access to court documents and services associated with the filing, maintenance, and participation in judicial proceedings and related matters. In particular, in determining the competency of interpretation services, courts should consider the guidelines in the Vermont Judiciary Language Access Plan.

4. That this rule as amended is prescribed and promulgated effective March 13, 2017. 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 January, 2017.

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**
**JANUARY TERM, 2017**

**Order Promulgating Addition of Rule 4(f) 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 4(f) of the Vermont Rules of Appellate Procedure be added to read as follows:

**RULE 4. APPEAL AS OF RIGHT WHEN TAKEN**

(f) **Appeal by an Inmate Confined in an Institution.**

(1) A notice of appeal filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement accompanying the notice of appeal stating the date the notice of appeal was deposited in the institution's internal mailing system. The notarized statement establishes a presumption that the notice of appeal was deposited in the institution's internal mailing system on the date shown in the statement. The presumption may be rebutted by documentary or other evidence.

(2) If an inmate files the first notice of appeal under this Rule 4(f), the 14-day period provided in Rule 4(a)(6) for another party to file a notice of appeal runs from the date when the superior court dockets the first notice.

(3) Nothing in this rule precludes other evidence of timely filing such as a postmark or an official date stamp showing the filing date of the document.

**Reporter's Notes—2017 Amendment**

Rule 4(f) is adopted in response to the Supreme Court's request in In re Bruyette, 2016 VT 3, ¶ 8, __ Vt. __, 136 A.3d 575 (per curiam), that the Civil Rules Committee "propose appropriate amendments . . . to facilitate application of" the prison mailbox rule in Vermont. The rule is similar, but not identical, to F.R.A.P. 4(c)(1) as most recently amended effective December 1, 2016. The Vermont rule provides that deposit of a notice of appeal in the internal prison mailing system can constitute timely filing and requires use of a prison "legal mail" system if available. The rule also explicitly creates a rebuttable presumption that the filing is timely if accompanied by a notarized statement showing deposit in the institution's internal mailing system on or before the last day for filing. Paragraph (3) follows the federal rule in allowing evidence of timely filing other than the notarized statement. Unlike the federal rule, the rule does not require a

statement that postage has been or "is being" prepaid, nor does it give the Court discretion to allow later filing of the notarized statement.

2. That this rule, as added, is prescribed and promulgated effective March 13, 2017. 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 9th day of January, 2017.

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**
**FEBRUARY TERM, 2017**

**Order Promulgating Amendments to**
**Rule 30 of the Vermont Rules of Criminal Procedure and**
**Rule 51(b) 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 30 of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; 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~~ must be furnished to adverse parties. The court ~~shall~~ must inform ~~counsel~~ the parties of its proposed instructions ~~prior to delivering them.~~, and include a copy of its proposed instructions in the record. The court must inform the parties of its action upon any requests made prior to their arguments to the jury.

(b) **Objections.** All parties ~~shall~~ must 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 on the record either at a charge conference or 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~~ must be given to make the objection out of the hearing of the jury. The court ~~shall~~ must give a written copy of the instructions to the jury before it retires.

(c) **Preservation of Objections.** An objection made at a charge conference to an instruction proposed by the court need not be repeated to be preserved. If any portion of the charge read to the jury differs in substance from the last version approved by the court on the record at the charge conference to which a party has objected in conformity with this rule, the party must object to that portion of the charge before the jury retires in order to preserve objection. A written copy of the version to which the party has objected must be included in the record.

### Reporter's Notes—2017 Amendment

Rule 30 is amended contemporaneously with an amendment of V.R.C.P. 51(b) to clarify those circumstances in both criminal and civil trials in which objections to proposed jury instructions fully articulated at a charge conference may be preserved, without the necessity for their reassertion after the court's reading of the

instructions and prior to the jury's retirement for deliberations. The amendment essentially shifts the objection process to the charge conference, excepting the need for post-instruction objections in the event that the court's instructions as actually given differ from that indicated on the record at the charge conference.

Rule 30 is reorganized into three separate paragraphs, and subdivision (c) is added to clarify the circumstances under which an objection to a jury instruction is sufficiently preserved. The amendments are 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 distinctly articulated with the grounds thereof, the objection may be preserved if it is so articulated in conformity with the rule at a charge conference so that the court can fully appreciate the objection and consider whether changes to the instructions are appropriate. Cf. State v. Kolibas, 2012 VT 37, ¶¶ 10-12, 191 Vt. 474, 48 A.3d 610 (construing as sufficient for preservation post-charge objections which briefly, but succinctly, stated grounds thereof, where there had been "lengthy debate" at the charge conference as to the instruction in issue). The amendments address perceived problems under prior practice with unnecessary delay, and extension of the time for commencement of deliberations, in order for the court to receive and address lengthy and detailed repetition of prior objections to instructions that have already been ruled upon.

The amendments do not obviate the need for fair and reasonable articulation of specific objections to jury instructions, asserted distinctly and stating the bases thereof. However, the amendments contemplate that where the record of an objection to a jury instruction is well developed, with distinct articulation at a charge conference in the case, a lengthy repetition of the specific objection and its bases is not required postcharge and predeliberation, provided that the instructions as actually given do not differ from those approved by the court as a result of the charge conference.

The amendments do not require reassertion of objections to instructions given in the manner prescribed, unless the court's 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 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.

In order to provide a clear record of the assertion of requests for particular instructions, the court's actions thereon, and objections thereto, the amendments contemplate that the court will file for record a copy of the original proposed instructions that are subject to review at the charge conference, as well as a copy of the written instructions actually read to the jury and provided to them for purposes of their deliberations. It is often difficult to reasonably discern, and assess upon review, transcript objections and argument as to proposed instruction content of pages, paragraphs and lines referred to only by those references, without examination of the documents in the hands of the parties and the court at the pertinent time.

References to "shall" are generally amended to "must" consistent with general restyling of the rules of procedure by the Court. The change in terminology is stylistic rather than substantive.

2. That Rule 51(b) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 51. ARGUMENT ~~OF COUNSEL~~; INSTRUCTIONS TO JURY**

(b) **Instructions to Jury; Objections.** 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. Prior to the parties' arguments to the jury, the ~~The~~ court ~~shall inform~~ must provide ~~counsel~~ them with a copy of its proposed jury instructions and include a copy in the record, inform them of its action upon ~~the~~ any requests ~~prior to their arguments to the jury~~, and give them the opportunity to state any objections to the proposed instructions on the record out of the hearing of the jury. The court, at is election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto either at a charge conference or before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. ~~Opportunity shall be given to make the objection out of the hearing of the jury.~~ An objection made at a charge conference to an instruction proposed by the court need not be repeated to be preserved. If any portion of the charge read to the jury differs in substance from the last version approved by the court at the charge conference to which the party has objected in conformity with this rule, the party must object to that portion of the charge before the jury retires in order to preserve the objection. A written copy of the version to which the party has objected must be included in the record.

**Reporter's Notes—2017 Amendment**

Rule 51(b) is amended contemporaneously with an amendment of V.R.Cr.P. 30 to clarify that, in both civil and criminal trials, objections to proposed jury instructions fully articulated at a charge conference may be preserved without the necessity for their reassertion after the court's reading of the instructions and prior to the jury's retirement for deliberations.

To facilitate the process, the court is required to give the parties a copy of the proposed charge and to include a copy in the record, informing the parties of its action on any requested instructions. The parties may then make objections to the instructions on the record at the charge conference or otherwise before the jury retires.

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 the instructions as actually given do not differ in substance from those approved by the court as a result of the charge conference.

The amendment does not require reassertion of objections to instructions given in the manner that it prescribes unless the court's 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 the court has omitted a particular instruction to the jury altogether. Nor does the amended rule preclude assertion of an 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 the objection would require full articulation of a party's objection, distinctly stating the bases thereof, postcharge, and predeliberation, to provide the court with the opportunity to reasonably address any claim of error. A written copy of the version objected to must be included in the record.

3. That these rules as amended are prescribed and promulgated effective April 10, 2017. 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 6th day of February, 2017.

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, 2017**

**Order Promulgating Amendment to Rule 5(h) 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 5(h) of the Vermont Rules of Civil Procedure be amended amendment to read as follows (new matter underlined; deleted matter struck through):

(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 certificate may be incorporated into the final page of the document being served, or may be on a separate form. It need not be in any special format so long as it contains all the required information. Multiple documents may be filed with one certificate of service. The certificate must meet the following requirements:

* * * * * * *

(3) ~~*Acceptance*~~ *Noncompliance.* ~~The court may strike any document not accompanied by a certificate of service,~~ If a document that requires a certificate of service is filed without one, the judge may issue an order (A) suspending the running of the time for response by the other party or parties until the filing of a proper certificate of service, ~~and may~~ (B) ~~decline~~ declining to act on the filing until a proper certificate is filed, or (C) ordering that the filing will be deemed withdrawn if no certificate is filed by a date certain. The lack of a certificate of service shall not be a basis for the clerk or the judge to refuse to accept the filing, or to return the document to the filer.

**Reporter's Notes—2017 Amendment**

Rule 5(h), as added effective September 21, 2015, is amended to clarify and make uniform the procedures under it. In some clerks' offices it has been interpreted to (1) require a separate form for each item served, (2) require that the form be on a separate document from the items it identifies, and (3) allow court staff to return filings that lack a certificate, rather than accepting them and then having the judge determine how to handle the absence. The amendment makes clear that the certificate may be incorporated in the document filed or be on a separate page and may embrace multiple documents. Further, the amendments to paragraph (3) make clear that a document filed without a certificate should be accepted for filing, subject to compliance with the order of the judge concerning the filing of a proper certificate.

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 _____, 2017.

_____
Paul L. Reiber, Chief Justice

_____
John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice

**PROPOSED**

**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**_____TERM, 2017**

**Order Promulgating Amendments 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 1 of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 1. SCOPE OF RULES**

These rules govern the procedure in the Civil and Criminal Divisions of the Superior Court and in the Judicial Bureau in all suits of a civil nature whether cognizable as cases at law or in equity, including actions transferred to the Civil Division from the Criminal Division and appeals to the Civil and Criminal Divisions from any court, commission, board, agency, or department of the state or any political subdivision thereof, with the exceptions stated in specific rules and in Rule 81. They shall be construed, ~~and~~ administered and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action.

**Reporter's Notes—2017 Amendment**

Rule 1 is amended to incorporate an amendment to F.R.C.P. 1 effective December 1, 2015. The amendment is intended to encourage increased cooperation among the parties by making clear that parties as well as courts have a responsibility to achieve "the just, speedy, and inexpensive determination of every action." See Federal Advisory Committee's Note to 2015 amendment of F.R.C.P. 1.

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

**RULE 26. GENERAL PROVISIONS REGARDING DISCOVERY**

* * * * * * *

(b) **Discovery Scope and Limits.** ~~Unless otherwise limited by order of a superior judge in accordance with these rules, the scope of discovery is as follows:~~

~~(1) *In General; Limitations.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it~~

~~relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~

~~A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of this paragraph. The court may specify conditions for the discovery.~~

~~The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by a Superior Judge if it is determined that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issue at stake in the litigation. The Superior Judge may act upon the Superior Judge's own initiative after reasonable notice or pursuant to a motion under subdivision (c).~~

(1) *Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) *Limitations on Frequency and Extent.*

(A) *Specific Limitations on Electronically Stored Information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(B)(ii). The judge may specify conditions for the discovery.

(B) *Orders Limiting Frequency or Extent of Discovery.* On motion or on its own, the judge must limit the frequency or extent of discovery otherwise allowed by these rules if it

determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by paragraph (b)(1) of this rule.

(~~2~~3) *Insurance Agreements.* .... .

* * * * * *

(~~3~~4) *Trial Preparation: Materials.*

* * * * * *

(~~4~~5) *Trial Preparation: Experts.*

* * * * * *

(~~5~~6) *Claims of Privilege or Protection of Trial-Preparation Materials.*

* * * * * *

(c) **Protective Orders.** Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, any Superior Judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the judge; (6) that a deposition after being sealed be opened only by order of the judge; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judge.

If the motion for a protective order is denied in whole or in part, the judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

* * * * * *

(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. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery, including any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and each party's attorney are 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 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, including any issues about preserving discoverable information, any issues about discovery of electronically stored information including the form or forms in which it should be produced, and any issues about claims of privilege or protection as trial-preparation materials; establishing a plan and schedule for discovery; setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

* * * * * *

**Reporter's Notes—2017 Amendment**

Rule 26 is amended to adapt portions of amendments to F.R.C.P. 26 effective December 1, 2015. See, generally, Federal Advisory Committee's Note to 2015 amendments of F.R.C.P. 26.

New Rule 26(b)(1) incorporates amended F.R.C.P. 26(b)(1) verbatim, significantly redefining the scope of discovery under the former Vermont rule. Discovery must now be relevant to any

parties' claim or defense, as opposed to being reasonably calculated to lead to the discovery of admissible evidence. Now, if information is otherwise within the scope of the rule, it "need not be admissible in evidence to be discoverable." A proportionality requirement has been added, saying that discovery may now only be obtained if it is "proportional to the needs of the case" as defined by five factors. These factors were added to the Federal Rule by 1983 and 1993 amendments that were not adopted for V.R.C.P. 26(b)(1).

New Rule 26(b)(2)(A) is carried forward from present Rule 26(b)(1) to which it was added by a 2009 amendment incorporating what is now F.R.C.P. 26(b)(2)(B). Former Rules 26(b)(2)-(5) are renumbered (3)-(6). Rule 26(c)(2) is amended to adopt the 2015 amendment to F.R.C.P. 26(c)(1)(B), allowing a protective order to address "the allocation of expenses" to eliminate any doubt that an order could include such a provision. See Federal Advisory Committee's Note to 2015 amendment of F.R.C.P. 26(c)(1)(B). Rule 26(f) is amended to adopt the 2015 amendment adding F.R.C.P. 26(f)(3)(C) to provide that the discovery plan include issues about electronically stored information.

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

## 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 days after service of the summons and complaint upon that defendant. Any Superior Judge may allow a shorter or longer time. ~~The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for objection.~~ For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. An objection must state whether any responsive materials are being withheld on the basis of that objection. If objection is made to

part of an item or category, the objection must specify the part ~~shall be specified~~ and permit inspection of the rest. The request being addressed shall be reproduced before the response. If objection is made to the requested form or forms for producing electronically stored information – or if no form was specified in the request – the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Unless the parties otherwise agree, or the court otherwise orders:

(~~i~~1) a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;

(~~ii~~2) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and

(~~iii~~3) a party need not produce the same electronically stored information in more than one form.

**Reporter's Notes—2017 Amendment**

Rule 34(b) is amended to adapt portions of amendments to F.R.C.P. 34(b)(2) effective December 1, 2015. The amendment requires the grounds for objection to be stated specifically consistent with the requirement that an objection has to state whether materials are being withheld in order to "facilitate an informed discussion of the objection." Federal Advisory Committee's Note to 2015 amendments of F.R.C.P. 34(b)(2)(C). A provision in the federal rule permitting a party to produce copies of documents or electronically stored information in lieu of inspection has not been adopted because it permits the party to avoid actual inspection in a situation where actual inspection might be important.

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

**RULE 37. FAILURE TO MAKE DISCOVERY: SANCTIONS**

* * * * * *

(f) **Failure to ~~Provide~~ Preserve Electronically Stored ~~Information~~ or Other Evidence.** ~~Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.~~ If electronically stored or other evidence that should have been preserved in the anticipation or conduct of litigation is lost because a party

failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court, upon finding prejudice to another party from loss of the evidence, may order measures no greater than necessary to cure the prejudice.

**Reporter's Notes—2017 Amendment**

Rule 37(f) is amended to adapt portions of the amendments to F.R.C.P. 37(e) effective December 1, 2015. The amendment is broader than the federal rule, applying not only to electronically stored, but to "other evidence," that should have been preserved. In view of this greater breadth, the present amendment leaves remedies for intentional nondisclosure covered in V.R.F.P. 37(e)(2) to Vermont case law.

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

**RULE 55. DEFAULT**

(c) **Setting Aside Default or a Default Judgment.** ~~For good cause shown the court may set aside an entry of default. If a judgment by default has been entered, the court may set it aside in accordance with Rule 60(b) and not otherwise.~~ The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

**Reporter's Notes—2017 Amendment**

Rule 55(c) is amended to adopt the amendment to F.R.C.P. 55(c) effective December 1, 2015. The federal rule was originally amended in 2007 as part of the general restyling of the Federal Rules. The 2015 amendment inserted "final" in the last clause, to make clear that the standards of Rule 60(b) apply only to a judgment that is "final" because it disposes of all claims among all parties, or because the judge has directed entry of final judgment under Rule 54(b). In the absence of finality, the judgment may be revised at any time under Rule 54(b). See Federal Advisory Committee's Note to 2015 amendment of F.R.C.P. 55(c).

6. That these rules, as amended, are prescribed and promulgated effective _____, 2017. 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 _____, 2017.

_____

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, 2017**

**Order Promulgating Amendment of Rule 26(b) 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 26(b) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck though; new matter underlined):

**RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY**

* * * * * *

**(b) Discovery Scope and Limits.** Unless otherwise limited by order of a superior judge in accordance with these rules, the scope of discovery is as follows:

(1) *In General; Limitations.*

(A) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of this paragraph. The court may specify conditions for the discovery.

(C) The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by a Superior Judge if it is determined that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the

amount in controversy, limitations on the parties' resources, and the importance of the issue at stake in the litigation. The Superior Judge may act upon the Superior Judge's own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) *Insurance Agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial Preparation: Materials.*

(A) Showing Required. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(B) Previous Statements. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A i) a written statement signed or otherwise adopted or approved by the person making it, or (B ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) *Trial Preparation: Experts.*

(A) Identification and Deposition of an Expert Who May Testify.

(i) A party may through interrogatories require any other party to ~~identify each person whom the other party expects to call as an expert witness at trial,~~ disclose the identity of any witness it may use at trial to present expert testimony under Vermont Rules of Evidence 702, 703, or 705 ~~to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions as to which the expert is expected to testify and a summary of the grounds for each opinion~~ and to comply with subparagraphs (ii) or (iii) as appropriate.

(ii) Unless otherwise stipulated or ordered by the court, if the expert witness is one

- who will not testify from personal knowledge as to any fact in issue in the case, and
- who is retained or specially employed to provide expert testimony in the case, or
- whose duties as an employee of the party involve giving expert testimony,

this disclosure must be accompanied by a written report prepared and signed by the witness. The report must contain

- a complete statement of all opinions the witness will express and the basis and reasons for those opinions;
- the facts or data considered by the witness in forming the opinions;
- any exhibits that will be used to summarize or support the opinions;
- the witness's qualifications, including a list of all publications authored in the previous 10 years;
- a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- a statement of any compensation to be paid for any study and testimony in the case.

(iii) Unless otherwise stipulated or ordered by the court, if the witness is any other expert identified pursuant to subparagraph (i), the disclosure must state the subject matter on which the expert is expected to testify, and the substance of the facts and opinions as to which the expert is expected to testify, and contain a summary of the grounds for each opinion.

(iv) The parties must make these disclosures at times and in a sequence provided by stipulation or order of the court. In the absence of a stipulation or court order, the disclosures must be made at least 90 days before the date set for trial or for the case to be ready for trial; or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter offered by another party, within 30 days after the other party's disclosure under (A)(ii) or (A)(iii).

(~~iv~~ v) A party may depose any person who has been identified in an answer to an interrogatory posed pursuant to subparagraph (A)(i) as an expert whose opinions may be presented at trial. If a report from the expert is required by subparagraph (A)(ii), the report must be produced in advance of the deposition.

(~~iii~~ vi) A party may obtain by request for production or subpoena any ~~final~~ written report of the opinions to be expressed by an expert who has ~~been identified in an answer to an interrogatory posed pursuant to subparagraph (A)(i) as an expert whose opinions~~

~~may be presented at trial~~ has been disclosed pursuant to subparagraph (A)(iii), as well as any exhibits that will be used to summarize or support the expert's opinions.

(B) Trial-Preparation Protection for Draft Disclosures and Certain Reports. Rule 26(b)(3) protects drafts of any disclosure of an expert that is required or prepared under subparagraph (A)~~(i)~~ and drafts of any report prepared by such an expert, regardless of the form in which the draft is recorded.

(C) Trial-Preparation Protection for Communications Between a Party's Attorney and Certain Expert Witnesses. Rule 26(b)(3) protects communications between the party's attorney and any expert who has been identified in an answer to an interrogatory posed pursuant to subparagraph (A)(i) as an expert whose opinions may be presented at trial, regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) Expert Employed Only for Trial Preparation. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(E) Payment. Unless manifest injustice would result, (i) the judge shall require that the party seeking discovery pay any expert who has been identified under subparagraph (A)(i) a reasonable fee for time spent in responding to discovery under this paragraph (4); and (ii) with respect to discovery obtained under subparagraph (D) of this paragraph the judge shall also require the party seeking discovery to pay the other party a fair portion of the fees and expenses incurred by the latter party in obtaining facts and opinions from the expert.

(5) *Claims of Privilege or Protection of Trial-Preparation Materials.*

(A) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial-preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(B) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial preparation-material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information

and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

**Reporter's Notes—2017 Amendment**

Rule 26(b) is amended to clarify its provisions and bring them more closely in line with comparable provisions of the Federal Rules of Civil Procedure. Rules 26(b)(1)-(3) are amended to make the numbering of their provisions clearer and consistent with the remainder of the rule.

Rule 26(b)(4)(A)(i) is amended to adapt from Federal Rule 26(a)(2)(A), as adopted in 1993, language making clear that its disclosure requirement extends to all opinion witnesses qualified and testifying as experts under V.R.E. 702, 703, and 705. The language thus includes an "event" witness who is not retained or specially employed as an expert. This disclosure requirement does not extend to the V.R.E. 701 lay opinion witness. The amendment supersedes the holding of Hutchins v. Fletcher Allen Health Care, Inc., 172 Vt. 580, 582, 776 A.2d 376, 379 (2001)(mem.), that an expert who is an "event" witness should be treated for discovery purposes as an ordinary witness.

Thanks to the liberality of V.R.E. 702, opinion witnesses with expertise in a wide variety of fields are now commonly used in most litigation. Cf. Reporter's Notes to 2004 Amendments of V.R.E. 701-703; State v. Streich, 163 Vt. 331, 658 A.2d 38 (1995), following Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). The extension of pretrial disclosure requirements to opinions of "event" witnesses is necessary to reflect the increased use and importance of opinion testimony and the consequent need to prevent surprise and unfairness. Since "event" witnesses will invariably be called at trial, their expertise and the basis of their opinions should be routinely disclosed in response to initial interrogatories. Subparagraphs (A)(ii) and (iii) establish different requirements for nonevent and other expert witnesses.

Note that the rule applies only to the use of the discovery methods provided in V.R.C.P. 26-36 and is silent on the availability or propriety of other means of obtaining information or documentation, such as investigation or informal inquiry. See Schmitt v. Lalancette, 2003 VT 24, ¶ 12, 175 Vt. 284, 830 A.2d 16 (nothing in Rule 26(c) implies that courts have authority to prevent a party to litigation from conducting its own private investigation to

identify witnesses or obtain desired information, without relying upon formal discovery).Thus, the amended rule does not preclude informal communication by a lawyer with an event witness in the course of investigation. Federal case law, however, generally prohibits such communication with a retained or employed expert, whether because implied from the structure and intent of Federal Rule 26 or prohibited by the Rules of Professional Conduct. See 6 Moore's Federal Practice - Civil § 26.80[4]. Common-law work product protection might provide another basis for prohibition. Of course, any communication with a represented party witness without permission of counsel would clearly be precluded by V.R.Pr.C. 4.2. See Baisley v. Missisquoi Cemetery Ass'n, 167 Vt. 473, 480, 708 A.2d 924, 932-33 (1998).

Rule 26(b)(4)(A)(ii) applies to a retained or specially or regularly employed expert not testifying from personal knowledge. That expert must provide a signed written report and supporting exhibits in language adopted from F.R.C.P. 26(a)(2)(B). Under subparagraph (A)(iii), the subject matter, substance, and grounds of any other expert, which would include an individual like a treating physician who may be both a fact witness and qualify as an expert, must be disclosed. Note that under both provisions drafts are not discoverable pursuant to Rule 26(b)(3) and 26(b)(4)(B).

Subparagraph (A)(iv) provides default times for disclosures not otherwise scheduled by order or stipulation: 90 days before trial for evidence in chief and 30 days after another party's disclosure for rebuttal evidence. Subparagraph (a)(v) and (vi) make clear the applicability of the rule to depositions and requests for production or subpoenas.

2. That this rule, as added, is prescribed and promulgated effective _____, 2017. 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 _____, 2017.

_____
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
VERMONTSUPREME COURT
_____ TERM, 2017

**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—2017 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 Rule 4 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**

(a) **Time for Filing a Notice of Appeal.**

(1) Except as provided in paragraph (2), the notice of appeal required by Rule 3 must be filed with the superior court clerk within 30 days after entry of the judgment or order appealed from.

(2) In a criminal case, the State must file an appeal within 7 business days after entry of the judgment or order, but in a criminal case resulting in a sentence of life imprisonment—where the defendant has not waived appeal—the State may file a notice of appeal within 30 days of the judgment entry date.

* * * * * *

(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—2017 Amendment**

Rule 4(a)(2) is amended to clarify that the State must file an appeal with 7 business days. This conforms to the concurrent amendment to 13 V.S.A. § 7403(e).

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

Rules 4(c)(1) and 4(d)(3) 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 Rule 5(b) 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—2017 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—2017 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 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—2017 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 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 or entered a plea of guilty or nolo contendere to the underlying charge, 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—2017 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—2017 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 Certain Kinds of Service.** When a party ~~is required or permitted to~~ may or must act within a prescribed period after ~~a paper is served on that party~~ service and service is made under V.R.C.P. 5(b)(2), ~~or~~ (3), or (4) three calendar days are added to the prescribed period after the period would otherwise expire under V.R.C.P. 6(a). ~~has been computed under Rule 26(a), unless:~~

~~(1) the Court serves the paper; or~~

~~(2) a party receives a paper served by nonelectronic means on the date of service.~~

* * * * * *

(d) **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) **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—2017 Amendment**

Rule 26 is amended to incorporate a specific reference to the simultaneous amendment of V.R.C.P. 6(a). Rule 26(c) is amended to conform with the simultaneous amendment to V.R.C.P. 6(e).

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—2017 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) 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—2017 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—2017 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 Rule 33.1(b) 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—2017 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 Rule 39(d) 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 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—2017 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) 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—2017 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 _____, 2017.

_____
Paul L. Reiber, Chief Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice

_____
Karen R. Carroll, Associate Justice

**PROPOSED**

**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**_____ TERM, 2017**

**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—2017 Amendment**

Rule 3 is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

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.

* * * * * *

(*l*) **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;

* * * * * *

**Reporter's Notes—2017 Amendment**

Rule 4(g)(3) is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6. Rule 4(*l*)(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—2017 Amendment**

Rule 4.1(b)(2) is amended to extend its 5-day time period to 7 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

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—2017 Amendment**

Rule 4.2(j)(3) is amended to extend its 3-day time period to 5 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

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 (e) 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 applicable 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), then 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 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) *"Business Day" Defined.* A "business day" is a day that is not a Saturday, Sunday, or state or federal legal holiday.

(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 Certain Kinds of 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.~~ When a party may or must act within a specified time after service and service is made under Rule 5(b)(2), (3), or (4), 3 days are added after the period would otherwise expire under Rule 6(a).

**Reporter's Notes—2017 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 Rule 6(a) of the Federal Rules of Civil Procedure. The amendment serves the purposes of both achieving simplicity and maintaining uniformity with the federal practice. By simultaneous amendment, the time provisions of these and all other procedural rules promulgated by the Supreme Court 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., 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 statute prescribes a specific method for computing time. For clarity, amended V.R.C.P. 6(a) retains the language of the former Vermont rule making its computation provisions apply to a time period in any "applicable statute that does not specify a method of computing time" (emphasis added). By Act ___ of 2017, the Legislature amended a number of statutory procedural time periods of less than 10 days to be expressly "business days," thus making Rule 6(a) inapplicable to them. For consistency, "business days" has been added to a few such time periods in several rules that were taken from one of the amended statutes. Act ___ also amended statutory periods of 10 days to 14 days, thus making them consistent with the "day is a day" provisions of Rule 6(a).

Former V.R.C.P. 6(a) applied to a time period in "any applicable statute." The retention of "applicable" in the amended rule is intended to preserve the effect of two Vermont Supreme Court decisions making clear that the test of whether a statute is "applicable" under V.R.C.P. 6(a) is whether the statute concerns matters to which the Rules of Civil Procedure apply under V.R.C.P. 1. In Allen v. Employment Security Board, 133 Vt. 166, 168 (1975), affirming the Board's dismissal of two appeals as untimely under applicable statutory provisions, the Court stated, "The scope of the Rules of Civil Procedure is clearly defined in V.R.C.P. 1. They govern procedure 'in the Superior Court in all suits of a civil nature' as well as causes transferred from District Court and appeals to the Superior Court, with stated exceptions. Clearly they do not apply to the cases here in issue." Appellant had argued that the statutory provisions should incorporate former V.R.C.P. 6(a) extending time periods that ended on weekends or holidays and former V.R.C.P. 6(e) adding time after service by

mail. In State v. Hanlon, 164 Vt. 125, 128 (1995), the Court found the State's appeal timely, holding that the provision of 13 V.S.A. § 7403(e) establishing a time period for the State to file an appeal in a criminal matter was an "applicable statute" under V.R.C.P. 6(a), incorporated in V.R.A.P. 26(a); thus, the statutory time period could be extended by the weekend and holiday provisions of the rule as it then stood.

The Federal 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 in the amended rule 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.

In sum, in the Vermont rules, most periods of 3 days are changed to 5 unless there is a specific reason for the shorter time. Periods of 5 to 20 days are converted to 7 or multiples of 7 for convenience. Thus, 5 days becomes 7. Seven days remains 7. Ten and 15 days become 14. Twenty days become 21. Several 10-day time periods were enlarged and changed to 28 days for consistency with the changed federal standard for motion practice. Thirty-day time periods remain unchanged. 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, former 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." Former 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.

Rule 6(a)(6) is added consistent with Act ___ of 2017 discussed above to make clear that an applicable statute, or another provision of these or other court procedural rules, computing a time period in "business days" creates an exception to the "day is a day" counting method generally made applicable by Rule 6(a)(1): Intermediate Saturdays, Sundays, and state or federal legal holidays will not be counted in computing a period specified to be in "business days," contrary to the practice specified by Rule 6(a)(1) for computing periods not so labeled.

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 seven days, consistent with F.R.C.P. 6(c)(2).

Rule 6(e) is amended to adopt the simplified language of Federal Rule 6(d)as amended in 2005 and follows the federal rule in adding the additional three days after service by electronic means if permitted or required under Rule 5(b)(4). Federal Rule 6(d) was amended effective December 1, 2016, to eliminate the three-day provision for electronic service, because, as the Federal Advisory Committee's Notes state, initial concerns with the reliability of electronic transmission "have been substantially alleviated by advances in technology and in widespread skill in using electronic transmission." In view of the relatively recent availability and use of electronic transmission in Vermont practice, the three-day provision has been retained in the present amendment.

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—2017 Amendment**

Rule 7(b)(4) is amended to extend its 5-day time period to 7 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

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—2017 Amendment**

Rule 12 is amended to change its 10-day, 20-day, and 50-day time periods to 14, 21, and 49 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

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—2017 Amendment**

Rule 13(j) is abrogated. Justices' courts were eliminated and their functions transferred to the District Court by Act No. 249 of 1973 (Adj. Sess.). The District Court was subsequently 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—2017 Amendment**

Rule 15(a) is amended to extend its 10- and 20-day time periods to 14 and 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

10. That Rule 16.1(b) 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—2017 Amendment**

Rule 16.1(b) is amended to change its 10-day and two-week time periods to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

11. 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—2017 Amendment**

Rule 17(c) is amended to extend its 10-day time periods to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

12. 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—2017 Amendment**

Rule 23(f) is amended to extend its 10-day time period to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

13. 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. The court shall do so upon motion by the attorney for any party if the motion includes:

* * * * * *

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—2017 Amendment**

Rule 26(f) is amended to change its 15-day time period to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

14. 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—2017 Amendment**

Rule 27(a)(2) is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

15. 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—2017 Amendment**

Rules 30(b)(1) and (5) are amended to extend their 10- and 5-day time periods to 14 and 7 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

16. 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—2017 Amendment**

Rule 32(d)(3)(C) is amended to extend its 5-day time period to 7 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

17. 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—2017 Amendment**

Rule 33(a) is amended to change its 45-day time period to 42 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

18. 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. . . .

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**Reporter's Notes—2017 Amendment**

Rule 34(b) is amended to change its 45-day time period to 42 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

19. 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—2017 Amendment**

Rule 36(a) is amended to change its 45-day time period to 42 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

20. 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 ~~10~~ 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 ~~10~~ 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—2017 Amendment**

Rules 38(b) and (c) are amended to extend their 10-day time periods to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

21. 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—2017 Amendment**

Rules 40(a)(1) and (b) are amended to extend their 20-day time periods to 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

22. 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—2017 Amendment**

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

23. That Rules 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—2017 Amendment**

Rule 52(a) is amended to extend its 5-day time periods to the 7 days consistent with the simultaneous "day is a day" amendments of V.R.C.P. 6. Rule 52(b) is amended for consistency with the current federal standard for motion practice, which was extended from 10 days to 28 days.

24. That Rules 53(d)(1) 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.**

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(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—2017 amendment**

Rule 53(d) is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendment of V.R.C.P. 6. Rule 53(e) is amended for consistency with F.R.C.P. 53(f)(2).

25. 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—2017 Amendment**

Rule 55(b)(4) is amended to extend its 3-day time period to 5 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

26. 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—2017 Amendment**

Rule 58(d) is amended to extend its 5-day time period to 7 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

27. 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 ~~10~~ 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 ~~10~~ 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 ~~10~~ 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 ~~10~~ 28 days after entry of the judgment.

* * * * * *

**Reporter's Notes—2017 Amendment**

Rule 59(c) is amended to extend its 10-day time period to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6. Rules 59(b),(d), and (e) are amended for consistency with the new federal standard for motion practice, which was extended from 10 days to 28 days. The 20-day time period in Rule 59(c) is reduced 14 days so that the total time for filing and serving affidavits may not exceed 30 days.

28. That Rule 62(a) 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—2017 Amendment**

Rule 62(a)(3)(A)-(B) is amended to extend its 10-day and 20-day time periods to 14 and 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

29. 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—2017 Amendment**

Rule 64(b)(2) is amended to extend its 5-day time period to 7 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

30. 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—2017 Amendment**

Rule 65(a) is amended to extend its 10-day time periods to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6. Consistent with V.R.C.P.65(b)(4), the two-day notice period for a motion to dissolve a TRO obtained without notice is retained in view of the exigent circumstances likely present in such a case.

31. 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—2017 Amendment**

Rule 68 is amended to extend its 10-day time periods to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

32. 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—2017 Amendment**

Rules 72(a) and (f)(1) and (2) are amended to extend their 5-, 10- and 20-day time periods to 7, 14, and 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

33. 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—2017 Amendment**

Rule 74(b) is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

34. 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—2017 Amendment**

Rule 78(b)(1) is amended to change its 15- and 10-day time periods to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

35. 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—2017 Amendment**

Rule 79.1(b) is amended to extend its 5-day time period to 7 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

36. 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 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—2017 Amendment**

Rule 80.1 is amended to extend its 6- and 10-day time periods to 7 and 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

37. 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—2017 Amendment**

Rule 80.2(a) is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

38. 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—2017 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 consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

39. That Rules 80.6(c)(3), (e)(1) and (5) and (*l*)(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—2017 Amendment**

Rules 80.6(c)(3), (e)(1) and (5), and (*l*)(1) are amended to change their 5-, 10-, 15-, and 20-day time periods to 7, 14, and 21 days consistent the simultaneous "day is a day" amendment of V.R.C.P. 6.

40. 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—2017 Amendment**

Rules 80.7(c)(2)(C) and (d)(1)-(3) are amended to extend their 5- and 10-day time periods to 7 and 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

41. 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—2017 Amendment**

Rule 80.9(b)(3) is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

42. 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, 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~~ 14 days from the date of the request.

**Reporter's Notes—2017 Amendment**

Rule 80.10(e) is amended to extend its 10-day time period to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

43. That Rule 80.11(e)(3)(B) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

## RULE 80.11. PROCEDURE IN EXPEDITED ACTIONS

(e) **Discovery.**

* * * * * *

(3) *Disclosure of Retained Expert Testimony.*

* * * * * *

(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~~ 14 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~~ 14 days after the deposition of the other party's expert.

**Reporter's Notes—2017 Amendment**

Rule 80.11(e)(3)(B) is amended to change its 15-day time period to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

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—2017 Amendment**

Form 1 is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

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—2017 Amendment**

Form 1A is amended to extend its 41-day time period to 42 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

46. That Form 2B of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

**FORM 2B. SUMMONS TO TRUSTEE FOR EARNINGS**

* * * * * *

Said disclosure shall be served on plaintiff 's attorney whose name and address is:

_____

_____

_____

and a copy shall be provided to the court. The disclosure must be served at least ~~three (3)~~ five (5) days prior to the hearing date specified above.

**Reporter's Notes—2017 Amendment**

Form 2B is amended to extend its 3-day time period to 5 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6 and 4.2(j)(3).

47. 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—2017 Amendment**

Form 15 is amended to extend its 10-day time period to 14 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6 and 17(c).

48. That 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—2017 Amendment**

Form 22 is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.

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

50. 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 _____, 2017.

_____
Paul L. Reiber, Chief Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

**PROPOSED**

**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**_____TERM, 2017**

**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 relating 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—2017 Amendment**

Rule 12.1(a) is amended to conform its 10-day time periods to the contemporaneously amendment of V.R.Cr.P. 45, which adopts the "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—2017 Amendment**

Rule 29(c) is amended to conform its 10-day time period to the contemporaneously amendment of V.R.Cr.P. 45, which adopts the "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—2017 Amendment**

Rule 32(c)(4)(A) is amended to conform its 3-day time period to the contemporaneously amendment of V.R.Cr.P. 45, which adopts the "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 by the 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—2017 Amendment**

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

5. That Rule 35(c) of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 35. CORRECTION, REDUCTION AND MODIFICATION OF SENTENCE**

(c) **Modification of Sentence on Motion of Prosecuting Attorney.** A motion to modify a sentence filed by the prosecuting attorney shall be made within seven business days of the date of imposition of sentence.

* * * * * *

**Reporter's Notes—2017 Amendment**

Rule 35(c) is amended to specify that a prosecuting attorney's motion to modify sentence must be made within seven business days of imposition of sentence. Addition of the term "business" to define the running of the days is required to render the rule consistent with the provisions of 13 V.S.A. § 7042(b), as amended by 2017, No. ____, § 29.

6. 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 applicable 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.

(7) *"Business Day" Defined.* A "business day" is a day that is not a Saturday, Sunday, or legal holiday.

(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.

(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 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. 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 Certain Kinds of Service ~~by Mail~~.** ~~Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other~~

~~paper upon him and the notice or other paper is served upon him by mail, three days shall be added to the prescribed period unless the notice or other paper is served by the court.~~ Whenever a party must or may act within a specified time after being served and service is made under V.R.C.P. 5(b)(2) (mailing), (3) (leaving with the clerk), or (4) (sending by electronic means), 3 days are added after the period would otherwise expire under subdivision (a).

**Reporter's Notes—2017 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), 204a(a)(5).

For clarity, amended V.R.Cr.P. 45(a) retains the language of the former Vermont rule making its computation provisions apply to a time period in "any applicable statute that does not specify a method of computing time." Thus, if a statute pertaining to criminal procedure itself specifies the method of computation of time in the particular instance, the provisions of that statute would govern as to the method of computation. By Act __ of 2017, the Legislature amended a number of statutory procedural time periods of less than 10 days to be expressly "business days," thus making Rule 45(a) inapplicable to them. For consistency, "business days" has been added to a few such time periods in several rules that were taken from one of the amended statutes. Act __ also amended statutory periods of 10 days to 14 days, thus making them consistent with the "day is a day" provisions of Rule 45(a).

As the 2009 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 (providing that 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). The Federal Advisory Committee Notes further explain that 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 (explaining that defendant wishing to offer 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 10 days after an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, 2007, is Labor Day). But if a filing is due 10 days before an event, and the tenth 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.

The one-day time period in Rule 45(d) for service of opposing affidavits on motions is changed to 7 days, consistent with V.R.C.P. 6(d) and F.R.C.P. 6(c)(2).

Rule 45(e), providing an additional 3 days for actions required after service is amended for conformity with other rules. V.R.Cr.P. 49(b) adopts by reference the provisions of V.R.C.P. 5 governing service for criminal proceedings as well. Rule 45(e) is amended to adopt the simplified language of F.R.Cr.P. 45(c) as amended in 2007 and follows the federal rule in effect until December 1, 2016 by adding the additional 3 days after service by electronic means if permitted or required under V.R.C.P. 5(b)(4). Federal Rule 45(c) was amended, effective December 1, 2016, to eliminate the 3-day provision for electronic service because, as the Federal Advisory Committee's notes state, initial concerns with the reliability of electronic transmission "have been substantially alleviated by advances in technology and widespread skill in using electronic transmission." However, in view of the relatively recent availability and use of electronic transmission in Vermont practice, the 3-day provision encompassing electronic transmission has been retained in the present amendment.

7. 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 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—2017 Amendment**

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

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

9. 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 _____, 2017.

_____
Paul L. Reiber, Chief Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice

_____
Karen R. Carroll, Associate Justice

**PROPOSED**

**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**_____, 2017**

**Order Promulgating Amendments to the Vermont Rules for Family Proceedings**

Pursuant to Chapter II, Section 37, of the Vermont Constitution, it is hereby ordered:

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

**RULE 1. PROCEDURE FOR JUVENILE DELINQUENCY PROCEEDINGS**

(a) **Applicability of Rules to Juvenile Proceedings.**

* * * * * *

(3) *Rules Modified.* The following Vermont Rules of Criminal Procedure shall apply to the extent set forth in this paragraph: .... Rules 11, 11.1, 12, 12.1, 15, 16, 16.1, 16.2, 17 and 26 shall be subject to subdivisions (d), (e), (h) and (i) of this rule and to 33 V.S.A. § 5110; however, in lieu of pleas of guilty or not guilty the pleas shall be admissions or denials, pleas shall be entered at the preliminary hearing, the pretrial hearing shall be held within ~~15~~ 14 days of the preliminary hearing, and pretrial motions shall be filed at or before the merits hearing. ....Rule 47 shall apply but memoranda in opposition shall be filed within ~~5~~ 7 days unless otherwise ordered by the court. ...

* * * * * *

(d) **Scheduling; Discovery.**

* * * * * *

(3) *Scheduling of Pretrial Hearings and Motions Hearings.* The court shall schedule a pretrial hearing within ~~15~~ 14 days of the preliminary hearing. The court may schedule a motions hearing at any time.

* * * * * *

(f) **Parties and Participants Other Than Child and Attorney Representing the State.**

* * * * * *

(2) *Participation.* Only the child and the attorney representing the state shall be entitled to participate in pretrial discovery relating to the merits hearing, call or examine witnesses at the

merits hearing, or otherwise actively participate at the merits hearing or proceedings relating to the merits hearing, unless the court for good cause shown at or before the merits hearing grants permission. The court's order of permission may place limits on the participation and may condition participation upon prompt compliance with such discovery as the order specifies. All persons who by statute are parties to these proceedings shall be entitled to participate fully in the disposition hearing and at discovery and other proceedings relating only to the disposition hearing. In any proceeding at which a party other than the child or the attorney representing the state intends to call a witness, the name and address of the witness and any written statement of the witness shall be disclosed at least ~~three~~ five days prior to the hearing, except for good cause shown.

* * * * * *

**Reporter's Notes—2017 Amendments**

Rule 1 is amended to change its 15- and 3-day time periods to 14 days and 5 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6 and V.R.Cr.P. 45, which adopt from the Federal Rules the day-is-a-day counting system, a simplified method of computing time periods. V.R.Cr.P. 45 applies under Rule 1, and V.R.C.P. 6 is generally applicable in the Family Division. See V.R.F.P. 2(a), 4.0(a), 9(e).

The amendments serve the purposes of both achieving simplicity and maintaining uniformity with the federal practice. As stated in the Reporter's Notes to the amendment of V.R.C.P. 6,

> As the Federal Advisory Committee's Notes point out, this computation method does not apply when a statute prescribes a specific method for computing time. For clarity, amended V.R.C.P. 6(a) retains the language of the former Vermont rule making its computation provisions apply to a time period in any "applicable statute that does not specify a method of computing time" (emphasis added). By Act ___ of 2017, the Legislature amended a number of statutory procedural time periods of less than 10 days to be expressly "business days," thus making Rule 6(a) inapplicable to them. For consistency, "business days" has been added to a few such time periods in several rules that were taken from one of the amended statutes. Act ___ also amended statutory periods of 10 days to 14 days, thus making them consistent with the "day is a day" provisions of Rule 6(a).
>
> Former V.R.C.P. 6(a) applied to a time period in "any applicable statute." The retention of "applicable" in the amended rule is intended to preserve the effect of two Vermont Supreme Court decisions making clear that the test of whether a statute is

"applicable" under V.R.C.P. 6(a) is whether the statute concerns matters to which the Rules of Civil Procedure apply under V.R.C.P. 1. In Allen v. Employment Security Board, 133 Vt. 166, 168 (1975), affirming the Board's dismissal of two appeals as untimely under applicable statutory provisions, the Court stated, "The scope of the Rules of Civil Procedure is clearly defined in V.R.C.P. 1. They govern procedure 'in the Superior Court in all suits of a civil nature' as well as causes transferred from District Court and appeals to the Superior Court, with stated exceptions. Clearly they do not apply to the cases here in issue." Appellant had argued that the statutory provisions should incorporate former V.R.C.P. 6(a) extending time periods that ended on weekends or holidays and former V.R.C.P. 6(e) adding time after service by mail. In State v. Hanlon, 164 Vt. 125, 128 (1995), the Court found the State's appeal timely, holding that the provision of 13 V.S.A. § 7403(e) establishing a time period for the State to file an appeal in a criminal matter was an "applicable statute" under V.R.C.P. 6(a), incorporated in V.R.A.P. 26(a); thus, the statutory time period could be extended by the weekend and holiday provisions of the rule as it then stood.

The Federal Advisory Committee's Notes provide a helpful further explanation of the change:

> Under former [Federal and Vermont] 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 in the amended rule 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.

In sum, in the Vermont rules, most periods of 3 days are changed to 5 unless there is a specific reason for the shorter time. Periods of 5 to 20 days are converted to 7 or multiples of 7 for convenience. Thus, 5 days becomes 7. Seven days remains 7. Ten and 15 days become 14. Twenty days become 21. Several 10-day time periods were enlarged and changed to 28 days for consistency

with the changed federal standard for motion practice. Thirty-day time periods remain unchanged. 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, former [V.R.C.P.] 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." Former [V.R.C.P.] 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.

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

**RULE 2. CHILDREN IN NEED OF CARE AND SUPERVISION**

(a) **Applicability of Rules to Juvenile Proceedings.**

* * * * * *

(3) *Rules Modified.* The following Vermont Rules of Civil Procedure shall apply to the extent set forth in this paragraph: .... Rules 15, 16 and 16.2 shall be subject to subdivision (d) of this rule. In addition, the pretrial conference shall be entitled a pretrial hearing, which shall be held within ~~15~~ 14 days of the preliminary hearing; and, absent a showing of good cause, pretrial motions must be filed at or before the pretrial hearing. ... Rule 78(b) shall apply, but memoranda in opposition shall be filed within ~~5~~ 7 days unless otherwise ordered by the court. Vermont Rules

of Criminal Procedure 17 shall govern the issue of subpoenas.

* * * * * *

(d) **Scheduling; Discovery.**

* * * * * *

(4) *Scheduling of Pretrial Hearings and Motions Hearings.* The court shall schedule a pretrial hearing within ~~15~~ 14 days of the temporary care or preliminary hearing. The court may schedule a motions hearing at any time.

(5) *Depositions.* Except as set forth in this rule, Vermont Rule of Civil Procedure 30 shall govern the taking of depositions. ... Notice of deposition may be oral or written, and need not be provided ~~ten~~ 14 days in advance of the deposition so long as reasonable notice is given, which in no case shall be less than 48 hours. ...

* * * * * *

**Reporter's Notes—2017 Amendments**

Rule 2 is amended to change its 15- and 10-day time periods to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

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

**RULE 3. TERMINATION OF PARENTAL RIGHTS**

(b) **Pretrial Hearing.** A pretrial hearing shall be held within ~~fifteen~~ 14 days of the filing of the petition, motion or request. At the pretrial hearing the judge either shall assign a date certain for hearing on the petition, motion or request, or shall issue a discovery schedule and assign a date certain for a second pretrial hearing at which a date certain for the hearing shall be set.

**Reporter's Notes—2017 Amendments**

Rule 3(b) is amended to change its 15-day time period to 14 days consistent, with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

4. That Rule 4.0 of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

## RULE 4.0. DIVORCE AND OTHER FAMILY PROCEEDINGS

* * * * * *

(b) **Complaint; Commencing an Action; Service; Parties.**

* * * * * *

(2) *Commencing an Action; Service.*

* * * * * *

(B) Service may be made by any of the following methods:

* * * * * *

(v) At any time, service may be made by delivering to the defendant by any method chosen by the plaintiff the summons and a request that the defendant waive service by any other method. The summons and request must be accompanied by the complaint, the notice of hearing, and a waiver of service form. The defendant must sign and date the waiver of service and return it to the court no later than ~~20~~ 21 days from the date the documents were delivered, or 60 days from that date if the documents and requests are delivered to the defendant outside a state or territory of the United States. If the defendant answers the complaint, the defendant must do so within ~~20~~ 21 days of the date that the defendant signed the waiver or, if the waiver is undated, within ~~20~~ 21 days of the date that the waiver is filed with the court. Failure to comply with a request to waive service may result in the imposition of costs, including reasonable attorney's fees, against the defendant for expenses incurred in effecting service by another means.

* * * * * *

(g) **Discovery.** Discovery may be taken as in civil actions, except as follows:

* * * * * *

(6) *Certificate or Affidavit of Income and Assets.*

(A) In any action subject to this rule in which a party is not, or may not subsequently be, obligated to pay child support, the parties must file a certificate, subject to the obligations of V.R.C.P. 11, that they have disclosed to each other all financial information, including, but not limited to, income, assets, and liabilities; but on order of the court, each party must file an affidavit of income and assets. The certificate must be filed on the earlier of the following dates: 30 days after the service of the complaint or on the date of the case management conference or, if no conference is scheduled, at least ~~five working~~ seven days before the date of the first-scheduled court appearance. The affidavits must be filed on the date set in the court's order requiring the filing.

* * * * * *

**Reporter's Notes—2017 Amendments**

Rule 4.0 is amended to change its 20- and 5-day time periods to 21 and 7 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

5. That Rule 4.1 of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

## RULE 4.1. CASES INVOLVING MINOR CHILDREN

(a) **Complaint; Service; Case Management Conference.**

* * * * * *

(2) *Commencing an Action; Service.* If either party is or may be obligated to pay child support to the other party or to the Office of Child Support, the action must be commenced, and service of process must be made, as provided in this paragraph.

* * * * * *

(B) After filing, the family division clerk will complete a notice of hearing or notice of case manager's conference and must attempt to schedule the hearing or case manager's conference so that it is held from ~~45~~ 42 to 60 days after the summons and complaint were filed, unless because of unavailability of magistrates, judges, or case managers or because of a subsequent failure to complete service, it is not practical to do so.

* * * * * *

(H) At any time, service may be made by delivering to the defendant by any method chosen by the plaintiff the summons and a request that the defendant waive service by any other method. The summons and request must be accompanied by the complaint, the notice of hearing or case manager's conference if applicable, and a waiver of service form. The defendant must sign and date the waiver of service and return it to the court no later than ~~20~~ 21 days from the date the documents were delivered, or 60 days from that date if the documents and request are delivered to the defendant outside a state or territory of the United States. If the defendant answers the complaint, the defendant must do so within ~~20~~ 21 days of the date that the defendant signed the waiver or, if the waiver is undated, within ~~20~~ 21 days of the date that the waiver is filed with the court. Failure to comply with a request to waive service may result in the imposition of costs, including reasonable attorney's fees, against the defendant for expenses incurred in effecting service by another means.

* * * * * *

(b) **Discovery and Required Information.**

* * * * * *

(4) *Affidavit of Income and Assets.*

(A) In any action under this rule in which a party is or may be obligated to pay child support to the other party or the Office of Child Support, each party must file the affidavit of income and assets required by 15 V.S.A. § 662 on or before the date of the case management conference scheduled pursuant to Rule 4.1(a)(3) or, if no conference is scheduled, at least ~~five working~~ 7 days before the date of the first scheduled hearing before the magistrate.

* * * * * *

**Reporter's Notes—2017 Amendments**

Rule 4.1 is amended to change its 45-, 20-, and 5-day time periods to 42, 21, and 7 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

6. That Rule 4.2 of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 4.2. MOTIONS AFTER JUDGMENT**

* * * * * *

(b) **Motion and Service.** Any proceedings under this rule to modify or enforce the judgment in an action for divorce must be made on motion and supported by affidavit. Copies of the motion and affidavit must be served in the same manner as a complaint by the appropriate method provided in this subdivision.

(1) *Cases Not Involving Minor Children.*

(A) Except as provided in paragraph (2), service of a motion not involving minor children must be made on the party and not the party's attorney, whether the party is within the state or not, by one of the following methods:

* * * * *

(iii) by delivery to the party by any method chosen by the moving party with a request that the responding party waive service by any other method. The motion with a request must be accompanied by the notice of hearing or case manager's conference if applicable and a waiver of service form. The responding party must sign and date the waiver of service and return it to the court no later than ~~20~~ 21 days from the date the documents were delivered, or 60 days from that date if the documents and request are delivered to the responding party outside a state or territory of the United States. If the party served responds, that party must do so within ~~20~~ 21 days of the date that the party signed the waiver or, if the waiver is undated, within ~~20~~ 21 days of the date that the waiver is filed with the court. Failure to comply with a request to waive service may result in the imposition of costs, including reasonable attorney's fees, against the responding party for expenses incurred in effecting service by another means; or

* * * * * *

**Reporter's Notes—2017 Amendments**

Rule 4.2 is amended to extend its 20-day time periods to 21days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

7. That Rule 4.3 of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 4.3. SPECIAL PROCEDURES**

* * * * * *

(b) **Motion to Intervene and for Relief from Parentage Judgment; Action for Wage Withholding.** Except as provided in this subdivision, the Vermont Rules of Civil Procedure apply to motions by nonparties seeking to intervene and obtain relief from a judgment of parentage and to actions seeking wage withholding.

* * * * * *

(2) *Action tor Wage Withholding.* Petitions for wage withholding to secure child support, spousal support, and arrearages of child support or spousal support are governed by this paragraph. If a petition is filed seeking both wage withholding for spousal support and wage withholding for child support, or arrearages thereof, the action will be heard entirely by a single superior judge assigned to the family division without any individualized finding under 4 V.S.A. § 463.

* * * * * *

(C) Notice of Hearing; Objections. A plaintiff who seeks wage withholding must submit a blank notice of hearing to the court together with the petition, for completion by the clerk and service with the petition. A hearing date will be scheduled within ~~10~~ 14 days of the filing of the petition. A party who objects must present the objection at the hearing provided for in the notice of hearing. If the Office of Child Support has notified the obligor to commence wage withholding pursuant to 15 V.S.A. § 782(f), the obligor must file any objection and a request for hearing within ~~10~~ 20 days of receiving the notification.

* * * * * *

(d) **Property Masters.**

* * * * * *

(6) *Report.*

* * * * * *

(B) Objections; Effect of Master's Report.

(i) In an action where the master has been appointed by agreement pursuant to paragraph (2) of this subdivision, if the parties have waived the right to object to the acceptance of the report, the master's findings of fact and conclusions of law will be conclusive on the parties, subject to the court's approval.

(ii) In any other action, any party may, within ~~10~~ 14 days after being served with notice of the filing of the report, serve written objections on the other party. Any party may, within 30 days after service of written objections by either party or, if no timely written objections have been served by either party, within 30 days after service of notice of the filing of the report, move the court for action on the report and any timely written objections to it. Whether or not a timely motion is filed, the court, with or without hearing, must review the report. In reviewing the report, the court must accept the master's findings of fact so long as they are supported by substantial evidence and may accept, modify, or reject the master's conclusions of law and recommendations. On the basis of that review, the court may adopt, modify, or reject the report in whole or in part, may receive further evidence, or may recommit it with instructions.

* * * * * *

(e) **Parent Coordination.**

(5) *Duties of the Parent Coordinator.*

* * * * *

(H) If the parties cannot agree on a parent-child contact plan, the parent coordinator will submit a report to the court, including a narrative summary of the parent coordinator's meetings with the parties and others and detailed recommendations for a parent-child contact plan. The recommendations of the parent coordinator must not exceed the scope delineated in the parent coordination order. The report will be filed with the court and mailed to the parties at least 14 days prior to the date set for the status conference.

(6) *Objections.* A party who objects to the parent-child contact plan proposed by the parent coordinator must file written objections with the court within ~~10~~ 14 days after the mailing to the parties of the parent coordinator's report and recommendations.

* * * * * *

**Reporter's Notes—2017 Amendments**

Rule 4.3(d) and (f) are amended to extend their 10-day time periods to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting

system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1. Rule 4.3(b)(2)(C) is amended for consistency with 15 V.S.A. § 782(c), as amended by Act ___ of 2017, and 15 V.S.A. § 783(a)(4).

8. That Rule 8(g) of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 8. MAGISTRATES PROCEEDINGS**

* * * * * *

(g) **Appeals.**

(3) *Appellate Procedure.*

* * * * * *

(B) The record on appeal shall consist of the papers and exhibits filed with the magistrate, the magistrate's decision, a statement of the questions which the appealing party wishes to have determined, and the tape of the magistrate's hearing. The appellant shall file and serve the statement of questions within ~~15~~ 14 days after the filing of the notice of appeal.

* * *

**Reporter's Notes—2017 Amendments**

Rule 8(g)(3)(B) is amended to change its 15-day time period to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

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

**RULE 9. ABUSE PREVENTION**

(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~~ 7 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~~ 14 days from the date of the request.

* * * * * *

**Reporter's Notes—2017 Amendments**

Rule 9(e) is amended to extend its 5-day time period to 7 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1. The required hearing date is extended from 10 to 14 days from the issuance of the order for consistency with 15 V.S.A. § 1104(b) as amended by Act ___ of 2017.

10. That Rule 15 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**

(a) **Appearance: In General.** This rule applies to all proceedings under Rules 2, 3, 4.0-4.3, and 9.

* * * * * *

(2) *Form; Service.* Except as provided in a limited appearance under subdivision (h), an attorney's signature to a pleading or motion 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 Civil Rule 5. Appearances entered in open court shall be confirmed in writing and served within ~~five~~ 7 days. An appearance, whether by pleading or motion or by formal written appearance, shall be signed by an attorney in the attorney's individual name and shall state the attorney's office address.

* * * * * *

(4) *Parties Appearing Pro Se.* A party may make an initial appearance pro se by signing a pleading or motion, by appearing in open court if no pleading or motion is required, or by filing a signed notice with the clerk, which shall be served pursuant to Civil Rule 5. Initial appearances entered in open court shall be confirmed in writing and served within ~~5~~ 7 days. ...

* * * * * *

(d) **Same: Child Support Hearings.** Except as may be otherwise agreed or ordered pursuant to a limited appearance under subdivision (h), an attorney who has entered an appearance for any party in a divorce, parentage, or other action under Rules 4.0-4.3 shall participate in all child support hearings and shall comply with all provisions for the exchange and filing of all required financial documents. In the discretion of the judge or magistrate, and for good cause shown, an attorney may be excused from attending a child support hearing, provided that not less than ~~5~~ 7 days prior to the scheduled hearing date, the attorney files (1) all financial affidavits and other documentation required by statute and these rules; and (2) a joint waiver of representation,

signed by attorney and client and setting forth that the client has affirmatively requested to appear pro se at the child support hearing and understands the nature and scope of the hearing; and further provided that parental rights and responsibilities are the subject of a court order or an existing written stipulation on file with the court.

* * * * * *

(g) **Same: Notification of Party.** When an attorney has been granted leave to withdraw an appearance pursuant to paragraph (3) of subdivision (f) or a limited appearance pursuant to paragraph (3) of subdivision (h), the clerk shall cause notice of the withdrawal to be served upon the party forthwith in the manner provided in Civil Rule 5. The notice shall inform the party that unless an attorney enters an appearance on behalf of the party within ~~15~~ 14 days after service of the notice, the party will be deemed to have entered a pro se appearance. If no appearance by attorney is entered within ~~15~~ 14 days, the clerk shall send the party written notification of the party's pro se status and shall serve that notification upon all other parties pursuant to Civil Rule 5. The notification to the party shall be accompanied by the material required by paragraph (4) of subdivision (a) to be sent to a party making an initial appearance pro se.

* * * * * *

**Reporter's Notes—2017 Amendments**

Rule 15 is amended to change the 5- and 15-day time periods to 7 and 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

11. That Rule 16 of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 16. CIVIL CONTEMPT PROCEEDINGS**

* * * * * *

(b) **Procedure.**

* * * * * *

(2) *Notice; Service.* The order of the court initiating the proceeding shall set the matter for evidentiary hearing and shall order that notice of the hearing, together with a copy of the order initiating the proceeding and any motion and affidavit, shall be served upon the person against whom the contempt proceedings are brought (the respondent) by the appropriate method provided in Rule 4.2(b) of these rules. The notice shall set forth the title of the action and the date, time, and place of the hearing, shall order the respondent to appear at the hearing to show cause why he or she should not be held in contempt, and shall allow the respondent a reasonable

time, not less than ~~15~~ 14 days before the date set for hearing, to file an answer and prepare a defense. ...

* * * * * *

(c) **Sanctions.** The court may impose any of the following sanctions on a person found to be in contempt:

* * * * * *

(4) *Financial Obligations.* In addition, in proceedings involving an order creating a financial obligation in accordance with 15 V.S.A. § 603, the court may order any of the following:

* * * * * *

(D) Payment by respondent of all or a portion of the unpaid financial obligation as a purge condition, providing that the court finds that the person has the present ability to pay the amount ordered and sets a date certain for payment. If the purge conditions are not met by the date established by the court and the date set for payment is within 30 days of finding of ability to pay, the court may issue a mittimus placing the contemnor in the custody of the commissioner of corrections.

(i) As long as the person remains in the custody of the commissioner of corrections, the court shall schedule the case for a review hearing every ~~15~~ 14 days.

* * * * *

**Reporter's Notes – 2017 Amendments**

Rule 16 is amended to change its 15-day time periods to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

12. That Rule 18(d) of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 18. MEDIATION**

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

* * * * * *

(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~~ 14 days after the date of the last signature.

* * * * * *

**Reporter's Notes—2017 Amendments**

Rule 18(d)(7) is amended to extend its 10-day time period to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

13. That these rules as amended are prescribed and promulgated effective _____. The Reporter's Notes are advisory.

14. 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 _____.

_____
Paul L. Reiber, Chief Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice

_____
Karen R. Carroll, Associate Justice

**PROPOSED**

**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**_____ TERM, 2017**

**Order Promulgating Amendments to the Vermont Rules for Environmental Court Proceeding**

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

1. That Rule 4 of the Vermont Rules for Environmental Court Proceedings is amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 4. REVIEW OF ENVIRONMENTAL ENFORCEMENT ORDERS**

* * * * * *

(b) **Assurances of Discontinuance.** An assurance of discontinuance filed pursuant to 10 V.S.A. § 8007(c) shall be deemed a pleading by agreement pursuant to Rule 8(g) of the Vermont Rules of Civil Procedure. Assurances shall be simultaneously filed with the court and the Attorney General. The court may sign the assurance with or without a hearing. If the assurance is signed by the court, the assurance shall become a judicial order and the court shall notify the Secretary, the respondent and the Attorney General. Notwithstanding Rule 60 of the Vermont Rules of Civil Procedure, within ~~ten~~ 14 days of the date that an assurance is signed by the court, the Attorney General may move the court to vacate the order on the grounds that the assurance is insufficient to carry out the purposes of 10 V.S.A. Chapter 201. After hearing, upon finding that the assurance is insufficient to carry out the purposes of Chapter 201, the court shall vacate the order.

(c) **Emergency Orders.**

(1) *Procedure for Issuance.* Upon presentation of an emergency administrative order to the court pursuant to 10 V.S.A. § 8009(b), if the court finds that the Secretary has made a sufficient showing that (A) a violation presents an immediate threat of substantial harm to the environment or an immediate threat to the public health; or (B) an activity will or is likely to result in a violation which presents an immediate threat of substantial harm to the environment or an immediate threat to the public health; or (C) an activity requiring a permit has been commenced and is continuing without a permit, an emergency judicial order may be issued pursuant to 10 V.S.A. §§ 8008 and 8009. Rule 65(a) of the Vermont Rules of Civil Procedure shall provide the procedure governing issuance of these orders, except that: (i) an affidavit but no complaint is required; (ii) the affidavit must establish and the court must find that all reasonable efforts have been made to notify the respondent of the presentation of the order to the court, and, if so, the court may allow the presentation to be made ex parte; (iii) any order, including an order issued ex parte, may, if the court so orders, continue in effect until further order of the court; and (iv) the order need only state the grounds upon which it has been granted, that the respondent has the right to a prompt hearing on the merits of the order, that the hearing must be requested by

motion filed within five business days of receipt of the order, that the order will remain in effect until further order of the court or a date provided, and the address or addresses where the motion must be filed. At any hearing on an application for an emergency order, the court may permit either party to present evidence. Any evidence so received that would be admissible upon the hearing on the merits becomes part of the record and need not be repeated upon the hearing on the merits.

(2) *Effect; Service.* An emergency judicial order shall become effective on actual notice to the respondent. The Secretary shall cause the order to be served upon the respondent.

(3) *Hearings on Modification or Dissolution; Stay.* If a motion requesting a hearing on the merits of the order is filed with the court and the Secretary by the respondent within five business days of the receipt of the order, the court shall schedule a prompt hearing, which shall take precedence over all other hearings and shall be held within five business days of filing of the motion. The court may affirm, modify or dissolve the order. The filing of a motion does not operate as a stay of the order, but the court may, upon motion, stay or modify the order upon such terms and conditions as it deems appropriate. Subdivision (d) of this rule shall govern the hearing and any resulting appeal, except that paragraph (2) of that subdivision is inapplicable and a pretrial conference will be held only in the discretion of the court. The court's ruling on a motion filed under this paragraph shall be deemed a final judgment.

(d) **Procedure for Review of Administrative Orders.**

* * * * * *

(2) *Notice of Request; Stay.* Review of an order of the Secretary shall be taken by filing a notice of the request with the clerk of the Environmental Court and with the Secretary within ~~fifteen~~ 14 days of receipt of the order or decision. The notice operates as a stay of an order issued, and payment of any penalty imposed under 10 V.S.A. § 8008 pending the hearing. The court also may hear and determine a motion for an emergency order under subdivision (c) of this rule with regard to the alleged violation that is the subject of the proceeding under this subdivision.

* * * * * *

(4) *Scheduling; Discovery; Pretrial Proceedings.*

* * * * * *

(B)(i) Within 7 days of the filing of a notice of request for hearing, the Secretary shall file a pretrial memorandum which shall include a list of witnesses and a summary of any evidence which the Secretary plans to present in support of the administrative order.

(ii) Within ~~10~~ 14 days of the filing of the Secretary's memorandum, the respondent shall file a pretrial memorandum which shall state respondent's agreement or disagreement with each element of the "statement of facts" in the administrative order; shall include a list of witnesses and a summary of any evidence which respondent plans to present to contest such facts; shall state with particularity whether respondent accepts or contests each element of the "order" section of the administrative order; if a penalty

was imposed by the order, shall include a summary of any evidence respondent plans to present regarding mitigating or other factors affecting the penalty calculation; and shall include a preliminary statement of the legal and jurisdictional issues which respondent plans to raise in the proceeding.

* * * * * *

(6) *Appeal to Supreme Court; Stay Pending Appeal.*

(A) A final judgment under this rule shall be appealable as of right to the Supreme Court pursuant to 10 V.S.A. § 8013(c). The notice of appeal shall be filed within ~~ten~~ 14 days of the date of receipt of the judgment appealed from in accordance with Vermont Rule for Electronic Filing 5(f).

* * * * * *

(e) **Procedure for Review of Final Municipal Solid Waste Orders.**

* * * * * *

(2) *Notice of Request; Stay.* Review of a municipal solid waste order shall be taken by filing a notice of the request with the clerk of the Environmental Court and with the municipal clerk within ~~ten~~ 14 days of receipt of the final order. The notice operates as a stay of any order issued, and payment of any penalty imposed, pending the hearing.

* * * * * *

**Reporter's Note – 2017 Amendment**

Rule 4 is amended to change its 10- and 15-day time periods to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.C.P. 6. The 5-day periods of Rule 4(c)(1) and (3) are designated "business" days, to conform to 10 V.S.A. § 8009(d) as amended by Act ___ of 2017.

2. That Rule 5 of the Vermont Rules for Environmental Court Proceedings is amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 5. APPEALS**

* * * * * *

(b) **Notice of Appeal.**

* * * * * *

(3) *Contents of Notice of Appeal.* The notice of appeal must specify the party or parties

taking the appeal and the statutory provisions under which each party claims party status; must designate the act, order, or decision appealed from; must name the court to which the appeal is taken; and must be signed by the appellant or the appellant's attorney. In addition, the notice of appeal must (A) advise all interested persons that they must enter an appearance in writing with the court within ~~20~~ 21 days of receiving the notice, or in such other time as may be provided in subdivision (c) of this rule, if they wish to participate in the appeal and (B) give the address or location and a description of the property or development with which the appeal is concerned and the name of the applicant for any permit involved in the appeal. An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(4) *Service.*

(A) *Appeal from an Appropriate Municipal Panel.* Upon the filing of a notice of appeal from an act or decision of an appropriate municipal panel, the appellant shall at the same time mail a copy of the notice of appeal to the clerk or other appropriate officer of the panel. Upon receipt of the copy of the notice of appeal, the clerk or other officer shall, within ~~five working~~ 7 days, provide to the appellant a list of interested persons with instructions to serve a copy of the notice upon each of them by certified mail. A copy of the notice shall thereupon be served by the appellant by certified mail upon each interested person.

(B) *Appeal from the Secretary of the Agency of Natural Resources, a District Commission, or a District Coordinator.* Upon the filing of a notice of appeal from an act or decision of the secretary of the agency of natural resources, a district commission, or a district coordinator, the appellant shall serve a copy of the notice of appeal in accordance with Rule 5 of the Vermont Rules of Civil Procedure upon the secretary, district commission, or district coordinator as appropriate and upon any party by right as defined in 10 V.S.A. § 8502(5), the Natural Resources Board, and every other person to whom notice of the filing of an appeal is required to be given by 10 V.S.A. § 8504(c) or (e), as appropriate. In addition, if the appeal is from an act or decision of the secretary or a district commission, the appellant shall publish a copy of the notice of appeal not more than ~~10~~ 14 days after serving the notice as required under this subparagraph, at the appellant's expense, in a newspaper of general circulation in the area of the project which is the subject of the act or decision appealed from.

* * * * * *

(c) **Appearance.** An appellant enters an appearance by filing a notice of appeal as provided in subdivision (b) of this rule. Any other person may enter an appearance within ~~20~~ 21 days after the date on which notice of filing of the last notice of appeal to be filed was served, or, if necessary, published pursuant to subparagraph (b)(4)(B) of this rule, by filing a written notice of appearance with the clerk and by serving the notice of appearance in accordance with Rule 5 of the Vermont Rules of Civil Procedure and the Vermont Rules for Electronic Filing; provided that any person enumerated in 10 V.S.A. § 8504(n)(l)-(3) may file and serve an appearance in a timely fashion. Any other person who has not previously entered an appearance as provided in this paragraph may enter an appearance by filing a timely motion to intervene. Attorneys shall comply with Civil Rule 79.1(i).

(d) **Claims and Challenges of Party Status**

(1) *Appeals of Interlocutory District Commission Party Status Decisions.* Any party in a proceeding before a district commission, or any person denied party status in such a proceeding, may move in the Environmental Court for an appeal of an interlocutory decision of the district commission granting or denying party status pursuant to 10 V.S.A. § 6085(c). The motion, together with a notice of appeal, must be filed and served as provided in subdivision (b) of this rule within ~~ten~~ 14 days after the decision of the district commission appealed from, except that the motion and notice need not be served by publication. The court may grant the motion and hear the appeal if it determines that review will materially advance the application process before the district commission. The court shall expedite hearing and determination of the motion and appeal. The provisions of Rule 2 apply to appeals under this paragraph only as ordered by the court.

* * * * * *

(e) **Stay.** Unless the act or decision appealed from is automatically stayed pursuant to 10 V.S.A. § 8504(f)(1) by the filing of the appeal or a stay has been granted by the district commission pursuant to 10 V.S.A. § 6086(f), the court, after the notice of appeal has been filed may, on its own motion, or on motion of a party, stay the act or decision and make such other orders as are necessary to preserve the rights of the parties upon such terms and conditions as are just. When the appeal is from the issuance of a permit pursuant to 24 V.S.A. § 4449, unless the decision appealed from is automatically stayed pursuant to 10 V.S.A. § 8504(f)(1)(B), the permit shall not take effect until the earlier of ~~15~~ 14 days from the date of filing of the notice of appeal or the date of a ruling by the court under this subdivision on whether to issue a stay.

(f) **Statement of Questions.** Within ~~20~~ 21 days after the filing of the notice of appeal, the appellant shall file with the clerk of the Environmental Court a statement of the questions that the appellant desires to have determined. The statement shall be served in accordance with Rule 5 of the Vermont Rules of Civil Procedure and the Vermont Rules for Electronic Filing. No response to the statement of questions shall be filed. The appellant may not raise any question on the appeal not presented in the statement as filed, unless otherwise ordered by the court in a pretrial order entered pursuant to subdivision (d) of Rule 2. The statement is subject to a motion to clarify or dismiss some or all of the questions.

* * * * * *

(h) **Appeals to the Environmental Court on the Record.**

(1) *From an Appropriate Municipal Panel.*

(A) An appeal from an appropriate municipal panel from which appeals may be on the record pursuant to 24 V.S.A. §§ 4471 and 4472 shall be governed by the Vermont Rules of Appellate Procedure and the Vermont Rules for Electronic Filing so far as applicable and except as modified by this rule. The record on appeal shall consist of the original papers filed with the municipal panel; any writings or exhibits considered by the panel in reaching the decision appealed from; and a written transcript of the proceedings, whether recorded electronically or stenographically, certified by the presiding officer of the municipal panel as

the full, true and correct record of the proceedings. Within 30 days after the filing of the notice of appeal, the clerk or other appropriate officer of the municipal panel shall transmit the papers and exhibits filed to the clerk of the Environmental Court in the manner provided in Rule 11(b) of the Rules of Appellate Procedure.

(B) Within ~~ten~~ 14 days after filing the notice of appeal, appellant shall send to the municipal panel an order for a transcript of all proceedings, unless all parties involved in the appeal stipulate to a transcript of less than all proceedings. A copy of the order shall be served on the clerk of the Environmental Court and all persons upon whom copies of the notice of appeal have been served pursuant to subdivision (b) of this rule. It shall thereupon be the responsibility of the municipal panel to cause a transcript to be made by a Court-approved transcription service pursuant to V.R.A.P. 10(b)(1) and (2). Appellant shall pay to the municipal panel at the time of ordering the deposit amount required under V.R.A.P. 10(b)(7). Before the transcription begins, the municipal panel shall pay the transcription service a deposit pursuant to that provision.

* * * * * *

(2) *From the Commissioner of Forests, Parks, and Recreation.* An appeal from a decision of the commissioner of forests, parks, and recreation under 10 V.S.A. § 2625(f) shall be on the record of the proceedings before the commissioner. Within 30 days after the filing of the notice of appeal, the commissioner shall transmit the papers and exhibits filed to the clerk of the Environmental Court in the manner provided in Rule 11(b) of the Rules of Appellate Procedure. If those proceedings have been electronically recorded, the provisions of paragraph (1) of this subdivision concerning electronic recording apply.

* * * * * *

**Reporter's Note – 2017 Amendment**

Rule 5 is amended to change its 5-, 10-, 15-. and 20-day time periods to 7, 14, and 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.C.P. 6.

3. That these Rules, as amended, are prescribed and promulgated to become effective _____, 2017. 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 _____, 2017.

_____

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

**PROPOSED**

**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**_____TERM, 2017**

**Order Promulgating Amendment to Rule 9(a) of the Rules Governing Qualification, List, Selection and Summoning of All Jurors**

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

1. That Rule 9(a) of the Rules Governing Qualification, List, Selection and Summoning of all Jurors be amended to read as follows (deleted matter struck through; new matter underlined):

**Rule 9. Penalties**

(a) Any person who fails to return a completed questionnaire within ~~ten~~ 14 days of its receipt may be summoned by the superior court clerk forthwith to appear before the clerk to fill out a questionnaire. Any person so summoned who fails to appear as directed by the superior court clerk shall be ordered forthwith by the presiding judge to appear and show cause for the person's failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance may be found in contempt of court and shall be subject to the penalties for contempt. 4 V.S.A. § 961(a).

**Reporter's Note—2017 Amendment**

The time for returning a completed questionnaire set in Rule 9(a) is changed from ten to fourteen days to comply with a similar amendment to 4 V.S.A. § 961(a) in 2017, No. __, § 1.

2. That these rules, as added or amended, are prescribed and promulgated effective _____.

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 _____, 2017.

_____
Paul L. Reiber, Chief Justice

_____
Marilyn Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

Harold E. Eaton, Jr. Associate Justice

Karen R. Carroll, Associate Justice

**PROPOSED**

**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**_____ TERM, 2017**

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

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

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

**RULE 4. NOTICE; PROCESS**

(e) **Service by publication.** When service by publication is required by this rule or by order of the court, the person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published in a newspaper of general circulation in the probate district where the petition was filed, or such other location as the court may direct. The publication of the notice shall be made within ~~20~~ 21 days after the petition is filed or the order is granted. Service by publication is complete on the day of publication.

**Reporter's Notes—2017 Amendment**

Rule 4(e) is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6.

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

**RULE 6. TIME**

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

(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 Register's Office.* Unless the court orders otherwise, if the register'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 register'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) *"Business Day" Defined.* A "business day" is a day that is not a Saturday, Sunday, or state or federal legal holiday.

(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 52(b), 60(b) and (c), ~~except to the extent and under the conditions stated therein~~.

(c) **Affidavits on motions.** When a motion is supported by affidavit, the affidavit shall be served with the motion; and, 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.

(d) **Additional time after service by mail.** ~~Whenever a party has the right or is required to do some act within a prescribed period~~ When a party may or must act within a specified time after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days ~~shall be added to the prescribed period unless the notice or other paper is served by the court~~ are added after the period would otherwise expire under Rule 6(a).

**Reporter's Notes—2017 Amendment**

Rule 6(a) is amended to adopt the "day is a day" rule, a simplified method of computing time periods. The amendment incorporates, with minor changes, the language of the simultaneous amendment of V.R.C.P. 6(a), which, in turn, is based upon a 2009 amendment of F.R.C.P. 6(a). The amendment serves the purposes of both achieving simplicity and maintaining uniformity with the Vermont Civil Rules and the federal practice.

As the Federal Advisory Committee's Notes point out, this computation method does not apply when a statute prescribes a specific method for computing time. Amended V.R.P.P. 6(a) retains the language of the former rule making its computation provisions apply to a time period "prescribed or allowed by... any applicable statute" (emphasis added) and clarifies that it is applicable only where the statute "does not specify a method of computing time." Federal Rule 6(a) as amended in 2009 omitted "applicable" from the prior federal rule in adopting language otherwise substantially identical to the language of amended V.R.C.P. 6(a). The Federal Advisory Committee's Note does not address the question whether "statute" standing alone includes every enacted provision containing a time period.

The retention of "applicable" in the amended Vermont rule is intended to preserve the effect of two Vermont Supreme Court decisions making clear that the test of whether a statute is "applicable" under former V.R.C.P. 6(a) is whether the statute concerns matters to which the Rules of Civil Procedure apply under V.R.C.P. 1. See Allen v. Vt. Emp't Sec. Bd., 133 Vt. 166, 168, 333 A.2d 122, 124 (1975), and State v. Hanlon, 164 Vt. 125, 128, 665 A.2d 603, 604 (1995), further discussed in the Reporter's Notes to the simultaneous amendment of V.R.C.P. 6(a).

The Federal Advisory Committee's Notes provide a helpful further explanation of the change in the computation method:

> 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 register'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.

In sum, in the Vermont rules, most periods of three days are changed to five unless there is a specific reason for the shorter time. Periods of five to 20 days are converted to seven or multiples of seven for convenience. Thus, five days becomes seven. Seven days remains seven. Ten and 15 days become 14. Twenty days become 21. .Several 10-day time periods were enlarged and changed to 28 days for consistency with the changed federal standard for motion practice. Thirty-day time periods remain unchanged. 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, amended V.R.P.P. 4(e) is forward-looking, requiring publication of notice "within 21 days after the petition is filed or the order is granted." Amended V.R.P.P. 6(c) is backward-looking, requiring service of affidavits supporting a motion "not later than seven days before the hearing" 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 <u>after</u> 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 <u>before</u> 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 in this example were inaccessible on Tuesday, September 4, the extension would continue until the office was accessible.

Rule 6(a)(6) is added consistent with Act ___ of 2017 in order to make clear that an applicable statute, or another provision of these or other court procedural rules, computing a time period in "business days" creates an exception to the "day is a day" counting method generally made applicable by Rule 6(a)(1): *Cf.* 14 V.S.A. § 2625(f)(2), as amended by Act ___ of 2017. Intermediate Saturdays, Sundays, and state or federal legal holidays will not be counted in computing a period specified to be in "business days," contrary to the practice specified by Rule 6(a)(1) for computing periods not so labeled.

Rule 6(b) is amended for consistency with the simultaneous amendment of V.R.C.P. 6(b). In Rule 6(c), the one-day time period for service of opposing affidavits on motions is changed to 7 days for consistency with other time provisions.

Rule 6(d), providing an additional 3 days for actions required after service by mail, has been revised to be consistent with the amendments to V.R.C.P. 6(e).

3. That Rules 7(b)(4) and (c) 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**

(b) **Motions.**

* * * * * * *

(4) Unless a different time is fixed by the court, any party opposing the motion may file a memorandum in opposition within ~~10~~ 14 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~~ 7 days before a hearing will not be considered at the hearing.

**Reporter's Notes—2017 Amendment**

Rules 7(b)(4) and (c) are amended to extend their 10- and 5-day time periods to 14 and 7 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6.

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

**RULE 12. NOTICE OF INITIAL HEARING; DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED**

(b) **Preliminary motion.** At the option of the pleader, the objections of lack of jurisdiction of the person, improper venue, and legal insufficiency of the petition may be raised by motion at any time before a hearing set under subdivision (a). The court may determine the issues raised before hearing or may postpone determination until the hearing. Any further pleading required shall be served within ~~10~~ 14 days after notice for the court's action.

**Reporter's Notes—2017 Amendment**

Rule 12(b) is amended to extend its 10-day time period to 14 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6.

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

**RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS**

(a) **Amendments.** A party may amend the petition once as a matter of course at any time before an answer is served. A party may amend an answer at any time within ~~20~~ 21 days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of all other parties; and leave shall be freely given when justice so requires. A party may file an answer to an amended petition within ~~10~~ 14 days after service of the amended petition.

**Reporter's Notes—2017 Amendment**

Rule 15(a) is amended to extend its 20- and 10-day time periods to 21 and 14 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6.

6. That Rule 52(b) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

## RULE 52. FINDINGS BY THE COURT

(b) **Amendment.** Upon motion of a party made 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.

### Reporter's Notes—2017 Amendment

Rule 52(b) is amended to extend its 10-day time period to 28 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6 and for consistency with the new standard of V.R.C.P. 52(b), adopted to conform to the federal rule.

7. That Rules 53(d)(1) and (e)(2)(iii) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

## RULE 53. MASTERS

(d) **Proceedings.**

(1) *Meetings.* When a reference is made, the register 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 expedite the proceedings and 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) *Effect.*

* * * * * * *

(iii) Except where the reference is by agreement without reservation of the right to object, any party may, within ~~10~~ 14 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. 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—2017 Amendment**

Rules 53(d)(1) and (e)(2)(iii) are amended to extend their 20- and 10-day time periods to 21 and 14 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6.

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

**RULE 58. ENTRY OF JUDGMENT**

The judge shall approve and sign the judgment, and the register shall thereupon enter it. A judgment is effective only when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall submit forms of judgment upon direction of the court. A form of judgment submitted in accordance with this rule shall be served upon all parties, who shall file any objections within ~~5~~ 7 days after service upon them unless the court orders such objections to be filed earlier.

**Reporter's Notes—2017 Amendment**

Rule 58 is amended to extend its 5-day time period to 7 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6.

9. That Rule 60(c) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 60. RELIEF FROM JUDGMENT OR ORDER**

(c) **Motion to alter or amend a judgment.** A motion to alter or amend the judgment shall be served not later than ~~10~~ 28 days after entry of the judgment.

**Reporter's Notes—2017 Amendment**

Rules 60(c) is amended to extend its 10-day time period to 28 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6 and for consistency with the new standard of the comparable Civil Rule, V.R.C.P. 59(e), adopted for consistency with the federal rule.

10. That Rules 64(a), (d), and (e) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

## RULE 64. CREDITORS' CLAIMS AGAINST DECEDENTS' ESTATES

(a) **Notice to creditors.** Unless notice to creditors has already been given or unless subsection (b) applies, an executor or administrator upon appointment shall publish, pursuant to Rule 4(e), notice to creditors of the estate to present their claims within four months after the date of publication of the notice or be forever barred from their claims. Unless the court orders otherwise, publication of the notice to creditors shall occur within 30 days after the issuance of letters testamentary or letters of administration. A copy of the notice shall be filed with the court, within ~~10~~ 14 days after publication. The executor or administrator shall also promptly send by first class mail a similar notice, or a copy of the published notice, to any creditor known to or reasonably ascertainable by the executor or administrator.

* * * * * * *

(d) **Determination of claims in the court.** If a claim is disallowed, the creditor may appeal to the court pursuant to law. The executor or administrator shall, within ~~10~~ 14 days after a creditor has appealed to the court, file a written statement showing why the claim should be rejected or should be reduced in amount.

(e) **Petition for order that a claim be paid.** When a petition is filed seeking an order directing the executor or administrator to pay a claim the executor or administrator shall within ~~10~~ 14 days file a written statement showing the assets in the estate, the provision made for homestead, family and support allowances, the nature and amount of claims that have been allowed, the nature and expected amount of unbarred claims that have not been presented and the costs and expenses of administration that have accrued.

**Reporter's Notes—2017 Amendment**

Rules 64(a), (d), and (e) are amended to extend their 10-day time periods to 14 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6.

11. That Rule 66(e) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

## RULE 66. INVENTORY AND ACCOUNTS

(e) **Accounts; necessity of a written objection.** Unless the court directs otherwise, no party who fails to file a written objection to the allowance of an account, specifying the grounds of objection, at least ~~3~~ 7 days before the hearing on the account shall be heard in opposition to the account. In the absence of any objections, the court may allow a verified account without hearing.

**Reporter's Notes—2017 Amendment**

Rule 66(e) is amended to extend its 3-day time period to 7 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6.

12. That Rule 72(b)(2) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 72. CIVIL CONTEMPT PROCEEDINGS**

(b) **Procedure.**

* * * * * * *

(2) *Notice; Service.* The order of the court initiating the proceeding shall set the matter for evidentiary hearing and shall order that notice of the hearing, together with a copy of the order initiating the proceeding and any motion and affidavit, shall be served upon the respondent by the appropriate method provided in Rule 5(b) of these rules. The notice shall set forth the title of the action and the date, time, and place of the hearing and shall allow the respondent a reasonable time, not less than ~~15~~ 14 days before the date set for hearing, to file an answer and prepare a defense. The notice may include an order to produce documents requested by the moving party or the court. The notice shall contain a warning that if the court finds the respondent to be in contempt, the court may impose sanctions, whether or not the respondent has answered or appeared in the proceeding. If the court has determined that it may consider imprisonment as a sanction, the notice shall so state and shall also advise the respondent that failure to retain or request counsel will result in a waiver of the right to be represented by counsel at the hearing.

**Reporter's Notes—2017 Amendment**

Rule 72(b)(2) is amended to change its 15-day time period to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6.

13. That Rule 80(c) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 80. CONVEYANCE OF PROPERTY WHEN RECORD HOLDER DECEASED**

(c) **Answer.** Unless the court directs otherwise, a person receiving notice shall serve an answer within ~~20~~ 21 days after service of the summons and petition or, with respect to a person receiving notice served pursuant to Rule 4(e), 4(f) or 4(k) outside the United States or Canada, within ~~50~~ 49 days after such service. The service of a motion permitted by these rules alters these periods of time as provided in Rule 12(a) of the Vermont Rules of Civil Procedure.

**Reporter's Notes—2017 Amendment**

Rule 80(c) is amended to change its 20-day time period to 21 days and its 50-day time period to 49 days, consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6.

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

15. 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 _____, 2017.

_____
Paul L. Reiber, Chief Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice

_____
Karen R. Carroll, Associate Justice

PROPOSED

STATE OF VERMONT
VERMONT SUPREME COURT
_____, 2017

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

Pursuant to Chapter II, Section 37, of the Vermont Constitution, it is hereby ordered:

1. That Rule 10 of the Vermont Rules of Small Claims Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 10. APPEALS**

* * * * * *

(c) **Record on appeal; transcript.**

* * * * * *

(2) If a transcript is needed, the appealing party must order it from a Court-approved transcription service on a form obtained from the Judiciary website or at the clerk's office, with a deposit of the estimated cost within ~~15~~ 14 days after filing the notice of appeal. The appealing party must file the completed original transcript with the superior court clerk when it has been completed.

* * * * * *

(e) **Appeal to the Supreme Court by permission.**

* * * * * *

(2) Permission to appeal to the Vermont Supreme Court may be requested as provided in Rule 6(b) of the Vermont Rules of Appellate Procedure. The request for permission must be filed with the clerk of the civil division within ~~10~~ 14 days from the entry of the judgment to be appealed from and must be served on all other parties by the party seeking permission. The party seeking permission must file the applicable certificate of service, which is available on the Judiciary website and at the clerk's office, with the clerk.

(3) If the request for permission to appeal is not filed with the clerk of the civil division within ~~10~~ 14 days from the entry of judgment, or permission to appeal is denied by the Vermont Supreme Court, the clerk will notify all parties that the appellate decision of the civil division is final.

* * * * * *

**Reporter's Notes—2017 Amendment**

Rule 10 is amended to change its 15- and 10-day time periods to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopt from the Federal Rules the day-is-a-day counting system, a simplified method of computing time periods. The amendments serve the purposes of both achieving simplicity and maintaining uniformity with the federal practice.

As stated in the Reporter's Notes to the amendment of V.R.C.P. 6 (quoting the Federal Advisory Committee's Note), "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." Periods less than 30 days have been converted to multiples of seven for convenience and to include Sundays and holidays. Thus, seven days remains seven. Ten and 15 days become 14. Twenty days becomes 21.

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

**RULE 12. SATISFACTION OF JUDGMENTS**

When a judgment is fully satisfied, the judgment creditor must notify the court clerk within ~~20~~ 21 days after receiving satisfaction, and the court clerk will enter satisfaction of the judgment on the docket. If satisfaction of the judgment is not entered on the docket within ~~20~~ 21 days after the judgment creditor receives satisfaction, the judgment debtor may move for an order that the judgment be deemed satisfied. There is no filing fee for this motion. Unless the judgment creditor, within ~~20~~ 21 days after the mailing to him or her by the judgment debtor of a notice of the motion, files a written objection with the court clerk, with a copy to the judgment debtor, the court will order an entry on the docket of satisfaction of the judgment. The judgment debtor and the judgment creditor must file with the clerk an applicable certificate of service, which is available on the Judiciary website and at the clerk's office.

**Reporter's Notes—2017 Amendment**

Rule 12 is amended to extend its 20-day time periods to 21 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6. See Reporter's Notes to V.R.S.C.P. 10.

3. That these rules as amended are prescribed and promulgated effective _____, 2017. 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 _____, 2017.

_____
Paul L. Reiber, Chief Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice

_____
Karen R. Carroll, Associate Justice

**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**MARCH TERM, 2017**

**Order Promulgating Amendments to Rules 4(a) and 80.2 of the Vermont Rules of Probate Procedure**

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

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

## RULE 4. NOTICE; PROCESS

(a) **Form of Notice.** A notice required under these rules shall bear the signature or facsimile signature of the judge or register, or petitioner's attorney; contain the name and address of the court and, as appropriate, the name of the decedent, the child or adult in need of or under guardianship, or the settlor and beneficiaries of a trust; be directed individually to each interested person identified pursuant to Rule 3(a) by name if known; state the name and postal and e-mail addresses and telephone number of the petitioner or of the petitioner's attorney; be accompanied by a copy of the petition and any annexed documents; state the date and place of hearing or reply if either is required; and advise the recipient that the action or order sought may be granted if no interested person appears to object. Where appropriate, the notice shall also state clearly that the recipient must enter an appearance to receive notice of further actions or filings in the proceeding and shall specify how the recipient can enter an appearance. ~~The court may require that a form on which the recipient may enter an appearance be attached to the notice.~~ A notice shall comply with the format provisions of the Vermont Rules for Electronic Filing, if applicable. The petitioner must include with the notice a blank Notice of Appearance form.

### Reporter's Notes—2017 Amendment

Rule 4(a) is amended to adopt language of V.R.C.P. 4(b) and 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 party 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 unrepresented parties is already in use informally in some courts, but it is only available once a party comes to the courthouse. By providing a blank notice of appearance form at the time the complaint is served, unrepresented defendants will be encouraged to provide contact information for the court as well as to comply with V.R.P.P. 79.1(c).

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

**RULE 80.2. ANCILLARY ADMINISTRATION**

(a) **Petition and Attachments.** An ancillary estate shall be opened when the following are filed:

(1) A petition requesting administration of the Vermont estate including:

(i) A request for appointment of an administrator or executor for the Vermont estate with the name of the proposed administrator or executor;

(ii) A ~~description of the real and personal property of the testator in Vermont~~ representation that some or all of the real property is located in the unit in which the proceeding is brought; and

(iii) The names and addresses of all interested persons as defined in Rule 17.~~; and~~

~~(iv) The entry fee.~~

(2) An authenticated copy of the will and the probate thereof, or such substitute for the copy as is allowed by law.

The petition shall be signed by the executor or administrator appointed in the state in which the will is probated, or some other interested person.

**Reporter's Notes—2017 Amendment**

Rule 80.2 is amended to conform to present practice. The petition will conform to the requirements of Rule 3 to the extent not inconsistent with this rule. The representation as to the location of real property is necessary to establish jurisdiction and venue.

3. That these rules, as added or amended, are prescribed and promulgated effective May 15, 2017. The Reporter's Notes are advisory.

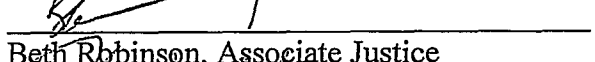
4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 13th day ~~of~~ March, 2017.

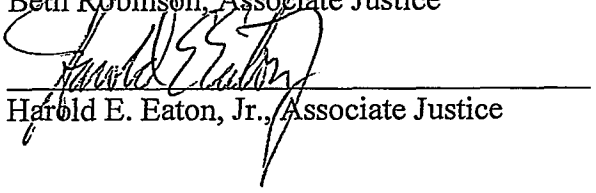
Paul L. Reiber, Chief ~~J~~ustice

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, 2017**

**Order Promulgating Amendment to Rule 47(d) of the Vermont Rules of Probate Procedure**

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

1. That Rule 47(d) 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**

(d) **Method of recording.** When a record is required or is ordered by the court, the recording shall be made with electronic sound recording equipment, ~~operated by a person appointed by the judge pursuant to law,~~ unless another method is specified by these rules ~~under this rule~~. ~~The operator of electronic sound recording equipment shall subscribe to an oath that the operator will well and truly operate the equipment to record all matters and proceedings. If it is not feasible to use electronic sound recording equipment, the court may request that the court administrator assign a stenographic reporter to make a verbatim report of a proceeding.~~

**Reporter's Notes—2017 Amendment**

Rule 47(d) is amended to conform to current practice. The deleted language is unnecessary and inappropriate. Although the former last sentence is found in 4 V.S.A. § 803(b), it and the other requirements of § 803 are "[s]ubject to any rules prescribed by the supreme court pursuant to law." 4 V.S.A. § 803(a).

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 _____, 2017.

_____
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**
**DECEMBER TERM, 2016**

**Order Promulgating Amendments to Rule 17 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 17 of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 17. SUBPOENA**

(a) **For Attendance of Witnesses; Form; Issuance.** A subpoena ~~shall~~ must be ~~issued~~ provided by the clerk. It ~~shall~~ must state the name of the court and the title, if any, of the proceeding, and ~~shall~~ must command each person to whom it is directed to attend and give testimony at the time and place specified therein. ~~The clerk shall issue a subpoena,~~ The subpoena must be issued signed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served. A subpoena ~~shall~~ will be issued by a judicial officer in a proceeding before him or her, and notice must be given as required in paragraph (c)(2) below.

(b) **Defendants Unable to Pay.** The court ~~shall~~ must order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed ~~shall~~ must be paid in the same manner in which similar costs and fees are paid in cases of a witness subpoenaed in behalf of the state.

(c) **For Production of Documentary Evidence and of Objects.** A subpoena may also command the witness to whom it is directed to produce the books, papers, documents or other objects designated therein. ~~The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents, or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, or objects or portions thereof to be inspected by the parties and their attorneys.~~ Such a subpoena may not be directed to an individual defendant. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(1) *Subject Matters of Subpoena; Electronically Stored Information; Motions to Quash.* A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced. A person commanded to produce and permit inspection, copying, testing, or sampling

of books, papers, documents, or tangible things, or of designated electronically stored information or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial. Upon a motion to quash a subpoena, the court may direct that books, papers, documents, or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence for an in camera review.

(2) *Protection of Persons Subject to Subpoenas.* A party or an attorney responsible for the issuance and service of a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. A person who has been subpoenaed to produce and or permit inspection, copying, testing, or sampling may within 14 days after service file written objection or a motion to quash. The subpoena must provide notice of the person's right to object or to seek to quash, and the procedures for doing so. In the event of an objection, all parties have the right to be heard. If objection has been made, the party seeking the materials will not be entitled to inspect and copy the materials except pursuant to a court order. When a party seeks access to a person's school records or to any other records of a person which are by law confidential, the party must provide written notice to the other party that the records have been requested prior to the service of any subpoena requesting the records.

* * * * * *

**Reporter's Notes – 2017 Amendment**

Rule 17(a) is amended to clarify that a subpoena is provided by the clerk of court but actually issued by a judicial officer, subject to certain notice of rights on the part of persons subject to subpoena to object thereto, and the procedures for doing so. The amended provisions related to provision and issuance of subpoenas are intended to conform to current practice in the criminal division.

Rule 17(c) is amended to add express provision for "nonproceedings" subpoenas duces tecum, that is, for production of specified objects, including but not limited to documents and electronically stored information, outside of the context of deposition or judicial proceedings. The former rule had only addressed document production in connection with witness attendance at deposition, hearing, or trial, and thus did not provide guidance as to those circumstances in which a party was solely interested in seeking production of documents or tangible objects related to a pending case without the necessity of a witness's attendance or personal appearance. The amendment is consistent with the equivalent civil rule, V.R.C.P. 45(a)(1), which already provides for such "nonproceedings" subpoenas duces tecum.

In default of clear provision for "nonproceedings" subpoenas, attorneys and parties in criminal cases were using existing forms which specified a deposition or court hearing date and time, with the understanding that the documents sought would actually be produced at an agreed location, usually

the serving party's office, and not the court as indicated. The amendment serves to conform the rule to the practice which has evolved, clarifying the court's role in issuance of subpoenas duces tecum as well as in responding to objections raised on the part of persons served with such subpoenas. The amendment is also consistent with decisions of the Court suggesting that recourse to the discovery process is the preferred course when a party seeks production of records which may be considered sensitive. See State v. Rehkop, 2006 VT 72, ¶ 9, 180 Vt. 228, 908 A.2d 488; State v. Barbera, 2005 VT 13, ¶ 11, 178 Vt. 498, 872 A.2d 309 (mem.); State v. Simoneau, 2003 VT 83, ¶ 28, 176 Vt. 15, 833 A.2d 1280; State v. Roy, 151 Vt. 17, 34, 557 A.2d 884, 894-95 (1989), overruled on other grounds by State v. Brillon, 2008 VT 35, 183 Vt. 475, 955 A.2d 1108.

New paragraph (c)(1) specifies that a subpoena commanding production of evidence or to permit inspection, copying, testing, or sampling may be issued independently from, but as well as for, trial, hearing, or deposition. In the case of a "nonproceedings" subpoena, if the requested items are produced, the person commanded to respond need not appear in person at the place of production or inspection. The paragraph carries forward the procedure authorizing the court in event of a motion to quash to direct that the documents or objects sought be produced before the court for in camera review. The new paragraph also specifies for the first time that a subpoena may issue for electronically stored information, with a requirement that the subpoena identify the form or forms in which such information is to be produced.

New paragraph (c)(2) prescribes certain protections for persons who are subject to the issuance of subpoenas. First, a party or attorney responsible for the issuance and service of a subpoena is obligated to take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. Second, express provision is made for filing of objection or motion to quash in response to subpoena within 14 days after service, and all parties have a right to be heard. In the event of objection, the materials in issue shall not be provided to the requesting party except pursuant to court order. In addition, when a party seeks access to a witness's school records, or to any other records of a witness which are by law confidential, the party must provide written notice to the other party that the records have been requested prior to the service of any subpoena requesting such records. This requirement is consistent with existing protection accorded to certain records of alleged victims under 13 V.S.A. § 6607, which provides:

> When a defendant seeks access to a victim's school records, or to any other records of a victim which are by law confidential, the defendant shall provide written notice to the prosecutor that the records have been

requested prior to the service of any subpoena requesting the records.

In addition, federal law serves to protect and apply to any release of an individual's substance abuse records and school records. See 42 U.S.C. § 290dd-2(a); In re B.S., 163 Vt. 445, 659 A.2d 1137 (1995). Substance abuse treatment records are not subject to subpoena unless the court finds good cause for disclosure. See 42 U.S.C. § 290dd-2(b)(2)(C); 42 C.F.R. § 2.64(d). Similarly, under the Family Educational Rights and Privacy Act of 1974 (FERPA) a school may not release such records without a valid release except "in compliance with judicial order, or pursuant to any lawfully issued subpoena," if the student and, under certain conditions, parents have been notified. 20 U.S.C. § 1232g(b)(2)(B). The purpose of the notification of the parents or the adult student is so they may seek protective action in a motion to quash. 34 C.F.R. § 99.31(a)(9)(ii). Thus the FERPA also anticipates a motion to quash the subpoena duces tecum as the appropriate procedure to follow. 20 U.S.C. § 1232g(b)(2)(B). The amended rule recognizes these provisions of law and their likely applicability in the court's determination of any objection or motion to quash a subpoena duces tecum.

References to "shall" are generally amended to "must" or "will" consistent with general restyling of the rules of procedure by the Court. The change in terminology is stylistic rather than substantive.

2. That these rules, as amended are prescribed and promulgated to become effective February 20, 2017. 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 15th day of December, 2016.

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

PROPOSED

**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**_____TERM 2017**

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

Pursuant to the Vermont Constitution, Chapter 11, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 32(g) of the Vermont Rules of Criminal Procedure be added to provide as follows:

**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.

(1) *Hearing; General Procedures.* Unless the amount of restitution is agreed to by the parties 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 state has the burden of establishing the amount of restitution and a defendant's ability to pay by a preponderance of the evidence. The court must enter a restitution judgment order establishing the defendant's restitution obligation. The provisions of subparagraph (c)(4)(A) apply in the conduct of restitution hearings.

(2) *Prehearing Disclosures.* At least 14 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 the state 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 14 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 14 days prior to the restitution hearing.

(3) *Ability to Pay.* If the defendant intends to raise the issue of inability to pay the requested amount at the restitution hearing or in a restitution payment schedule or both,

he or she must disclose such intent in writing to the court and prosecuting attorney at least 14 days prior to the restitution hearing.

**Reporter's Notes—2017 Amendment**

Subdivision 32(g) is added in response to the Court's decision in State v. Morse, 2014 VT 84, 197 Vt. 495, 106 A.3d 902, to provide specific procedures for conduct of restitution hearings convened pursuant to 13 V.S.A. § 7043. Paragraph 32(g)(1) prescribes the procedure in restitution hearings generally, including allocation of the burden of proof in establishing restitution claims payable to a victim of crime. The paragraph also adopts by reference the provisions of subparagraph 32(c)(4)(A), 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, the Rules of Evidence do not apply. V.R.E. 1101(b)(3); Morse, 2014 VT 84, ¶¶ 13-19.

Paragraph 32(g)(2) specifies written prehearing disclosures that are required to be made to the defendant by the prosecuting attorney, and by the defendant to the prosecuting attorney. The disclosures to be made by the prosecuting attorney include a written statement of the amount of restitution claimed, copies of documents intended to be introduced in evidence to support claims of a victim's material loss and restitution to be ordered, as well as 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," 13 V.S.A. § 7043(a)(2) 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 the victim or the 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).

Paragraph 32(g)(3) requires that if a defendant intends to raise the issue of inability to pay restitution, he or she must provide written notice to this effect to the court and prosecuting attorney at least 14 days prior to the restitution hearing. This disclosure requirement is intended to enable the prosecuting attorney and the court to know that evidence may be required on the issue of ability to pay from the defendant or other sources. See 13 V.S.A. § 7043(d)(2); State v. Vezina, 2015 VT 56, 199 Vt. 175; 121 A.3d 1195. The amended rule contemplates that a defendant's failure to provide timely notice may not be construed as a waiver of the right to be heard or to present evidence as to alleged inability to pay restitution. However, an untimely interposed assertion of inability to pay may provide grounds for continuance or such other orders as the court deems just under the circumstances.

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 _____, 2017.

_____
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
DECEMBER TERM, 2016

**Order Promulgating Amendments to Rules 4.2(a) and 4.3(b) of the Vermont Rules for Family Proceedings**

Pursuant to Chapter II, Section 37, of the Vermont Constitution, it is hereby ordered:

1. That Rule 4.2(a) of the Vermont Rules for Family Proceedings be amended to read as follows (new matter underlined:

**RULE 4.2. MOTIONS AFTER JUDGMENT**

(a) **Applicability.** This rule applies to all post-judgment proceedings in actions for divorce under Rules 4.0 and 4.1 except motions for relief under V.R.C.P. 59 or 60, motions to intervene and for relief from a judgment of parentage under Rule 4.3(b)(1), and actions seeking wage withholding under Rule 4.3(b)(2). Notwithstanding the pendency of an appeal, the court may entertain motions under this rule as provided in Rule 12(d).

**Reporter's Notes—2017 Amendment**

Rule 4.2(a) is amended to implement the simultaneous amendment of Rule 4.3(b) by making clear that motions to intervene and for relief from a parentage judgment under new Rule 4.3(b)(1), like wage withholding actions under what is now Rule 4.3(b)(2), are excepted from the provisions of Rule 4.2.

2. That Rule 4.3(b) of the Vermont Rules for Family Proceedings be amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 4.3. SPECIAL PROCEDURES**

(b) **Motion to Intervene and for Relief from Parentage Judgment; Action for Wage Withholding.** ~~(1) Application of Civil Rules.~~ Except as provided in this subdivision, the Vermont Rules of Civil Procedure apply to motions by nonparties seeking to intervene and obtain relief from a judgment of parentage and to actions seeking wage withholding.

(1) *Motion for Relief from Parentage Judgment by Nonparty.*

(A) A person seeking to establish parentage in a case where parentage has been previously determined by a judgment in a parentage action in the Family Division pursuant to subchapter 3A of chapter 5 of Title 15 to which the person was not a party may make a motion to reopen and intervene in that action on the ground that the person's interest was not adequately represented by the parties to it and to set aside the parentage determination on the ground that the person's constitutional rights were infringed by the determination.

(B) The motion must be filed in the county where the judgment of parentage was originally entered, and must be served upon all parties to the original determination and any other parties against whom relief is sought.

(2) *Action for Wage Withholding.* Petitions for wage withholding to secure child support, spousal support, and arrearages of child support or spousal support are governed by this ~~subdivision~~ paragraph. If a petition is filed seeking both wage withholding for spousal support and wage withholding for child support, or arrearages thereof, the action will be heard entirely by a single superior judge assigned to the family division without any individualized finding under 4 V.S.A. § 463.

(~~2~~A) Petition. A petition for wage withholding pursuant to 15 V.S.A. § 780 et seq. must set forth the petitioner's name, and, if different, the name of the person legally entitled to receive child or spousal support, the defendant, the defendant's employer(s), if known, and any other information required by law.

(~~3~~B) Service and Filing of Petition. The court or the Office of Child Support will serve a copy of the petition on the defendant either:

(~~A~~i) in person in accordance with V.R.C.P. 4; or

(~~B~~ii) by certified mail, return receipt requested with instructions to deliver to addressee only. If acceptance of service is refused, the court may serve the obligor by sending the petition to the obligor by ordinary first-class mail and by certifying that such service has been made. In the alternative, the court may provide for mail service as provided in V.R.C.P. 4(f) and (*l*).

(4C) Notice of Hearing; Objections. A plaintiff who seeks wage withholding must submit a blank notice of hearing to the court together with the petition, for completion by the clerk and service with the petition. A hearing date will be scheduled within 10 days of the filing of the petition. A party who objects must present the objection at the hearing provided for in the notice of hearing. If the Office of Child Support has notified the obligor to commence wage withholding pursuant to 15 V.S.A. § 782(f), the obligor must file any objection and a request for hearing within 10 days of receiving the notification.

(~~5~~D) Findings and Order. The court's ruling will, if contested, contain findings and conclusions, must in all cases contain a separately captioned order, and must also be served on each party and the registry in accordance with V.R.C.P. 5. The order will contain the information required by 15 V.S.A. § 785.

**Reporter's Notes—2017 Amendment**

Rule 4.3(b) is amended to address the question raised in Columbia v. Lawton, 2013 VT 2, 193 Vt. 165, 71 A.3d 1218, concerning the remedy for a person seeking to establish parentage after a prior determination of parentage to which that person was not a party. Columbia interpreted 15 V.S.A. § 302(a) to prohibit a parentage action in the Family Division by a nonparty after a prior Family Division parentage determination in the absence of a showing of a constitutional right. The amended rule does not apply to a

determination of parentage made in a Probate Division adoption proceeding pursuant to 15A V.S.A. §§ 3-101–3-802.

Rule 4.3(b) continues to provide that the Rules of Civil Procedure apply to motions and actions under it except as otherwise provided in that rule. Under new Rule 4.3(b)(1)(A), a nonparty to a prior parentage determination under 15 V.S.A. §§ 301-308 may seek to claim a deprivation of constitutional rights in that determination by filing a motion to intervene and reopen the matter, asserting that the parties to the determination did not adequately represent the applicant's interest and seeking to set aside the determination as an infringement of the applicant's constitutional rights. The amendment is not intended to establish the elements of a direct action based on the constitution but to make clear that a constitutional claim is possible by providing a procedure for a nonparty to raise such a claim in the Family Division. Subparagraph (1)(B) provides a process for filing and serving the motion that controls over any contrary provision in the Civil Rules.

The wage withholding provisions of Rule 4.3(b)(1)-(5) have been redesignated as Rule 4.3(b)(2)(A)-(D) with changes in numbering and a minor stylistic change.

3. That these rules as amended are prescribed and promulgated, effective on February 20, 2017. 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 15th day of December, 2016

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