

STATE OF VERMONT  
VERMONT SUPREME COURT  
SEPTEMBER 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—2018 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—2018 Amendment**

Rule 4(a)(2) is amended to clarify that the State must file an appeal within 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 business 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—2018 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.

Rule 5(b)(5)(A) is amended to clarify that the State must file an appeal within 7 business days. This conforms to the concurrent amendment to 13 V.S.A. § 7403(e).

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—2018 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—2018 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—2018 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—2018 Amendment

Rules 11(a)(2) and (b)(1) are amended to conform their 15-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 3 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 Amendment**

Rules 39(d)(2) and (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.

\* \* \* \* \*

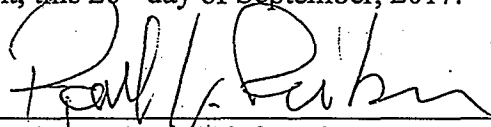
**Reporter's Notes—2018 Amendment**

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).

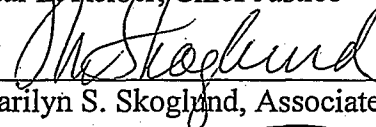
15. That these rules and forms, as added or amended, are prescribed and promulgated effective January 1, 2018. The Reporter's Notes are advisory.

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.

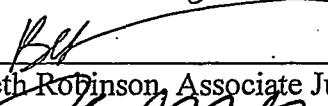
Dated in Chambers at Montpelier, Vermont, this 20<sup>th</sup> day of September, 2017.



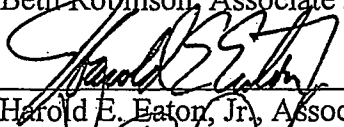
Paul L. Reiber, Chief Justice



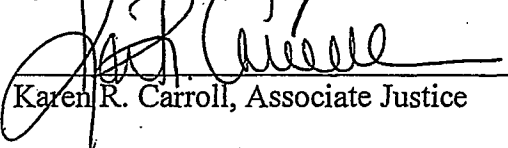
Marilyn S. Skoglund, Associate Justice



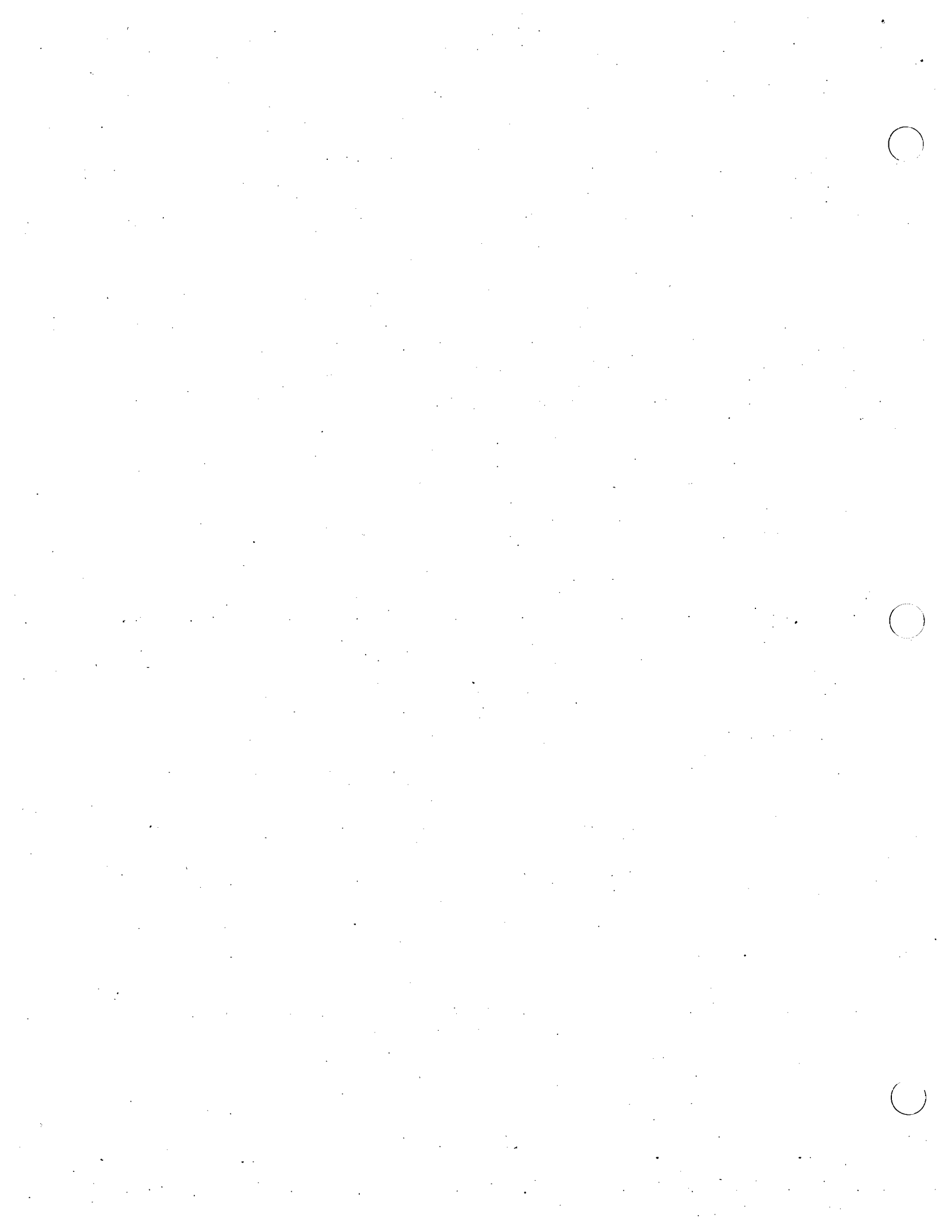
Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice



STATE OF VERMONT  
VERMONT SUPREME COURT  
SEPTEMBER 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—2018 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—2018 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—2018 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—2018 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 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 6(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 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 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) "Legal Holiday" Defined. A "legal holiday" means:

(A) any day declared a holiday by the President or Congress of the United States; and

(B) any 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 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.~~

### Extending Time.

(1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) Exceptions. The court must not extend the time to act under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), 60(b), and 80.1(m).

**(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 being served and service is made under Rule 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 Rule 6(a).~~

### Reporter's Notes—2018 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 No. 11 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 No. 11 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, 333 A.2d 122, 124 (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, 665 A.2d 603, 604 (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.

The phrase "legal holidays" in new Rules 6(a)(1)-(3) is defined in new Rule 6(a)(6) to include both federal and state holidays.

Of course, if the clerk's office is inaccessible on the last day or hour, or the day or hour to which the period has been extended, Rule 6(a)(3) provides that the deadline falls on the next accessible or available day or time. Inaccessibility includes failure of the electronic filing system in a case where a document is to be filed electronically. See V.R.E.F. 4(c); Federal Advisory Committee's Note to 2009 amendment adding F.R.C.P. 6(a)(3). 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.

New Rules 6(a)(4)-(6) are based on the comparable provisions of F.R.C.P. 6(a) as amended in 2009.

Rule 6(a)(7) is added consistent with Act No. 11 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 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 revised to adopt the format and language of F.R.C.P. 6(b) as restyled in 2007 and amended in 2009. The one-day time period in Rule 6(d) for service of opposing affidavits on motions is changed to 7 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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. . . .

\* \* \* \* \*

#### Reporter's Notes—2018 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—2018 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—2018 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—2018 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 ~~40~~ 28 days after entry of judgment or, if the motion addresses a jury issue not decided by a verdict, no later than ~~40~~ 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—2018 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—2018 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.

\* \* \* \* \*

(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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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~~ five (5) days prior to the hearing date specified above.

**Reporter's Notes—2018 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—2018 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. . . .

\*\*\*\*\*

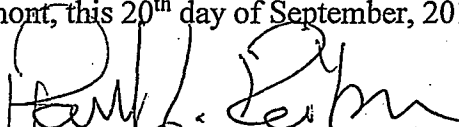
**Reporter's Notes—2018 Amendment**

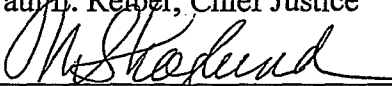
Form 22 is amended to extend its 20-day time period to 21 days consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6.


49. That these rules and forms, as amended, are prescribed and promulgated effective January 1, 2018. The Reporter's Notes are advisory.

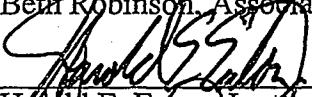
50. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

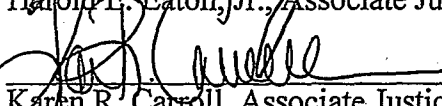
Dated in Chambers at Montpelier, Vermont, this 20<sup>th</sup> day of September, 2017.

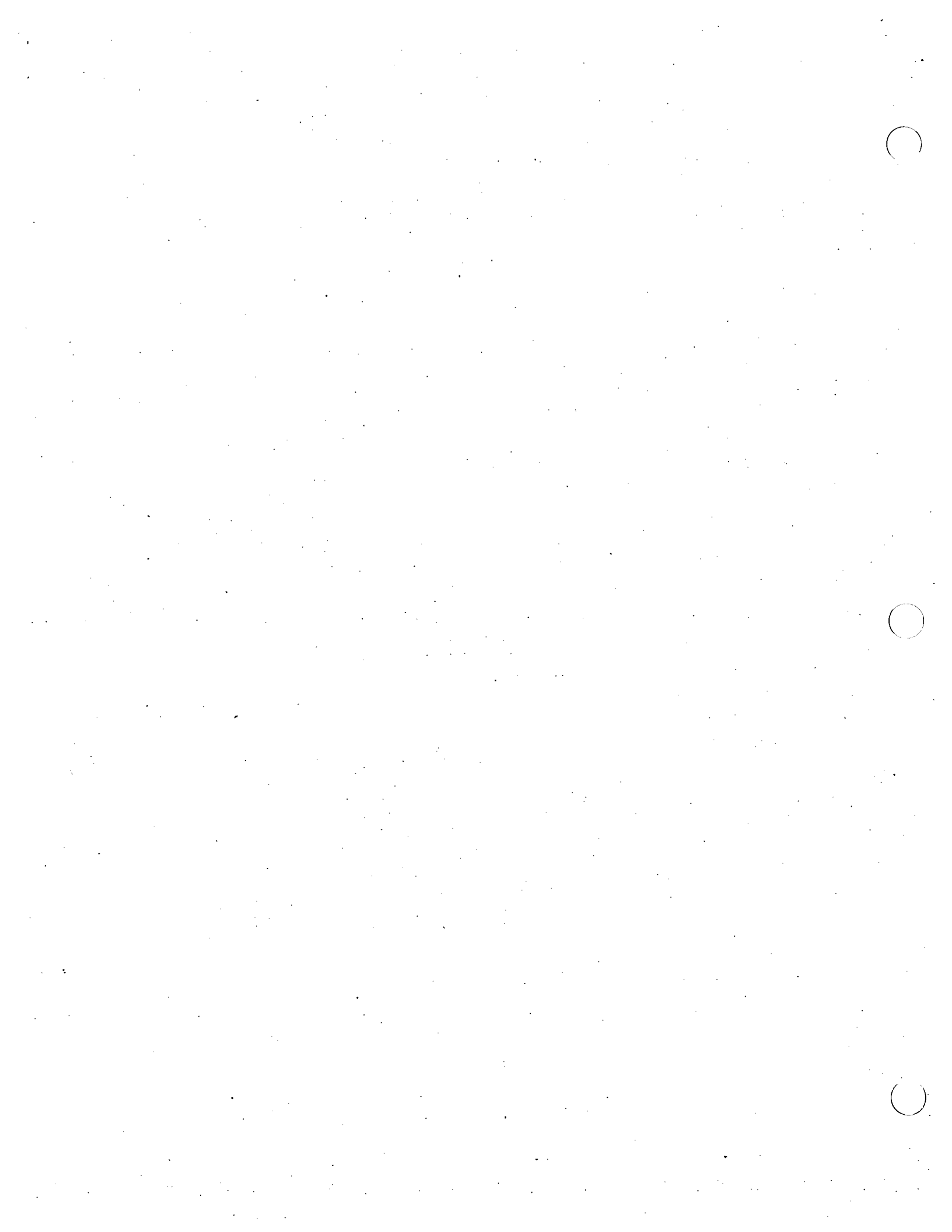
  
\_\_\_\_\_  
Paul H. Reiber, Chief Justice

  
\_\_\_\_\_  
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  
SEPTEMBER 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~~ 28 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—2018 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 28 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. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

### Reporter's Notes—2018 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—2018 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—2018 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—2018 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. 11, § 29.

6. That Rule 45 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. A "legal holiday" means:

(A) any day declared a holiday by the President or Congress of the United States; and

(B) any 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 may or 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 Rule 6(a).

### Reporter's Notes—2018 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 No. 11 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 No. 11 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 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.

The phrase “legal holidays” in new Rule 45(a)(1)-(3) is defined in new Rule 45(a)(6).

Of course, if the clerk’s office is inaccessible on the last day or hour, or the day or hour to which the period has been extended, Rule 45(a)(3) provides that the deadline falls on the next accessible or available day or time. Inaccessibility includes failure of the electronic filing system in the event that a document is to be filed in a case electronically. See V.R.E.F. 4(c), and Federal Advisory Committee’s Note to 2009 amendment adding F.R.Cr.P. 45(a)(3). 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 28 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. former 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. former 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(a)(6) defines legal holiday to include federal and state holidays.

Rule 45(a)(7) is added consistent with Act No. 11 of 2017, discussed above, to define business day.

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.

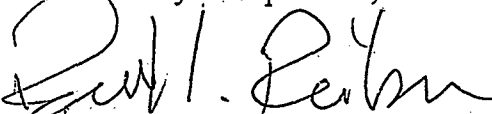
##### Reporter's Notes—2018 Amendment

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.

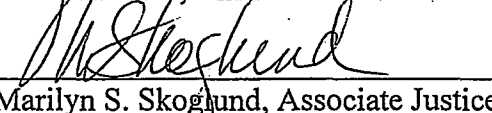
8. That these Rules, as amended, are prescribed and promulgated to become effective January 1, 2018. The Reporter's Notes are advisory.

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.

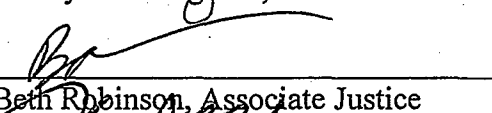
Dated in Chambers at Montpelier, Vermont this ~~20<sup>th</sup>~~ day of September, 2017.




Paul L. Reiber, Chief Justice



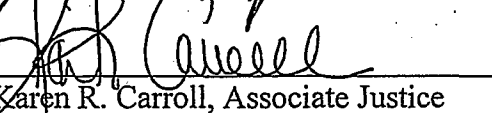
Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice

STATE OF VERMONT  
VERMONT SUPREME COURT  
SEPTEMBER 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 – 2018 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 No. 11, § 12 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)(1)-(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.

\* \* \* \* \*

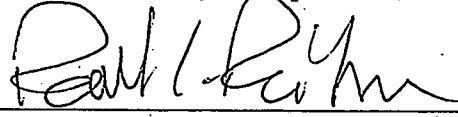
#### Reporter's Note – 2018 Amendment

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.

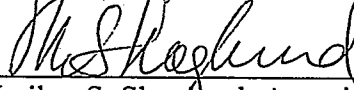
3. That these Rules, as amended, are prescribed and promulgated to become effective January 1, 2018. The Reporter's Notes are advisory.

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 20<sup>th</sup> day of September, 2017.



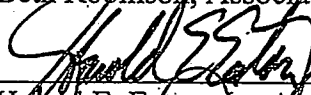
Paul L. Reiber, Chief Justice



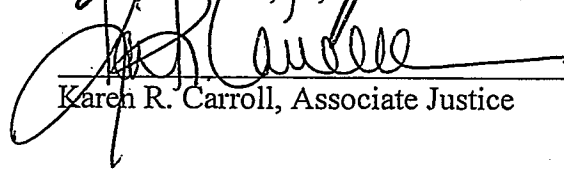
Marilyn S. Skoglund, Associate Justice



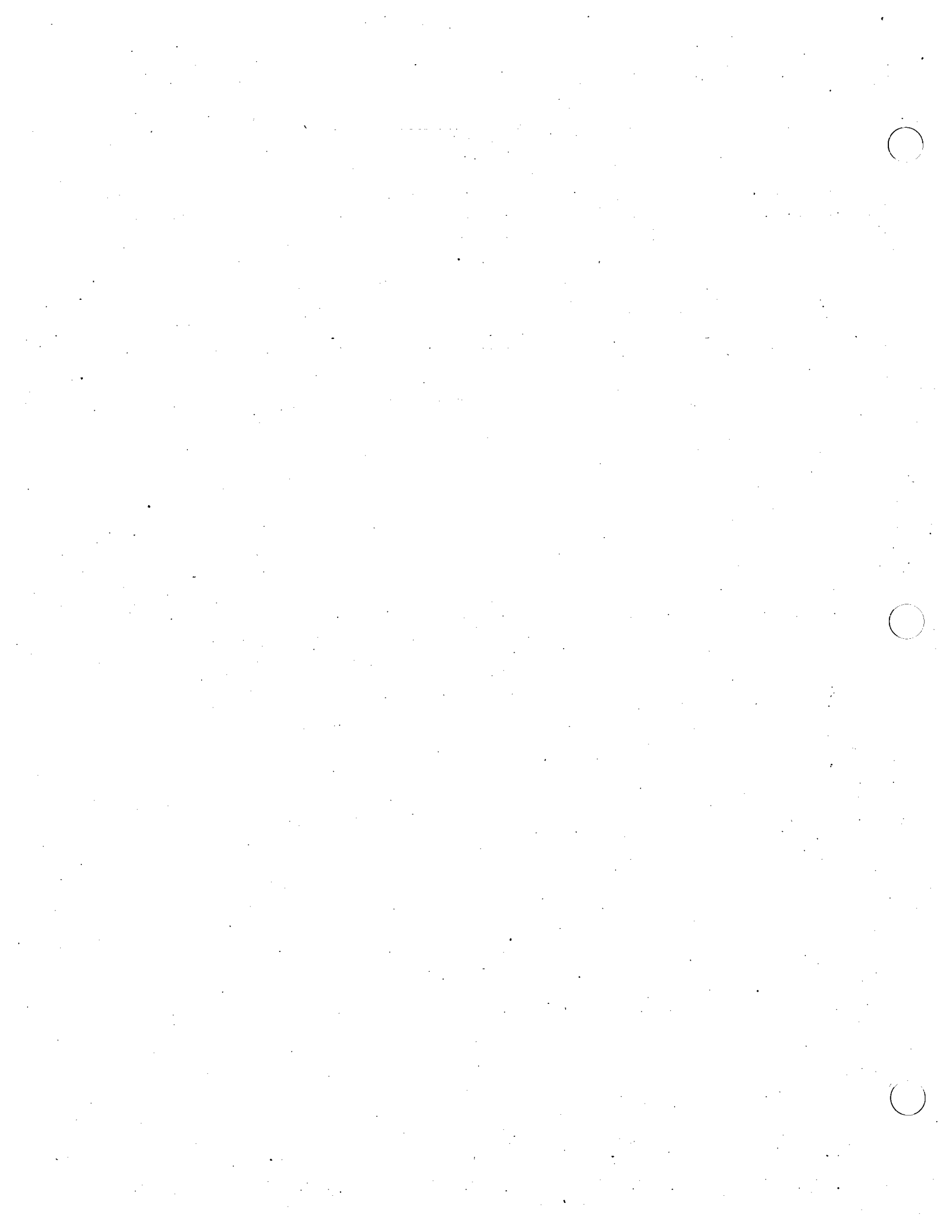
Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice



STATE OF VERMONT  
VERMONT SUPREME COURT  
SEPTEMBER TERM, 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—2018 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 are intended both to achieve simplicity and to maintain uniformity with the Federal Rules and among the various bodies of Vermont procedural rules. In sum, 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. For details, see Reporter's Notes to concurrent amendments of V.R.C.P. 6 and V.R.Cr.P. 45.

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—2018 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—2018 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~~ 7 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—2018 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—2018 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—2018 Amendments

Rule 4.2 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, 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—2018 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 11 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—2018 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—2018 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 11 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—2018 Amendments

Rule 15 is amended to change its 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—2018 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.

\*\*\*\*\*

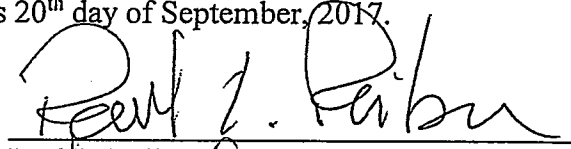
**Reporter's Notes—2018 Amendments**

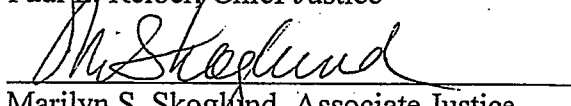
Rule 18(d)(7) is amended to extend its 10-day time period to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

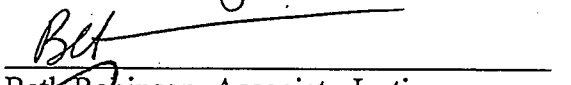
13. That these rules as amended are prescribed and promulgated effective January 1, 2018. The Reporter's Notes are advisory.

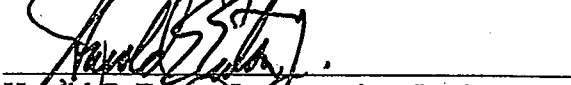
14. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

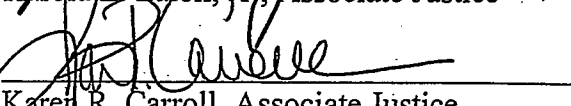
Dated in Chambers at Montpelier, Vermont, this 20<sup>th</sup> day of September, 2017.

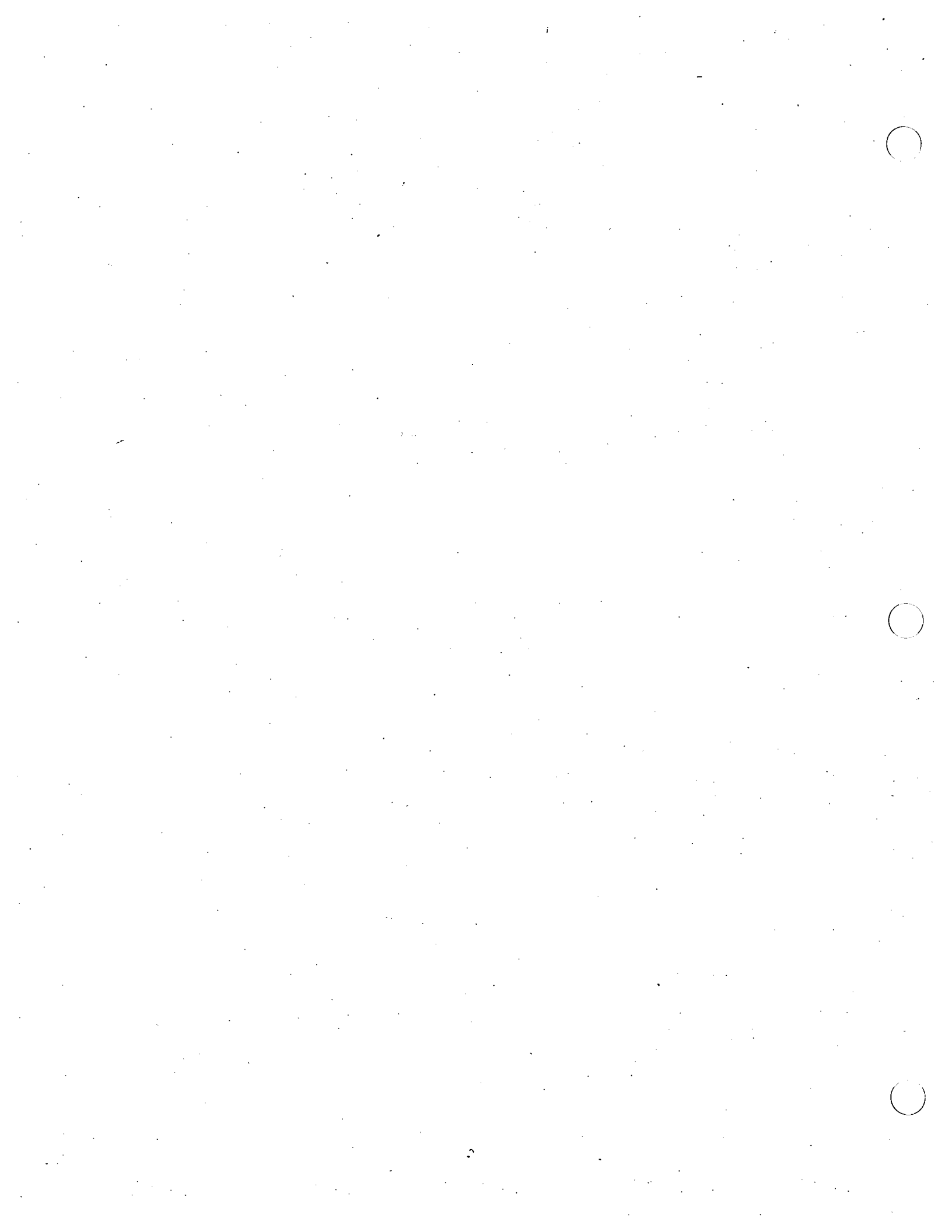
  
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Paul L. Reiber, Chief Justice

  
\_\_\_\_\_  
Marilyn S. Skoglund, Associate Justice

  
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Beth Robinson, Associate Justice

  
\_\_\_\_\_  
Harold E. Eaton, Jr., Associate Justice

  
\_\_\_\_\_  
Karen R. Carroll, Associate Justice



STATE OF VERMONT  
VERMONT SUPREME COURT  
SEPTEMBER 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).

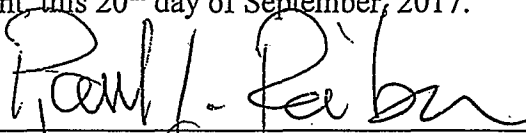
**Reporter's Notes—2018 Amendment**

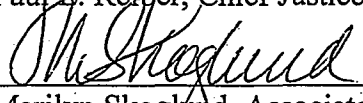
The time for returning a completed questionnaire set in Rule 9(a) is changed from ten to fourteen days to comply with a similar amendment to 4 V.S.A. § 961(a) in 2017, No. 11, § 1.


2. That these rules, as added or amended, are prescribed and promulgated effective January 1, 2018. The Reporter's Notes are advisory.

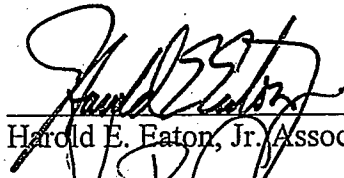
3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 20<sup>th</sup> day of September, 2017.

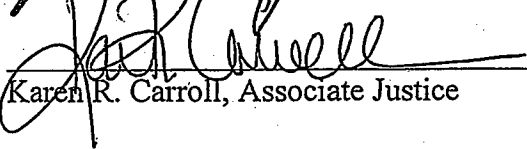
  
\_\_\_\_\_  
Paul L. Reiber, Chief Justice

  
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Marilyn Skoglund, Associate Justice

  
\_\_\_\_\_  
Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice

STATE OF VERMONT  
VERMONT SUPREME COURT  
SEPTEMBER TERM, 2017

**Order Promulgating Amendments to the  
Rules for Mandatory Continuing Legal Education**

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

1. That Section 9 of the Rules for Mandatory Continuing Legal Education is amended to read as follows (deleted matter struck through; new matter underlined):

**§ 9 Procedure**

\* \* \* \* \*

(d) In the event a licensed attorney fails to file the compliance form, files an incomplete compliance form, or files a form which does not demonstrate substantive compliance with the requirements of these rules, the Board shall promptly notify such attorney of the fact and nature of noncompliance, by certified or registered mail, return receipt requested. Failure of the Board to send timely notice shall not relieve the attorney of his or her duty to comply with the rules. The statement of noncompliance shall advise the attorney that the attorney must respond within ~~fifteen~~ 14 days by:

(1) filing the form which reflects compliance;

(2) filing a makeup plan as described in § 10, below, along with the makeup plan filing fee; or

(3) filing with the Board a written answer to the Board's notice of noncompliance.

(e) If an answer pursuant to subdivision (3) of paragraph (d) above is filed and the answer does not admit noncompliance, the Board shall schedule a hearing on the question of compliance within thirty days of the filing. Notice of the date, time and place of said hearing shall be given to the attorney at least ~~ten~~ 14 days prior thereto. The attorney shall bear the burden of establishing compliance with the substance of these rules. The attorney may be represented by counsel. Witnesses shall be sworn; and if requested by the attorney a complete electronic recording shall be made of all proceedings and all testimony taken. The chairperson, or other presiding member of the Board, shall have the authority to determine all motions, objections and other matters presented in connection with the hearing. The hearing shall be conducted in conformity with the Vermont Rules of Civil Procedure. The presiding officer of the Board and the attorney shall have the right to subpoena witnesses for said hearing. Application for a subpoena, including a subpoena duces tecum, shall be made to the Clerk of the Supreme Court, who shall issue the same.

\*\*\*\*\*

### Board's Notes—2018 Amendment

Section 9(d) and (e) 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.

2. That Section 10(b) of the Rules for Mandatory Continuing Legal Education is amended to read as follows (deleted matter struck through; new matter underlined):

#### § 10. Makeup Plans

(b) The makeup plan must contain a specific plan for correcting the attorney's noncompliance within 120 days from the date of filing. The plan shall be accompanied by a makeup plan filing fee of \$50.00. The plan shall be deemed accepted by the Board unless within 30 days after its receipt the Board notifies the attorney to the contrary. Full completion of the plan shall be reported by the compliance form filed with the Board not later than ~~15~~ 14 days following the 120-day period. If the attorney shall fail to file an acceptable plan, or shall fail to complete and report completion of the plan within the aforementioned 135 days, the Board shall proceed as set forth in paragraphs (d) through (k) of § 9 of these rules.

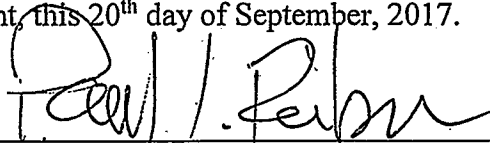
### Board's Notes—2018 Amendment

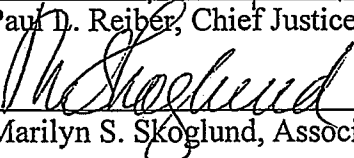
Section 10(b) is amended to change its 15-day time period to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.C.P. 6.

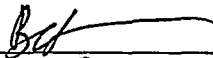
3. That these rules, as amended, are prescribed and promulgated to become effective on January 1, 2018. The Board's Notes are advisory.

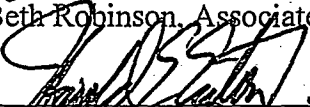
4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

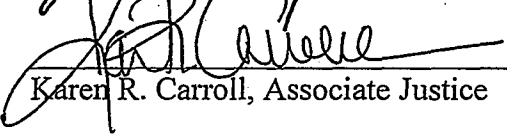
Dated in Chambers at Montpelier, Vermont, this 20<sup>th</sup> day of September, 2017.

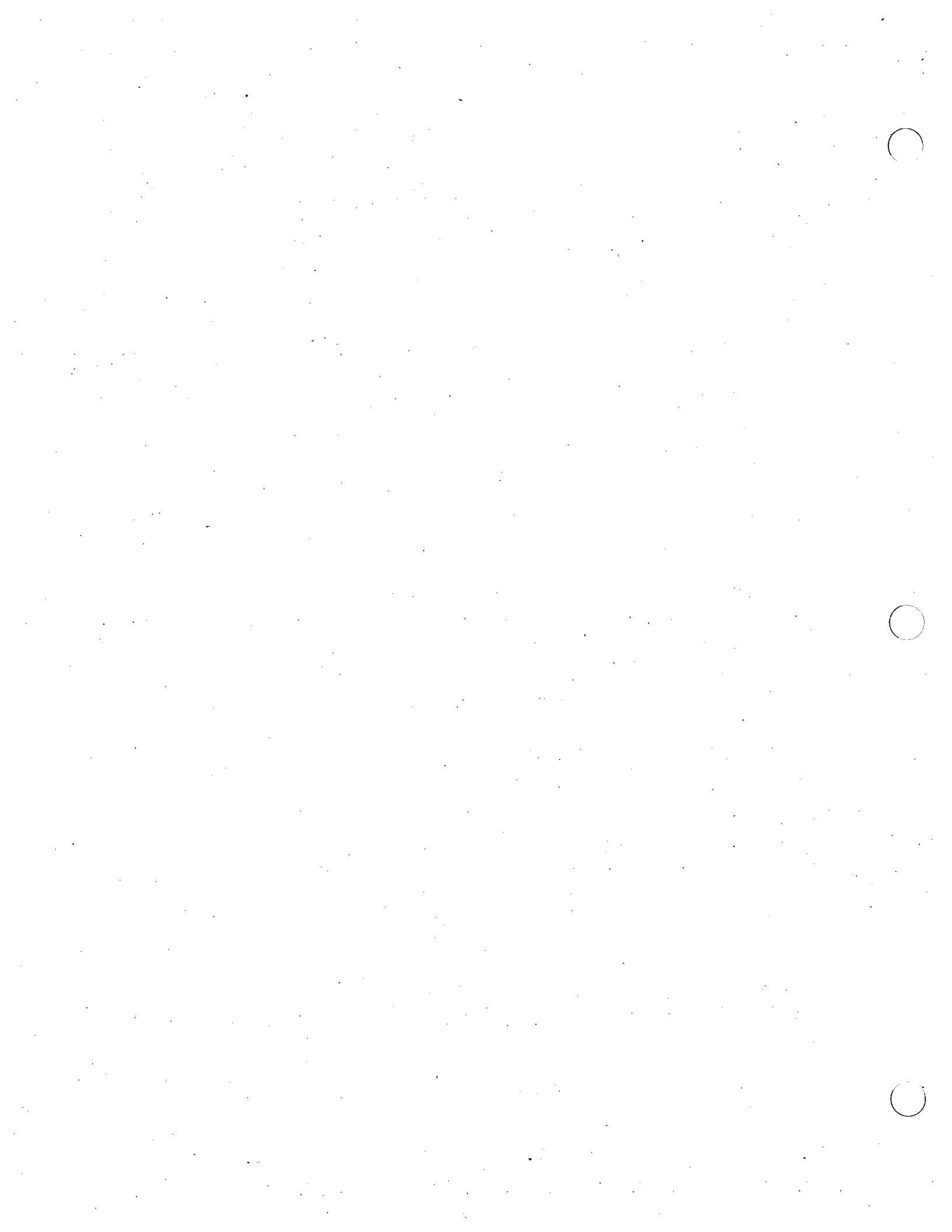
  
\_\_\_\_\_  
Paul D. Reiber, Chief Justice

  
\_\_\_\_\_  
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  
SEPTEMBER 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—2018 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 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 Register's Office.* Unless the court orders otherwise, if the register's office 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 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 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 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) *"Legal Holiday" Defined.* A "legal holiday" means:

(A) any day declared a holiday by the President or Congress of the United States; and

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

### Extending Time.

(1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) Exceptions. The court must not extend the time to act under Rules 52(b) and 60(b) and (c).

(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 certain kinds of service, service by mail.** ~~Whenever a party has the right or is required to do some act within a prescribed period 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. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2) (mailing) or (3) (leaving with the clerk), 3 days are added after the period would otherwise expire under Rule 6(a).~~

### Reporter's Notes—2018 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 “in 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.

The phrase “legal holidays” in new Rules 6(a)(1)-(3) is defined in new Rule 6(a)(6) to include both federal and state holidays.

Of course, if the register's office is inaccessible on the last day or hour, or the day or hour to which the period has been extended, Rule 6(a)(3) provides that the deadline falls on the next accessible or available day or time. Inaccessibility includes failure of the electronic filing system in a case where a document is to be filed electronically. See V.R.E.F. 4(c); Federal Advisory Committee's Note to 2009 amendment adding F.R.C.P. 6(a)(3). 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, 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 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 in this example were inaccessible on Tuesday, September 4, the extension would continue until the office was accessible.

New Rules 6(a)(4)-(6) are based on the comparable provisions of F.R.C.P. 6(a) as amended in 2009.

Rule 6(a)(7) is added consistent with Act 11 of 2017 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 11 of 2017. Intermediate Saturdays, Sundays, and 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 revised to adopt the format and language of F.R.C.P. 6(b) as restyled in 2007 and amended in 2009. The one-day time period in Rule 6(c) for service of opposing affidavits on motions is changed to 7 days, consistent with V.R.C.P. 6(d)(2) and F.R.C.P. 6(c)(2).

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 ~~five~~ 7 days before a hearing will not be considered at the hearing.

### Reporter's Notes—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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—2018 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.

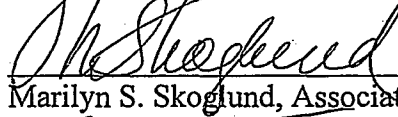
14. That these rules, as added or amended, are prescribed and promulgated effective January 1, 2018. The Reporter's Notes are advisory.

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 20<sup>th</sup> day of September, 2017.



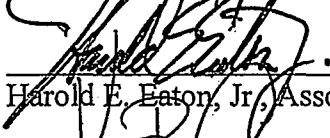
Paul L. Reiber, Chief Justice



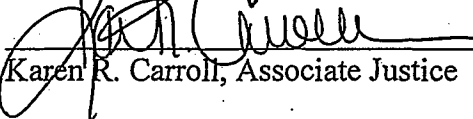
Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice

STATE OF VERMONT  
VERMONT SUPREME COURT  
SEPTEMBER TERM, 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—2018 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 7 for convenience and to include Sundays and holidays. Thus, 7 days remains 7. 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.

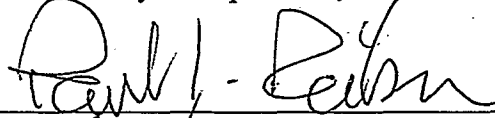
### Reporter's Notes—2018 Amendment

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.

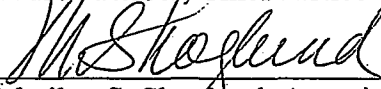
3. That these rules as amended are prescribed and promulgated effective January 1, 2018. The Reporter's Notes are advisory.

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 20<sup>th</sup> day of September, 2017.



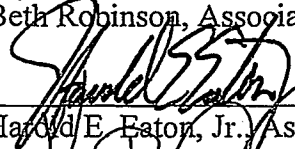
Paul L. Reiber, Chief Justice



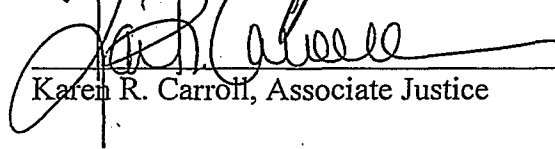
Marilyn S. Skoglund, Associate Justice



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