

**STATE OF VERMONT
VERMONT SUPREME COURT
FEBRUARY TERM, 2025**

Order Deleting Rule 11(e) of the Vermont Rules of Civil Procedure and Promulgating Amendments to Rules 43(d) and (h), 56(c)(1), (2) and (6), 56(d), and 56(h) of the Vermont Rules of Civil Procedure.

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

1. That Rule 11(e) of the Vermont Rules of Civil Procedure be deleted.

Reporter’s Notes—2025 Amendment

This amendment deletes Rule 11(e), captioned “Use of Declaration In Place of Notarization,” which authorized use of a declaration whenever these rules required the filing of a statement made under oath, an affidavit, or a notarized document. Rule 11(e) did not apply when an oath, affidavit, or notarization was required by statute. Amendments to 4 V.S.A. § 27b by 2023, No. 46, § 4, permit a broadening of the declaration rule. These changes are incorporated in simultaneously adopted Rule 43(h), titled “Declaration In Place of Affidavit or Oath.” Rule 43(h) authorizes use of a declaration without exception whenever a rule or court order requires filing or service of an affidavit or a statement signed under oath.

2. That Rule 43(d) and (h) of the Vermont Rules of Civil Procedure be amended as follows (new matter underlined; deleted matter struck through):

RULE 43. EVIDENCE

(d) **Affirmation in Lieu Place of Oath.** ~~Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof. Whenever a rule or court order requires a person to take an oath, the court may accept a solemn affirmation in its place.~~

* * * * *

(h) ~~**Order of Evidence.** [Abrogated].~~ **Declaration In Place of Affidavit or Oath.** Whenever a rule or court order requires the filing or service of an affidavit or a statement signed under oath, a party may instead file or serve a document signed under penalty of perjury with language immediately above the signature in substantially the following form:

“I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury or to other sanctions in the discretion of the court.”

Reporter’s Notes—2025 Amendment

Rule 43(d) is reworded for clarity and consistency. Rule 43(h) is added to authorize use of a declaration in place of an affidavit or oath. This reflects the provisions of 4 V.S.A. § 27b, as amended effective June 5, 2023, as applied to oaths and affidavits.

Subdivision (h) allows the use of an unsworn and unnotarized declaration, signed in proper form as true under penalty of perjury, in place of an affidavit or oath otherwise required by a rule or court order. A declaration, for example, could be used to verify answers to interrogatories otherwise required to be signed under oath. V.R.C.P. 33.

Rule 43(h) does not extend to other notarizations, such as acknowledgements, as to which the statute (or its exceptions) may apply. See 4 V.S.A. § 27b (referring broadly to any document that would otherwise require the approval or verification of a notary but stating exceptions). Rule 43(h) has no exceptions.

The words used in the declaration must substantially conform to those in subdivision (h). A false statement or affidavit is subject, not only to penalty of perjury, but also to other sanctions in the discretion of the court. See also V.R.C.P. 56(h) (Affidavit or Declaration Submitted in Bad Faith).

Rule 11(e), which authorized use of a declaration in place of a “notarization” not required by statute, is concurrently deleted.

While the rule by its terms allows a declaration as an alternative to affidavits submitted for summary judgment purposes, Rule 56 is concurrently amended to clarify that any declaration used to support or oppose summary judgment must be made on personal knowledge. V.R.C.P. 56(c)(6).

3. That Rule 56(c)(1), (2) and (6), (d), and (h) of the Vermont Rules of Civil Procedure be amended as follows (new matter underlined):

RULE 56. SUMMARY JUDGMENT

(c) Procedures Supporting Factual Positions.

(1) A moving party asserting that a fact cannot genuinely be disputed must support the assertion by filing a separate and concise statement of undisputed material facts consisting of numbered paragraphs with specific citations to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other admissible materials. Upon request, the party must provide each adverse party

with a copy of the statement in an editable format that allows entry of responses to be incorporated into a single document.

(2) A nonmoving party responding to a statement of undisputed material facts and asserting that a fact is genuinely disputed, that the materials cited do not establish the absence of a genuine dispute, or that the moving party cannot produce admissible evidence to support the fact, must file a paragraph-by-paragraph response, with specific citations to particular parts of materials in the record that the responding party asserts demonstrate a dispute, including depositions, documents, electronically stored information, affidavits, declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other admissible materials. The responding party must reproduce each numbered paragraph of the moving party’s statement before including the response thereto. To the extent that the responding party asserts that there are additional material facts that should be considered, the party may file a separate and concise statement of additional material facts in numbered paragraphs, with specific citations to particular parts of admissible materials in the record. Upon request, the party must provide each adverse party with a copy of its response and of any separate statement of additional facts in editable format that allows entry of replies to be incorporated into single documents.

* * * * *

(6) *Affidavits or Declarations*. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated.

(d) **When Facts Are Unavailable to the Nonmovant**. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations, or to take discovery; or
- (3) issue any other appropriate order.

* * * * *

(h) **Affidavit or Declaration Submitted in Bad Faith**. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney’s fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

Reporter’s Notes—2025 Amendment

Rule 56 is amended to refer to a “declaration,” an unsworn document signed subject to the penalties of perjury under these rules or applicable law. See 4 V.S.A. § 27b and V.R.C.P 43(h). This amendment is consistent with Federal Rule of Civil Procedure 56, on which it is based. See V.R.C.P. 56, Reporter’s Notes—2012 Amendment (Rule 56, as originally adopted and amended, was

replaced in 2012 by rule based almost entirely on December 2010 amendments of Federal Rule 56 but omitted references to declarations). Under Rule 56(b)(6) as now amended, a declaration used to support or oppose a summary judgment motion must be based on personal knowledge.

4. That these amendments be prescribed and promulgated, effective on **July 1, 2025**. The Reporter's Notes are advisory.

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

Dated in Chambers at Montpelier, Vermont, this 3rd day of February, 2025.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice