

STATE OF VERMONT  
VERMONT SUPREME COURT  
DECEMBER TERM, 2024

**Order Promulgating Amendments to Rules 16.2 and 26(f) 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 16.2 of the Vermont Rules of Civil Procedure be amended as follows (new matter underlined; deleted matter struck through):

**RULE 16.2 SCHEDULING ORDERS**

(a) **Issuance.** The court may enter a scheduling order on motion or on stipulation of the parties, or after a status conference, or discovery conference, or a hearing called for that purpose. The terms of a scheduling order must be determined with reasonable accommodation to litigants and their counsel.

~~After a pretrial or discovery conference or after a hearing called for that purpose, the court may enter or amend a scheduling order which may:~~

(b) **Contents.** A scheduling order may:

(i) set a date or dates by which all pretrial motions, except those based on circumstances that arise after the cut-off date or a motion to dismiss for lack of subject matter jurisdiction, must be filed;

(ii) set a date by which third parties may be brought into the action pursuant to V.R.C.P. 14;

(iii) provide for discovery of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation materials after production;

(v) set a date at which all discovery will be closed and the case will be tried, or a date after which the case will be considered ready for trial so that it will appear on a trial list and thereafter be governed by V.R.C.P. 40(a);

(6) include other appropriate matters.

(c) **Modification.** A case subject to a scheduling order may be continued and the date of any action of a party as ordered by the court may be extended only on motion and a showing of good cause, but the court must modify a scheduling order where necessary to prevent manifest injustice.

~~Except as herein provided, a scheduling order controls the subsequent course of the action and takes precedence over any rule with respect to the time for taking any action or the scheduling of actions for trial. A case subject to a scheduling order may be continued only on motion and a showing of good cause. The date of a conference or action of a party as ordered by the court may be extended only on motion and a showing of good cause.~~

~~The terms of a scheduling order shall be determined with reasonable accommodation to litigants and their counsel and shall be modified where necessary to prevent manifest injustice.~~

**(d) Enforcement and Effect.** A scheduling order, unless modified, controls the subsequent course of the action and takes precedence over any rule with respect to the time for taking any action or the scheduling of actions for trial. When a party fails to obey a scheduling order, the court may impose the sanctions provided in Rule 37(b)(2)(B) or (C) or, if the failure is to appear for trial as directed, dismiss the action or enter a default.

### **Reporter’s Notes—2025 Amendment**

Rule 16.2 is amended to reflect established practice. In practice, Rule 16.2 is implemented by agreement using individualized or standardized stipulations that combine discovery, case management, and mediation scheduling. The amendment to Rule 16.2(a) conforms to current practice to provide that a scheduling order may be entered on stipulation or motion, without the necessity for a pretrial or discovery conference.

The rule continues to provide that an extension of an existing schedule requires a motion and showing of good cause. The intent of Rule 16.2 is “that the court maintain firm but reasonable control over the pace of litigation without forcing the litigants to meet deadlines that will make preparation and full airing of the case impossible. The court must consider this standard both in establishing cut-off dates and in ruling on requests for continuances or extensions.” V.R.C.P. 16.2, Reporter’s Notes.

Former paragraph (v) is renumbered (b)(5) and amended to refer to the date at which “all discovery will be closed” instead of the date at which “the case will be tried.” It is usually impractical to include a trial date in an early scheduling order. The close of all discovery is the controlling deadline that triggers both trial scheduling under V.R.C.P. 40(a) and the cut off under V.R.C.P. 56(a) for summary judgment motions, unless otherwise agreed or ordered.

A trial date may be included in an initial or modified order under new paragraph 16.2(b)(6), which is added to clarify that the list of permitted contents of a scheduling order is not exhaustive and may include other appropriate matters. See F.R.C.P. 16(b)(3)(B). This gives parties flexibility to address case-specific needs. For example, a scheduling order may limit the time to amend the pleadings, set the timing and sequence for disclosure of experts and for other discovery, provide the timing and method of how parties will comply with agreements for asserting claims of privilege or of protection as trial-preparation material, and schedule other matters necessary for the proper management of the case.

Former paragraphs (i)–(v) are relabeled as paragraphs (b)(1)–(5). Other text of the Rule is reorganized as separate subdivisions (a) through (d)

with descriptive captions and changes made as a matter of style or for clarity, with no change of meaning.

2. That Rule 26(f) of the Vermont Rules of Civil Procedure be amended 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:

- (1) A statement of the issues as they then appear;
- (2) A proposed plan and schedule of discovery, including any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;
- (3) Any limitations proposed to be placed on discovery;
- (4) Any other proposed orders with respect to discovery; and
- (5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and each party's attorney 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 14 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, including any issues about preserving discoverable information, any issues about discovery of electronically stored information including the form or forms in which it should be produced, and any issues about claims of privilege or protection as trial-preparation materials; establishing a plan and schedule for discovery under V.R.C.P. 16.2; setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. The order shall also set a date for completion of mediation if required by V.R.C.P. 16.3. ~~An order may be altered or amended whenever justice so requires.~~

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

### **Reporter's Notes—2025 Amendment**

Rule 26(f) is amended to clarify the interrelation of Rule 26(f) and Rules 16.2 and 16.3. The amendment states that the plan and schedule for discovery to be established following the discovery conference will be a scheduling order under Rule 16.2, and that, if Rule 16.3 requires mediation, the discovery conference order must include a date for completion of mediation. The amendment deletes the provision for

altering or amending a discovery conference order. As a scheduling order, the discovery conference order may be modified on motion and a showing of good cause or as necessary to prevent manifest injustice under Rule 16.2(c).

3. That these amendments be prescribed and promulgated, effective on **July 1, 2025**. 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 16<sup>th</sup> day of December, 2024.



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