

STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_ TERM, 2026

**Order Promulgating the Addition of Rule 80.12 and Amendment of Rule 81(a) 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 80.12 of the Vermont Rules of Civil Procedure be added to read as follows:

**RULE 80.12. PROCEDURES FOR POST-CONVICTION RELIEF**

(a) **Applicability.** This rule governs proceedings in the Civil Division of the Superior Court under 13 V.S.A. §§ 7131-7137 by a person in custody under a sentence of a Vermont court. To the extent that they are not inconsistent with any statutory provisions or this rule, the other provisions of these rules and the Vermont Rules of Criminal Procedure may be applied to a proceeding under this rule.

(b) **Content of Petition.** The petition may be informal but must state:

- (1) the case number and the date of sentencing for the challenged judgment; and
- (2) the alleged violation or defect in the conviction or sentence.

(c) **Filing of Petition.**

(1) *Where to File.* The petition must be filed with the Civil Division in the county where the sentence was imposed.

(2) *Separate Petitions for Separate Judgments.* A petitioner who seeks relief from judgments entered in more than one county must file a separate petition in each county.

(d) **Successive Petitions.**

(1) *Identifying Successive Petition.* In the initial petition, a petitioner must identify by case number any prior proceeding challenging the same sentence or conviction.

(2) *Considering Successive Petition.* The court is not required to consider a petitioner's second or successive petition for similar relief.

(e) **Assignment and Preliminary Review.**

(1) *Assignment of Judge*. The judge reviewing a petition may not be the judge who imposed the sentence or entered the judgment challenged in the petition.

(2) *Preliminary Review*. The court will dismiss the petition if it plainly appears from the petition, any attached exhibits, and the record of prior proceedings that the petitioner is not entitled to relief.

**(f) Service, Answer, and Victim Notification.**

(1) *Serving the Petition*. If the petition is not dismissed after preliminary review, the clerk will serve the petition on the State's Attorney, Attorney General, and Defender General.

(2) *Answer*. Unless the court orders, the State is not required to answer the petition.

(3) *Notice to Victims of Listed Crimes*. If the petition involves a judgment for a listed crime under 13 V.S.A. § 5301(7), the prosecutor's office that obtained the judgment must promptly inform the victim of the post-conviction relief proceeding, explain the significance of the proceeding, and notify the victim of the date, time, and place of any hearing or decision.

**(g) Discovery.** A judge may, for good cause, authorize a party to conduct discovery under the Vermont Rules of Civil Procedure or Criminal Procedure.

**(h) Evidentiary Hearing.**

(1) *Scheduling the Hearing*. If the petition is not resolved by motion practice or stipulation, an evidentiary hearing will be scheduled as soon as practicable after giving the parties adequate time to investigate and prepare.

(2) *Rules of Evidence*. The Vermont Rules of Evidence apply at any evidentiary hearing.

**(i) Relief.**

(1) *Grounds for Relief*. The court may grant relief if it finds that

(A) the challenged judgment was made without jurisdiction,

(B) the sentence imposed was not authorized by law or is otherwise open to collateral attack, or

(C) petitioner's constitutional rights were denied or abridged to the extent that the judgment is vulnerable to collateral attack.

(2) *Relief Based on Parties' Stipulation*. If the parties stipulate to relief for the petitioner, the court must determine whether the stipulated relief is in the interests of justice. The court may accept or reject the stipulated relief but may not modify the parties' stipulation. If the stipulated relief requires entry of a plea or sentencing in the Civil Division, then the court will apply the rules and law that would apply in a similar proceeding in the Criminal Division.

(3) *Relief Based on Merits Decision*. If the court determines that petitioner is entitled to relief, the court must vacate the challenged judgment and remand the matter to the Criminal Division in the county where the vacated judgment was entered with instructions for further proceedings.

(j) **Appeals.** The Civil Division’s final order entered on the petition may be appealed to the Supreme Court.

### **Reporter’s Notes—2026 Amendment**

Rule 80.12 is added to provide procedural rules for post-conviction relief (PCR) proceedings under 13 V.S.A. §§ 7131-7137. The new rule follows the statutory provisions and is intended to make the procedures and requirements more easily accessible to litigants, who are usually incarcerated and sometimes self-represented. Although the procedures are derived from the statutory provisions and consistent with the statutory requirements, some language is updated for clarity.

Rule 80.12(a) delineates the rule’s applicability in accordance with 13 V.S.A. § 7131, which provides a process for relief for a prisoner “in custody under sentence.” Supreme Court cases have examined the meaning of the in-custody requirement and explained that it includes those “suffering significant restraints on liberty.” *In re LaMountain*, 170 Vt. 642, 643, 752 A.2d 24, 25 (2000) (mem.). The PCR statute does not contain a time limitation, and the rule follows that approach. See *In re Laws*, 2007 VT 54, ¶ 9, 182 Vt. 66, 928 A.2d 1210 (noting that “fundamental aspect” of PCR proceedings is that they can be brought “ ‘at any time’ ” (quoting 13 V.S.A. § 7131)). Rule 80.12(a) indicates that to the extent they are not inconsistent with the statute or this rule, the other civil rules apply; however, the criminal rules may apply if the civil division accepts a plea or imposes a new sentence pursuant to the parties’ stipulation or acts in some other manner as a criminal court. Some rules that generally apply to these proceedings include but are not limited to Rules 4(d)-(g), 5, 6, 7(b), 10, 11, 15, 24, 25, 43, 45, 46, 56, 58, 59, and 60. Rule 81(a) previously addressed the nonapplicability of the civil rules in PCR proceedings and is simultaneously amended to remove reference to PCR proceedings.

Rule 80.12(b) sets forth the requirements for the content of the petition. The statute provides that a PCR petition “may be informal, but shall identify the offense, the date of sentencing, and the alleged violation or defect in the sentence.” 13 V.S.A. § 7132. Under 80.12(b), the petition must identify the case number and date of sentencing for the challenged judgment and specify the alleged violation or defect. The rule requires the petitioner to identify the case number of the challenged judgment or

sentence to assist the court in identifying the judgment or sentence being challenged. These requirements are not meant to burden or to set unrealistic obstacles, but to provide the court with sufficient information to assess the viability of and proper venue for the petition. Many petitions are filed by incarcerated individuals using a form. Where a petition is deficient, for example because it is missing a case number, this should not be the basis for summary rejection but could be grounds for dismissal if not corrected. In practice, many petitions are amended after appointment of counsel for the petitioner. See 13 V.S.A. § 7137 (allowing appointment of counsel for PCR proceedings); 13 V.S.A. § 5233(a)(3) (setting forth extent of public-defender services available to needy persons in PCR proceedings).

Rule 80.12(c) sets the filing requirements for the petition. Under (c)(1), a petition must be filed in the county where the sentence was imposed. This is a statutory requirement. See 13 V.S.A. § 7131 (requiring petition to be filed in “county where the sentence was imposed”). Under (c)(2), a petitioner must file separate petitions for judgments from different counties. It is not unusual for a petitioner to have judgments in multiple counties, and this helps to clarify the petitioner’s responsibility to challenge each one separately. If a petition is filed in the wrong county, it may be transferred to a different county, but outright dismissal is not appropriate because the filing requirement “goes to venue and not subject matter jurisdiction.” *In re Laws*, 2007 VT 54, ¶ 7.

Successive petitions are addressed in new 80.12(d). Rule 80.12(d)(1) requires a petitioner to identify in the initial petition any prior proceeding that challenged the same sentence or conviction. Rule 80.12(d)(2) follows 13 V.S.A. § 7134, which provides that the court is not required to entertain “a second or successive motion for similar relief on behalf of the same prisoner.” The Supreme Court has explained that § 7134 “bars relitigation of claims actually raised and decided on the merits in an earlier PCR.” *Chandler v. State*, 2016 VT 62, ¶ 8, 202 Vt. 226, 148 A.3d 574.

Rule 80.12(e) addresses assignment and preliminary review of the petition. Under (e)(1), the judge assigned to a petition may not be the same judge who presided over the original judgment and sentence. This is in keeping with 13 V.S.A. § 7131. Under (e)(2), the court must conduct a preliminary review of the petition and may dismiss if petitioner is plainly not entitled to relief. Although the language is slightly different than the statute, the standard is meant to incorporate the statutory provision that the

case moves forward “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 13 V.S.A. § 7133.

Rule 80.12(f) pertains to service of the petition, the answer, and the victim notification. Under (f)(1), if the court does not dismiss a petition after preliminary review, then the clerk is required to serve the petition on the state’s attorney, the Attorney General, and the Defender General. See 13 V.S.A. § 7133 (requiring service on state’s attorney and Attorney General if petition is not dismissed). Pursuant to (f)(2), the State is not required to file an answer to a petition unless the courts orders. Paragraph (f)(3) addresses the notification to victims of listed crimes as required by 13 V.S.A. § 5315.

Rule 80.12(g) provides that the court may authorize discovery for good cause. The rule indicates that the Vermont Rules of Civil Procedure or Criminal Procedure apply to any discovery. Although most discovery is covered by civil rules, where discovery parallels a criminal process, the criminal rules would apply. For example, discovery related to a confidential informant or a child victim. This provision contains the substance of prior V.R.C.P. 81(a), which allowed discovery in PCR proceedings by court order for good cause.

Rule 80.12(h) sets forth the requirements for any evidentiary hearing held on a petition. Under (h)(1), if the petition is not otherwise resolved, the matter is set for a hearing after both sides have been provided adequate time to investigate and prepare their case. This accords with the statute, which allows petitioner a “prompt hearing” on the petition. 13 V.S.A. § 7133.

Rule 80.12(i) provides the grounds and the mechanism for granting relief to petitioner. Rule 80.12(i)(1) delineates three categories of errors that would warrant granting petitioner relief. These track the bases for relief provided in 13 V.S.A. § 7133. The Supreme Court has explained that PCR proceedings are not intended to address “the petitioner’s guilt or innocence”; rather they are “to provide prisoners with an opportunity to challenge the legality of their confinement, and thus ‘to guard against illegal restraints on liberty.’ ” In re Laws, 2007 VT 54, ¶ 9 (quoting In re Stewart, 140 Vt. 351, 359, 438 A.2d 1106, 1109 (1981)).

Under (i)(2), if the parties reach a stipulation, the civil division must

determine whether the stipulation is in the interests of justice. If the stipulated relief involves entry of a plea or an agreed sentence, the civil division must resolve the matter without remand to the criminal division and will apply whatever rules and law would be applicable in the criminal division for such a proceeding.

Under (i)(3), if the civil division finds based on the merits that there is a basis for relief, it must vacate the challenged judgment and remand the matter to the criminal division for further proceedings. This accords with the statute, which indicates that the court can “discharge the prisoner or resentence him or her or grant a new trial or correct the sentence as may appear appropriate.” 13 V.S.A. § 7133. The Supreme Court has held that the civil division has the authority to remand as inherent to its power to vacate a conviction. *In re Morin*, 2011 VT 132, ¶ 7, 191 Vt. 580, 45 A.3d 39 (“When a court vacates and sets aside a judgment, that eliminates the judgment and thereby returns the case to its status before the judgment was made.”).

Rule 80.12(j) provides that the court’s final order on a PCR petition is appealable to the Supreme Court as provided in 13 V.S.A. § 7135. Although some PCR proceedings end with a “remand” back to the criminal division, the final order of the PCR court is final and appealable. See *In re Morin*, 2011 VT 132 (reviewing civil division PCR decision that remanded matter to criminal division).

2. That Rule 81(a) of the Vermont Rules of Civil Procedure be amended as follows (new matter underlined; deleted matter struck through):

## **RULE 81. APPLICABILITY OF RULES**

(a) **Limited Applicability.** These rules do not alter the practice prescribed by the statutes of the State of Vermont for commencing and conducting the proceedings ~~for review of sentence under 13 V.S.A. §§ 7131-7137~~ or for a writ of habeas corpus.

In respects not covered by statute, the practice in ~~these~~ habeas corpus proceedings shall conform to these rules, except that discovery shall be used only by order of the court on motion for good cause shown.

### **Reporter’s Notes—2026 Amendment**

Rule 81(a) is amended to remove the reference to proceedings for post-conviction relief under 13 V.S.A. §§ 7131-7137. The procedures for these

proceedings are now addressed in simultaneously promulgated new V.R.C.P. 80.12.

3. That these Rules, as amended, are prescribed and promulgated to become effective \_\_\_\_\_ . The Reporter’s Notes are advisory.

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

Dated in Chambers at Montpelier, Vermont this \_\_\_\_ day of \_\_\_\_\_ 2026.

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Nancy J. Waples, Associate Justice

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Christina E. Nolan, Associate Justice

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Michael P. Drescher, Associate Justice