PROPOSED

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2015

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—2015 Amendment

Rule 3 is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

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

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(g) Service by Publication.

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(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.

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(*l*) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

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(3) Method. The notice and request given under this subdivision

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(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; and

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Reporter's Notes—2015 Amendment

Rule 4(g)(3) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a). 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

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(b) Writ of Attachment: Issuance.

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(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

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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—2015 Amendment

Rule 4.1(b)(2) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

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

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(j) Trustee Process Against Earnings.

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(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—2015 Amendment

Rule 4.2(j)(3) is amended to conform its 3-day time period to the simultaneous amendment of V.R.C.P. 6(a).

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~~

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~~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 statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and state or federal legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or state or federal legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or state or federal legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office or the court's electronic filing system is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or state or federal legal holiday; or

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(B) during the last hour for filing under Rule 6(a)(2), the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or state or federal legal holiday.

(4) *"Last Day" Defined*. Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight; and

(B) for filing by other means, when the 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.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under ~~Rule 60(b), except to the extent and under the conditions stated therein, and it may extend the time for taking any action under~~ Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), 60(b), and 80.1(m) ~~no more than 20 additional days unless the specific rule otherwise provides~~.

(c) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

(d) Affidavits on Motions. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rules 56~~(c)~~(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 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.~~

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Reporter's Notes—2015 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 F.R.C.P. 6(a). The amendment serves the purposes of both achieving simplicity and maintaining uniformity with the federal practice. By simultaneous amendment, other time provisions of the civil and appellate rules 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., now a Vermont Supreme Court law clerk, 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 court order has established 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 6(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 6(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day—and the 10-day period not infrequently ended later than the 14-day period….
>
> Under [the amended rule], all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days—including intermediate Saturdays, Sundays, and legal holidays—are counted, [except that if] the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday.

Of course, if the clerk's office is inaccessible or the electronic filing system unavailable on the last day or the day to which the period has been extended, the deadline falls on the next accessible or available day. Note that "act, event, or default" has been changed to "event" for brevity and simplicity. The change is not intended as a change in meaning.

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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.

Thirty-day time periods remain unchanged. Several 10-day time periods were changed to 28 days for consistency with the new federal standard for motion practice. 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, 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." 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 <u>after</u> an event, and the thirtieth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 21 days <u>before</u> an event, and the twenty-first day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk's office is inaccessible on August 31, then [the rule] extends the filing deadline forward to the next accessible day that is not a Saturday,

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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.

Rules 6(b) and (d) are amended in minor ways for consistency with other amendments. The one-day time period in Rule 6(d) for service of opposing affidavits on motions is changed to 7 days.

Rule 6(e), providing an additional three days for actions required after service under V.R.C.P. 5(b)(2) or (3), has been deleted. The provision is unduly complicated in application and is inconsistent with the overall purpose of the simplification provided by the day-is-a-day rule. Moreover, it will become unnecessary as most service in practice is increasingly made by email.

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

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(b) Motions and Other Papers.

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(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—2015 Amendment

Rule 7(b)(4) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

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

PROPOSED

(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.

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(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.

PROPOSED

Reporter's Notes—2015 Amendment

Rule 12 is amended to conform its 10-day, 20-day, and 50-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

8. That Rule 13(j) of the Vermont Rules of Civil Procedure be abrogated.

RULE 13. COUNTERCLAIM AND CROSS-CLAIM

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~~**(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—2015 Amendment

Rule 13(j) is abrogated because justices' courts were eliminated and their functions transferred to the District Court by Act No. 249 of 1973 (Adj. Sess.), and the former District Court was 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—2015 Amendment

Rule 15(a) is amended to conform its 10-day and 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

PROPOSED

10. That Rules 16.1(b)(3) and (4) 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

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(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:

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(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—2015 Amendment

Rules 16.1(b)(3) and (4) are amended to conform its 10-day time periods to their simultaneous amendment of V.R.C.P. 6(a).

11. That Rule 16.3 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 16.3. ALTERNATIVE DISPUTE RESOLUTION

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(c) Stipulation for Alternative Dispute Resolution. In every action in which alternative dispute resolution is required under subdivision (a) of this rule, the parties must file a stipulation for alternative dispute resolution and proceed as provided in this subdivision, or the parties will be required to engage in preliminary evaluation as provided in subdivision (d).

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PROPOSED

(3) *Selection of Neutral*. When a stipulation for alternative dispute resolution is filed pursuant to paragraphs (1) and (2) of this subdivision, if the parties have not agreed on a specific individual to serve as neutral, the clerk will send them copies of the referral list established as provided in paragraph (e)(4) of this rule. If the parties have not agreed on a name from that list, or on another available neutral, within ~~7~~ 14 days after the list is sent, they must engage in preliminary evaluation as provided in subdivision (d).

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(6) *Report*. Within ~~15~~ 14 days after the conclusion of an alternative dispute resolution proceeding other than binding arbitration, the neutral must report the results of the process to the court in writing. The report may not disclose the neutral's assessment of any aspect of the case or substantive matters discussed during the session, except as is required to report the information required by this paragraph. The report must contain the following items:

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(d) Preliminary Evaluation.

(1) *Scheduling; Choice of Preliminary Evaluator*. In any action in which a stipulation for alternative dispute resolution has not been filed by the date provided in paragraph (c) (1) of this rule, or the parties have not agreed on a neutral as provided in paragraph (c)(3) or (e)(5), the clerk will schedule a preliminary evaluation session to be held within 60 days after the date specified for filing or agreement. The clerk will notify the parties of the date of the session and will send them a list of three preliminary evaluators selected by the clerk from a panel established as provided in paragraph (e)(3). If the parties have not agreed on a name from that list, or on another available evaluator, within ~~seven~~ 14 days after the list is sent, the clerk will designate the evaluator from those on the list.

(2) *Preliminary Evaluation Session*. Prior to a preliminary evaluation session scheduled pursuant to paragraph (1) of this subdivision, the parties must submit to the evaluator statements setting forth the issues and their evidentiary positions on each. All parties and counsel must participate in the session in the manner provided in paragraph (c)(5) of this rule. At the session, the evaluator will assist the parties to evaluate the respective strengths of their positions and, through informal mediation, may encourage them to settle the case on the merits or to agree to enter a stipulation for alternative dispute resolution. If the parties agree to stipulate, the action will go forward as provided in subparagraph (c)(1)(C). If no settlement or stipulation for alternative dispute resolution can be agreed upon, the evaluator will encourage the parties to enter a stipulation resolving pretrial issues, and the action will go forward as provided in paragraph (c)(7). The evaluator will file a report with the court within ~~15~~ 14 days after the session in the manner provided in paragraph (c)(6).

(e) Neutrals. The following provisions apply to neutrals in all alternative dispute resolution proceedings held as provided in this rule:

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(5) *Impartiality; Disclosure; Conflict of Interest*. A neutral selected by the parties or designated by the clerk must not accept the assignment, or must withdraw, if the neutral does not reasonably believe that the assignment can be undertaken impartially. If the neutral accepts the assignment, the neutral must disclose at any time to the parties any interest or relationship likely to affect the neutral's impartiality or to create an appearance of partiality or bias. If a neutral selected by the parties does not accept the assignment or withdraws, or if any party objects on grounds of conflict of interest to such a neutral, unless otherwise provided by the agreement or by law the parties must agree on another neutral within ~~seven~~ 14 days or the action will proceed to preliminary evaluation in accordance with subdivision (d). A preliminary evaluator designated by the clerk may be disqualified only by the court for cause. Within ~~seven~~ 14 days after an order of disqualification, the clerk will select another evaluator and may set a new date for the preliminary evaluation session if necessary.

Reporter's Notes—2015 Amendment

Rule 16.3 is amended to conform its 7-day and 15-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

12. 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

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(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—2015 Amendment

Rule 17(c) is amended to conform its 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

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13. 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

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(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—2015 Amendment

Rule 23(f) is amended to conform its 10-day time period to the simultaneous amendment of V.R.C.P. 6(a).

14. 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

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(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.

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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—2015 Amendment

Rule 26(f) is amended to conform its 15-day time period to the simultaneous amendment of V.R.C.P. 6(a).

15. 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.

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(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—2015 Amendment

Rule 27(a)(2) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

16. 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

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(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.

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(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

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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—2015 Amendment

Rules 30(b)(1) and (5) are amended to conform their 5-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

17. 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—2015 Amendment

Rule 32(d)(3)(C) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

18. 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

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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—2015 Amendment

Rule 33(a) is amended to conform its 45-day time period to the simultaneous amendment of V.R.C.P. 6(a).

19. 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—2015 Amendment

Rule 34(b) is amended to conform its 45-day time period to the simultaneous amendment of V.R.C.P. 6(a).

20. 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—2015 Amendment

Rule 36(a) is amended to conform its 45-day time period to the simultaneous amendment of V.R.C.P. 6(a).

21. 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.

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Reporter's Notes—2015 Amendment

Rules 38(b) and (c) are amended to conform their 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

22. 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—2015 Amendment

Rules 40(a)(1) and (b) are amended to conform their 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

23. That Rules 50(b) and (c)(2) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 50. JUDGMENT AS A MATTER OF LAW IN ACTIONS TRIED BY A JURY; ALTERNATIVE MOTIONS FOR NEW TRIAL; CONDITIONAL RULINGS

* * * * * *

(b) Renewal of Motion for Judgment After Trial; Alternative Motion for New Trial. Whenever a motion for judgment as a matter of law made under subdivision (a) is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by filing not later than ~~10~~ 28 days after entry of judgment or, if the motion addresses a jury issue not decided by a verdict, no later than ~~10~~ 28 days after the jury was discharged. Renewal of the motion is necessary to appeal from a

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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.

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(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—2015 Amendment

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

24. That Ruled 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

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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—2015 Amendment

Rule 52(a) is amended to conform its 5-day time periods to the simultaneous amendment of V.R.C.P. 6(a). Rule 52(b) is amended for consistency with the new federal standard for motion practice, which was expanded from 10 days to 28 days.

25. That Rules 53(d) 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

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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—2015Amendment

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

26. 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.

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(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—2015 Amendment

Rule 55(b)(4) is amended to conform its 3-day time period to the simultaneous amendment of V.R.C.P. 6(a).

27. 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.

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Reporter's Notes—2015 Amendment

Rule 58(d) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

28. 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—2015 Amendment

Rule 59 is amended to conform its 10-day time period to the simultaneous amendment of V.R.C.P. 6(a). Rule 59(b) is amended for consistency with the new federal standard for motion practice, which was expanded from 10 days to 28 days. The 20-day time period in Rule 59(c) is reduced so that the total time for filing and serving affidavits may not exceed 30 days.

29. That Rule 62(a)(3)(A)-(B) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

PROPOSED

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay Prior to Appeal; Exceptions.

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(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—2015 Amendment

Rule 62(a)(3)(A)-(B) is amended to conform its 10-day and 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

30. 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

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(b) Writ of Replevin: Issuance.

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(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

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in the manner provided in Rule 4 at the same time that the summons and complaint are served upon the defendant.

Reporter's Notes—2015 Amendment

Rule 64(b)(2) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

31. 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—2015 Amendment

Rule 65(a) is amended to conform its 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

32. That Rule 68 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

PROPOSED

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—2015 Amendment

Rule 68 is amended to conform its 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

33. 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).

PROPOSED

(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—2015 Amendment

Rules 72(a) and (f)(1) and (2) are amended to conform their 5-day, 10-day and 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

34. 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

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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—2015 Amendment

Rule 74(b) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

35. 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—2015 Amendment

Rule 78(b)(1) is amended to conform its 10-day and 15-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

36. 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.

PROPOSED

Reporter's Notes—2015 Amendment

Rule 79.1(b) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

37. 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

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date of the accounting until the date of redemption. Such interest shall be calculated at the rate provided in the mortgage or other evidence of indebtedness, or at the rate allowed on judgments by law, whichever is higher. The form of judgment must contain the following statement in bold print: **"If you wish to appeal this judgment, you must request permission to appeal by motion filed with the Court within ~~ten~~ 14 calendar 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—2015 Amendment

Rule 80.1 is amended to conform its 6-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

38. 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—2015 Amendment

Rule 80.2(a) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

39. 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—2015 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 to conform to the simultaneous amendment of V.R.C.P. 6(a).

40. 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—2015 Amendment

Rules 80.6(c)(3), (e)(1) and (5), and (*l*)(1) are amended to conform their 5-day, 10-day, and 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

41. 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:

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* * * * * *

(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—2015 Amendment

Rules 80.7(c)(2)(C) and (d)(1)-(3) are amended to conform their 5-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

42. 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—2015 Amendment

Rule 80.9(b)(3) is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

43. 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 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—2015 Amendment

Rule 80.10(e) is amended to conform its 10-day time period to the simultaneous amendment of V.R.C.P. 6(a).

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

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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—2015 Amendment

Form 1 is amended to conform its 20-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

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—2015 Amendment

Form 1A is amended to conform its 41-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

46. 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)

*** * * * * ***

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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—2015 Amendment

Form 15 is amended to conform its 10-day time period to the simultaneous amendment of V.R.C.P. 6(a).

47. That Rule 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—2015 Amendment

Form 22 is amended to conform its 20-day time period to the simultaneous amendment of V.R.C.P. 6(a).

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

49. 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 _____, 2015.

_____

Paul L. Reiber, Chief Justice

PROPOSED

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

PROPOSED