

STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_ TERM, 2022

**Order Amending Rules 2(a)(2) and (3), 6(a) and (c)(2)(3), 6.1(a) and (c)(1), and 8(h)  
of the Vermont Rules for Family Proceedings**

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

1. That Rule 2(a)(2) and (3) of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 2. CHILDREN IN NEED OF CARE OR SUPERVISION**

**(a) Applicability of Rules to Juvenile Proceedings.**

(2) *Rules Not Applicable.* The following Vermont Rules of Civil Procedure shall not apply in proceedings under this rule: Rules 2 (One Form of Action), 3 (Commencement), 3.1 (Waiver of Filing Fee and Service Costs), 4.1 (Attachment), 4.2 (Trustee Process), 4.3 (Arrest), 7(a) ~~and (e)~~ (Pleadings ~~and Demurrers~~), 8 (Rules of Pleading), 9 (Pleading Special Matters), 10(b) and (c) (Form of Pleadings), 12(a) and (h) (When Defenses Presented; Waiver), 13 (Counterclaim and Cross-Claim), 14 (Third-Party Practice), 16.1 (Complex Actions), 17 (Parties), 19 (Joinder of Persons), 20 (Permissive Joinder), 21 (Misjoinder and Nonjoinder), 22 (Interpleader), 23 (Class Actions), 23.1 (Shareholder Derivative Actions), 23.2 (Unincorporated Associations), 25 (Substitution of Parties), 31 (Depositions Upon Written Questions), 38 and 39 (Trial by Jury), 40(a) and (b) (Calendar), 41(b)(1), (c) and (d) (Involuntary Dismissal on Court's Motion; Dismissal of Counterclaim; Costs), 45 (Subpoenas), 47, 48, 49 and 51 (Jurors; Jury Trials), 50 (Judgment As a Matter of Law in Actions Tried by a Jury; Alternative Motions for New Trial; Conditional Rulings), 53 (Masters), 54 (Judgment; Costs), 55 (Default), 56 (Summary Judgment), 57 (Declaratory Judgments), 62 (Stays), 64 (Replevin), 65 (Injunctions), 65.1 (Security), 66 (Receivers), 67 (Deposit In Court), 68 (Offer of Judgment), 69 (Execution), 70 (Judgment for Specific Acts), 72 (Probate Appeals), 73 (Small Claims Appeals), 74 and 75 (Appeals from Governmental Agencies), ~~78(a) (Motion Days)~~, 79(b) (Judgment Book), 79.1 (Appearance and Withdrawal of Attorneys), 79.2 (Recording Court Proceedings), 80.1 (Mortgage Foreclosure), 80.2 (Naturalization), 80.4 (Habeas Corpus), 80.5 (Civil License Suspensions and DWI Penalties), 80.6 (Judicial Bureau Procedures), 80.7 (Immobilization or Forfeiture Procedures), 80.8 (Transfer from District Court), 80.9 (Municipal Parking Violations), and 80.10 (Stalking or Sexual Assault Orders), 81(a)-(c) (Applicability of Rules to Specified Actions; Terminology), 85 (Title), 86 (Effective Date).

(3) *Rules Modified.* The following Vermont Rules of Civil Procedure shall apply to the extent set forth in this paragraph: Rule 4 shall apply subject to 33 V.S.A. §§ 5311, 5312. Rule 7(b)(4) shall apply, but memoranda in opposition shall be filed within 7 days unless otherwise ordered by the court. Rule 12(b)-(g) shall be subject to subdivision (d) of this rule. Rules 15, 16 and 16.2 shall be subject to subdivision (d) of this rule. In addition, the pretrial conference shall be entitled a pretrial

hearing, which shall be held within 14 days of the preliminary hearing; and, absent a showing of good cause, pretrial motions must be filed at or before the pretrial hearing. Rules 26-37 shall apply subject to subdivisions (d), (f) and (g) of this rule. Rule 40(c), (d) and (e) shall apply subject to subdivision (b) of this rule. Rule 43 shall apply subject to 33 V.S.A. § 5110. Rule 58 shall apply except that, although a judgment need not be set forth on a separate document, it is effective only when it is in writing, signed by the judge, and entered as provided in Rule 79(a). ~~Rule 78(b) shall apply, but memoranda in opposition shall be filed within 7 days unless otherwise ordered by the court.~~ Vermont Rule of Criminal Procedure 17 shall govern the issuance of subpoenas.

### Reporter's Notes—2022 Amendment

Rule 2(a)(2) is amended to eliminate the reference to V.R.C.P. 78(a), (Motion Days) which was abrogated by order of June 7, effective August 9, 2021. Rule 2(a)(3) is amended to replace the reference to V.R.C.P. 78(b) with a reference to V.R.C.P. 7(b)(4) (Memorandum in Opposition), added by that order and embodying the provisions of former V.R.C.P. 78(b)(1) in revised form. See Reporter's Notes to 2021 amendment of V.R.C.P. 7(b) and abrogation of V.R.C.P. 78.

2. That Rules 6(a) and 6(c)(2)(3) of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

### **RULE 6. REPRESENTATION BY ATTORNEYS AND GUARDIANS AD LITEM OF MINORS**

(a) **Applicability.** This rule applies to all proceedings under 33 V.S.A. Chapters 51, 52 and 53 (Juvenile Judicial Proceedings) which are held within the family court ~~and to any proceeding under Article 1 of Subchapter 2 of 14 V.S.A. Chapter 111 (Guardians of Minors) in which the probate court, in its discretion, seeks to appoint a guardian ad litem for a minor;~~ and to any proceeding under 18 V.S.A. Chapters 179 and 181 (Involuntary Treatment), and Chapter 206 (~~Care for Mentally Retarded Persons~~ Care for Persons with Intellectual Disabilities), involving a minor.

(b) **Appointment of Counsel.** In proceedings under 33 V.S.A. Chapters 51, 52 and 53, the court shall assign counsel pursuant to Administrative Order No. 32 to represent the child unless counsel has been retained by that person.

(c) **Appointment of Guardian Ad Litem.**

(1) *Proceedings Under 33 V.S.A. Chapters 51, 52 and 53.* In all proceedings under Chapters 51, 52 and 53 of Title 33, appointment of a guardian ad litem for the child shall be governed by Family Court Rules 1, 2 and 3.

~~(2) *Guardians of Minors.* In proceedings under Article 1 of Subchapter 2 of 14 V.S.A. Chapter 111, the probate court, in the exercise of its discretion, may appoint a guardian ad litem for a minor upon notice to the minor, with opportunity to request a hearing.~~

~~Hearings on these motions shall be set expeditiously, and sufficiently in advance of the hearing on the merits so as to allow the guardian ad litem adequate time to prepare for the hearing on the merits. Civil Rule 78(b) shall not apply to these motions.~~

~~When served upon the proposed ward, the motion and affidavit must include or be accompanied by a clear explanation that the proposed ward need not consent to the motion, and that the person has a right to appear in person before the court to object, or may object by letter.~~

~~(3) (2) Selection, Replacement, Discharge.~~ The guardian ad litem shall be selected and replaced as appropriate by the court in its discretion.

### **Reporter's Notes—2022 Amendment**

On August 18, 2020, the Vermont Supreme Court promulgated V.R.P.P. 80.9 (Representation by Guardians ad Litem of Minors) and V.R.P.P. 80.10 (Representation by Attorneys and Guardians ad Litem of Adults in Specified Proceedings). Prior to that time, the appointment of guardians ad litem and attorneys in these probate proceedings were governed by V.R.F.P. 6 and 6.1. In light of the promulgation of probate rules for the appointment of guardians in probate guardianship proceedings, it is no longer necessary for the family rules to apply to these proceedings.

In addition, the title of 18 V.S.A. Chapter 206 is amended to be consistent with legislation enacted in 2014. 2013, No. 96 (Adj. Sess.), § 114.

3. That Rule 6.1 of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through):

#### **RULE 6.1. REPRESENTATION BY ATTORNEYS AND GUARDIANS AD LITEM IN SPECIFIED PROCEEDINGS**

(a) **Applicability.** This rule applies to all proceedings involving adults under (1) ~~Subchapter 12 of 14 V.S.A. Chapter 111 (Involuntary Guardianships), (2) 18 V.S.A. Chapters 179 and 181 (Involuntary Treatment), (3) 18 V.S.A. Chapter 204 (Sterilization), (4) 18 V.S.A. Chapter 206 (Care for Mentally Retarded Persons)~~ Care for Persons with Intellectual Disabilities, and (5) ~~18 V.S.A. Chapter 215 (Protective Services).~~

(b) **Appointment of Counsel.** In all proceedings to which this rule applies, the court shall assign counsel pursuant to Administrative Order No. 32 to represent the respondent unless counsel has been retained by that person.

**(c) Appointment of Guardian Ad Litem.**

(1) *Appointment.* In all proceedings to which this rule applies, the respondent, or an attorney who has been appointed or retained to represent a respondent, or any other attorney or party, may file and serve a motion, supported by affidavit, requesting the appointment of a guardian ad litem. The court may raise the issue sua sponte. In all cases other than where respondent has personally filed the motion or consents in open court, the motion and affidavit shall be served upon the respondent. The motion shall not be granted except after opportunity for hearing. No hearing is required when the respondent consents to the appointment and the court in its discretion finds that the affidavit provides sufficient support for the motion.

Hearing on these motions shall be set expeditiously, and sufficiently in advance of the hearing on the merits so as to allow the guardian ad litem adequate time to prepare for the hearing on the merits. Civil Rule ~~78(b)~~ 7(b)(6) shall not apply to these motions.

When served upon the respondent, the motion and affidavit must include or be accompanied by a clear explanation that the respondent need not consent to the motion, and that the respondent has a right to appear in person before the court to object, or may object by letter.

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**Reporter's Notes—2022 Amendment**

On August 18, 2020, the Vermont Supreme Court promulgated V.R.P.P. 80.9 (Representation by Guardians ad Litem of Minors) and V.R.P.P. 80.10 (Representation by Attorneys and Guardians ad Litem of Adults in Specified Proceedings). Prior to that time, the appointment of guardians ad litem and attorneys in these probate proceedings were governed by V.R.F.P. 6 and 6.1. In light of the promulgation of probate rules for the appointment of guardians in probate guardianship proceedings, it is no longer necessary for the family rules to apply to these proceedings.

In addition, the title of 18 V.S.A. Chapter 206 is amended to be consistent with legislation enacted in 2014. 2013, No. 96 (Adj. Sess.), § 114.

Rule 6.1(c)(1) is amended to replace the reference to V.R.C.P. 78(b) (Disposition of Written Motions With or Without Hearing), which was abrogated by order of June 7, effective August 9, 2021, with a reference to V.R.C.P. 7(b)(6) (Evidentiary Hearings) added by that order and embodying its relevant provisions in revised form. See Reporter's Notes to 2021 amendment of V.R.C.P. 7(b) and abrogation of V.R.C.P. 78.

4. That Rule 8(h) of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through):

**RULE 8. MAGISTRATES PROCEEDINGS**

(h) **Motions by Magistrates or the Family Court.** A motion by the magistrate or the family court under 15 V.S.A. §§ 462, 463 shall be made in open court or, if in writing, conform to V.R.C.P. 7 ~~and 78~~.

**Reporter’s Notes—2022 Amendment**

Rule 8(h) is amended to eliminate the reference to V.R.C.P. 78 (Motion Day), which was abrogated by order of June 7, effective August 9, 2021. All relevant provisions of the former V.R.C.P. 78 are now incorporated in V.R.C.P. 7. See Reporter’s Notes to 2021 amendment of V.R.C.P. 7(b) and abrogation of V.R.C.P. 78.

5. That these amendments be prescribed and promulgated, effective on \_\_\_\_\_. The Reporter’s Notes are advisory.

6. 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 \_\_\_\_\_, 2022.

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice

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Vacant, Associate Justice