

SUPREME COURT OF VERMONT  
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TO: Members of the Vermont Bar  
FROM: Robert Greemore, Court Administrator  
RE: Promulgated Rule Amendments  
DATE: July 19, 2010

For your information, I enclose the following:

**I. EMERGENCY RULE AMENDMENTS RECENTLY PROMULGATED BY THE VERMONT SUPREME COURT**

**a. Order Promulgating Emergency Amendment to Rules of Appellate Procedure 33.1**

The emergency amendments to Rule 33.1 of the Vermont Rules of Appellate Procedure make clear that in a case to be considered by a three-justice panel, the matter will be deemed submitted on the briefs if no party requests oral argument. The new rule also provides that oral argument is limited to five minutes per side unless the Court allows more time. The new subdivision also allows litigants to present oral argument by video conference in matters before three justice panels. The rule clarifies that inmates may present argument via telephonic conference as a right and all others by permission. The rule is effective immediately and the Advisory Committee on Civil Rules is directed to report to the Court on any comments that may be received on these emergency amendments by September 30, 2010.

These emergency rule amendments, promulgated on July 15, 2010 and effective immediately, can be found on our website at the following address:

<http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDEMERGENCYVRAP33.1.pdf>

Comments on this emergency amendment can be sent by **September 20, 2010** to:

William Griffin, Esq.  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609-1001  
[bgriffin@atg.state.vt.us](mailto:bgriffin@atg.state.vt.us)

**b. Order Promulgating Emergency Amendments to the Vermont Rules of Civil, Criminal, Appellate, and Small Claims Procedure and the Vermont Rules for Family and Environmental Court Proceedings**

These emergency amendments implement Act 154 of 2009, § 7 (Adj. Sess.), An Act Relating to Restructuring of the Judiciary, effective July 1, 2010, which enacted 4 V.S.A. § 30

establishing a single Superior Court of statewide jurisdiction with Civil, Criminal, Family, and Environmental divisions to replace the former Superior, District, Family and Environmental courts.

These amendments promulgated on July 1, 2010, and effective immediately, can be found on our website at the following address:

[http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDEMERGENCY\\_VT--restructuring%20rules-070110.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDEMERGENCY_VT--restructuring%20rules-070110.pdf)

## **II. PROPOSED RULE AMENDMENTS (NOTE: THE FOLLOWING PROPOSED AMENDMENTS ARE PROPOSED BY THE RULES COMMITTEES AND HAVE NOT BEEN REVIEWED BY THE SUPREME COURT.)**

### **a. Proposed Amendments to Vermont Rules of Civil and Appellate Procedure**

The proposed amendment to Rule 5(g) would permit continued inclusion of a social security number in a document where it is required by federal law. In particular, retirement fund administrators might decline to honor an instrument such as a Qualified Domestic Relations Order (QDRO) in which the litigants' social security numbers had been redacted as required by V.R.C.P. 5(g) in the absence of a specific request from the court.

The proposed amendment to Rule 45(f) is added to incorporate the provisions of the Uniform Interstate Depositions and Discovery Act (UIDDA), with modifications appropriate to Vermont practice. The Act has been adopted in 14 states and the District of Columbia since 2008 and is pending in four other states and the U.S. Virgin Islands. Idaho, Montana, and New Mexico have adopted the provisions of the Act by court rule.

The proposed amendment to Rule 45(f)(1) makes clear the purpose of the rule to provide a procedure enabling litigants in a proceeding in another state to use the procedures of the Vermont rules to obtain the forms of discovery covered by the rule.

The proposed amendment to Rule 45(f)(2) contains the definitions set forth in UIDDA § 2. Note that the definition of "foreign subpoena" in subparagraph (B) limits the applicability of the rule to subpoenas "issued under the authority of a court of record," thus excluding subpoenas issued by other tribunals such as administrative agencies or boards of arbitration. Cf. UIDDA § 3, Comment. Note also that the definition of "subpoena" includes a subpoena duces tecum and an order to permit inspection of premises but does not include an order to appear for a physical examination.

The proposed amendment to Rule 45(f)(3) is based on UIDDA § 3, with variations to adapt the rule to Vermont practice.

The proposed amendment to Rule 45(f)(4) is based on UIDDA § 4, with variations to adapt the rule to Vermont practice and to eliminate any requirement of a return to the issuing court.

The proposed amendment to Rule 45(f)(5) adapts UIDDA § 5 to the provisions of the Vermont rule.

The proposed amendment to Rule 45(f)(6) adapts UIDDA § 6 to the provisions of the Vermont rule.

The proposed amendment to Rule 80.5(j) would substitute a more functional standard of review based on the language of V.R.A.P. 5(b). The former language provided a circular standard. A judge who thought that the defendant was likely to prevail on appeal should have simply entered judgment for the defendant.

The proposed amendment to Rule 25(a)(2) is added to include in the Vermont Rules of Appellate Procedure a requirement like that of V.R.C.P. 5(g) [as amended in 2010] and V.R.Cr.P. 49(c) (incorporating the Civil Rule) that social security numbers must be redacted from any paper to be filed unless otherwise requested by the Supreme Court or required by

law. The number must be redacted from a paper in the printed case even if the number was requested by the trial court, and included in the trial court filing, unless the Supreme Court requests the number or it is required by law.

These proposed rule amendments can be found on our website at the following address:

[http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRCP\\_VRAP\\_061810.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRCP_VRAP_061810.pdf)

Comments on these proposed amendments can be sent by September 20, 2010 to:

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### **b. Proposed Amendments to Vermont Rules of Professional Conduct 1.15(d) and (e)**

The proposed amendment to Rule 1.15B(d) is at the request of the Professional Responsibility Board to modernize and clarify the operation of the rule. The proposed amendment would make clear that institutions must notify Disciplinary Counsel, rather than the Board, not only when an instrument presented against insufficient funds is honored or dishonored, but whenever any transaction—whether electronic, paper, wire, or other—causes an overdraft to an attorney trust account. The proposed amendment reflects the evolving nature of banking practices and the fact that some newer types of transactions do not involve an instrument being presented against an account; for example, Automated Clearing House (ACH) transactions. Conforming changes are made in Rule 1.15B(e).

These proposed rule amendments can be found on our website at the following address:

[http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDAmendmentVRPCtRule1.15B\\_d.pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDAmendmentVRPCtRule1.15B_d.pdf)

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### **III. REMINDER TO REDACT SOCIAL SECURITY NUMBERS**

The Supreme Court is concerned with protecting the privacy of social security numbers of persons involved in court proceedings.

In 2001, the Court promulgated procedural rules requiring attorneys and self-represented litigants to redact the social security number from any paper before filing it with the trial court unless the SSN was specifically requested by the trial court. See V.R.C.P. 5(g); V.R.Cr.P. 49(c).

The Supreme Court has asked the Advisory Committee on the Rules of Civil Procedure to propose a procedural rule that social security numbers be redacted from all papers filed with the Supreme Court prior to filing.

Pending promulgation of such a rule, the Court at this time requests that the social security number be redacted from any paper filed with the Supreme Court, and in particular

the Court requests that the SSN be redacted from all papers in the printed case, even if the SSN was requested by the trial court and was included on the paper filed with the trial court.

#### **IV. OTHER REMINDERS**

Attorneys are reminded of their obligation under A.O. 41 to keep this office informed of their current mailing and email addresses.

You may send changes to [JUD-AttyLicensing@state.vt.us](mailto:JUD-AttyLicensing@state.vt.us). Your cooperation is very much appreciated.