

**SUPREME COURT OF VERMONT
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TO: Members of the Vermont Bar
FROM: Lee Suskin, Court Administrator
RE: Promulgated & Proposed Rule Amendments
DATE: November 21, 2008

For your information, I enclose the following:

I. RULE AMENDMENTS RECENTLY PROMULGATED BY THE VERMONT SUPREME COURT

a. Order Promulgating Amendment to Vermont Rules 1(j) and Amendment to Rule 3(a)(3) for Family Proceedings.

Rule 1(j) is added to provide a procedure governing withdrawal of an admission of delinquency comparable to the provisions of V.R.Cr.P. 32(d) for plea withdrawal in a criminal case.

Rule 3(a)(3) is amended to amended to make clear that the rule applies to a single parent as well as to "parents."

The amendment to V.R.F.P. 1(j) is effective on January 12, 2009, and the amendment to Rule 3(a)(3) is effective immediately. These amendments promulgated on November 12, 2008, can be found on our website at:

[http://www.vermontjudiciary.org/rules/Promulgated/VRFP1\(j\)and3\(a\)\(3\).Promulgated.pdf](http://www.vermontjudiciary.org/rules/Promulgated/VRFP1(j)and3(a)(3).Promulgated.pdf)

b. Amendments to Rules 24(f) and 43(c) of the Vermont Rules of Criminal Procedure

The amendment adding Rule 24(f) was made to permit the court to select a sufficient number of jurors to make up both a jury of twelve and between one and four alternates without predetermining the identity of the alternates. The amendment to V.R.Cr.P. 43(c) clarifies that the defendant's presence is not required at a conference or argument on a question of law. Under

the amended rule, the defendant's presence is required only at those proceedings specified in subdivision (a) or otherwise would be ordered by the court.

These amendments promulgated on November 12, 2008, and effective January 11, 2009, can be found on our website at:

[http://www.vermontjudiciary.org/rules/Promulgated/vrcrp24\(f\)and43\(c\)amended.pdf](http://www.vermontjudiciary.org/rules/Promulgated/vrcrp24(f)and43(c)amended.pdf)

c. Administrative Directive No. 28 – Electronic Devices in a Courthouse.

This directive establishes a policy for the use of electronic devices in a courthouse. The Directive, promulgated on November 12, 2008, and effective January 2, 2009, can be found on our website at:

http://www.vermontjudiciary.org/rules/Promulgated/ad28electronicdevicesincourthouses_Promulgated.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 Order making permanent Rule 79.1(h) of the Vermont Rules of Civil Procedure and amending Rule 31(e)(2) of the Vermont Rules of Appellate Procedure

By order of March 13, 2008, Rule 79.1(h), permitting a lawyer acting pursuant to a limited representation agreement with a *pro se* client to enter a limited appearance in the Superior Court, was extended until April 10, 2009. This proposed amendment would make the rule permanent.

The proposed amendment to Rule 31(e)(2) of the Vermont Rules of Appellate Procedure would clarify the procedure on a motion to disqualify a Supreme Court justice when more than two justices are challenged.

Comments on these proposed amendments can be sent to the Chair of the Civil Rules Committee by January 26, 2009. The chair can be reached either by U.S. postal or email at the following addresses:

William Griffin, Esq., Chair
Civil Rules Committee
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
bgriffin@atg.state.vt.us

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

[http://www.vermontjudiciary.org/rules/proposed/VRCP79.1\(h\)VRAP31\(e\)\(2\)PROPOSED.pdf](http://www.vermontjudiciary.org/rules/proposed/VRCP79.1(h)VRAP31(e)(2)PROPOSED.pdf)

b. Proposed Order amending Rules 16.2, 26(b) and (f), 33(c), 34, 37(f), 45, 50(b) of the Vermont Rules of Civil and Appellate Procedure

The proposed amendments to the Vermont Rules of Civil Procedure 16.2, 26, 33, 34, 37 and 45 would incorporate recent amendments to the Federal Rules of Civil Procedure concerning discovery of electronically stored information and the proposed amendment to V.R.C.P. 50 would incorporate recent changes in F.R.C.P. 50 related to the timing of a motion for judgment after trial.

Comments on these proposed amendments can be sent to the Chair of the Civil Rules Committee by January 26, 2009. The chair can be reached either by U.S. postal or email at the following addresses:

William Griffin, Esq., Chair
Civil Rules Committee
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
bgriffin@atg.state.vt.us

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

[http://www.vermontjudiciary.org/rules/proposed/VRCP16.2_26_33_34_37_45_50\(b\)\(d\)PROPOSED.pdf](http://www.vermontjudiciary.org/rules/proposed/VRCP16.2_26_33_34_37_45_50(b)(d)PROPOSED.pdf)

c. Proposed Order amending Rules 16.1(c), 18(b), 24(d), 32(b) and 32(c) of the Vermont Rules of Criminal Procedure

The proposed amendment to V.R.Cr.P. 16.1(c) would permit the prosecutor to speak privately to law enforcement officers who have participated in the investigation even if the officers appear on a defense witness list. The proposed amendment to V.R.Cr.P. 18(b) would require prosecution of violations of pre-trial release conditions to be held in the county or circuit of the court that issued the pre-trial release order unless the defendant has been charged with a new offense. The proposed amendment to V.R.Cr.P. 24(d) would add language permitting the court to retain alternate jurors after the jury retires in order to ensure that a sufficient number of jurors will be available in case a sitting juror is unable to complete deliberations. The proposed amendment to V.R.Cr.P. 32(b) would permit the clerk to sign a judgment to reflect the court's ruling from the bench. The proposed amendment to V.R.Cr.P. 32(c) would require a probation officer to give the defendant's attorney notice and opportunity to attend an interview of defendant conducted as part of a presentence investigation.

Comments on these proposed amendments can be sent to the Chair of the Criminal Rules Committee by January 26, 2009. The chair can be reached either by U.S. postal or email at the following addresses:

P. Scott McGee, Esq.
Hershensen, Carter, Scott & McGee

PO Box 909
Norwich, VT 05055-0909
smcgee@hcsmlaw.com

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

[http://www.vermontjudiciary.org/rules/proposed/VRCrP16.1\(c\)_18\(b\)_24\(d\)_32\(b\)PROPOSED.pdf](http://www.vermontjudiciary.org/rules/proposed/VRCrP16.1(c)_18(b)_24(d)_32(b)PROPOSED.pdf)

d. Proposed Order Amending the Vermont Family Rules for Family Proceedings.

The proposed amendment to Rule 4(b)(2)(B) of the Vermont Rules of Family Proceedings would make clear that the clerk is to complete the notice of a hearing or case manager's conference after filing of the complaint and is to attempt to schedule the conference or hearing within 45 to 60, rather than 15 to 30, days after filing. The amended time period, which reflects current scheduling practice, is intended to assure that the hearing or conference will be held after the 20 day period for filing an answer, so that the defendant will have time to prepare.

It is proposed that Rule 4(g)(1) relating to the testimony of witnesses be abrogated. By simultaneous amendment, its provisions have been incorporated in new Rule 17.

The proposed amendment to Rule 9(a)(3) would provide that in relief from abuse actions, depositions under V.R.C.P. 30 may be taken only on order for good cause shown.

The proposed amendments to Rule 15 would permit a lawyer acting pursuant to a limited representation agreement with a pro se client to enter a limited appearance in Family Court in certain specific situations.

The proposed addition of Rule 17 would make clear that a family court judge or magistrate in any action or proceeding under the Family Rules may require or permit a witness or party to testify or participate by telephone.

Comments on these proposed amendments can be sent to the Chair of the Family Rules Committee by January 26, 2009. She can be reached either by U.S. Postal or email at the following address(es):

Jody Racht, Esq., Chair
Vermont Attorney General's Office
Ladd Hall, 103 South Main Street
Waterbury, VT 05671-0701
jracht@srs.state.vt.us

This proposed rule amendment can be found on our website at the following address:

[http://www.vermontjudiciary.org/rules/proposed/VFFP4\(b\)\(2\)\(B\)_4\(g\)\(1\)_9\(a\)\(3\)_15_17PROPOSED.pdf](http://www.vermontjudiciary.org/rules/proposed/VFFP4(b)(2)(B)_4(g)(1)_9(a)(3)_15_17PROPOSED.pdf)

IV. 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. Your cooperation is very much appreciated.