

STATE OF VERMONT  
VERMONT SUPREME COURT  
JULY TERM, 2010

**Order Promulgating Emergency Amendments to Rule 33.1 of the  
Vermont Rules of Appellate Procedure**

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

1. That Rule 33.1 of the Vermont Rules of Appellate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 33.1. SUMMARY PROCEDURES ON APPEAL**

(a) **Orders.** In any case, the Court, if all members not disqualified agree, may order that the matter be set for ~~oral argument~~ consideration before a panel of three justices. If no party requests oral argument by letter addressed to the clerk reasonably in advance of the date set for consideration, the matter will be deemed to have been submitted for decision on the briefs unless the Court directs that the case be argued. If all parties of record are represented by counsel the Court may direct that the matter be submitted on the briefs, without oral argument.

(b) **Oral Argument.** Unless otherwise ordered by the Court, the allotted time for oral argument will be five minutes per side, including any time reserved by the appellant for rebuttal. Parties may present oral argument either in person or by video conference. Incarcerated parties may also present oral argument by telephone as long as the telephonic conference can be arranged at the place of incarceration. All other parties may present oral argument by telephone with the Court's permission. Parties intending to present oral argument by telephonic or video conference must notify the Court no later than three business days before the scheduled argument date. Parties participating by video conference must arrange the conference, and pay any associated fees, through a service approved by the Court. Unless the Court orders otherwise, a video or telephonic conference may be held in accordance with this rule only if the equipment to be used satisfies any safeguards that the Court may require by administrative order. The Court assumes no responsibility for any failure to properly connect for a video or telephonic conference, and in such cases the Court may direct that the case will be considered without oral argument.

(b) (c) **Disposition after Argument Before Three Justices; Additional Briefing, etc.** ~~Any matter as to which oral argument has been heard by a panel of three justices shall be decided by unanimous opinion of the three justices. Any decision issued by a three-justice panel must be unanimous. The panel may, and i~~ If a unanimous decision cannot be reached on the merits, shall, direct that the matter will be reargued considered by before the full Court. The panel may also elect to have a matter considered by the full Court based on the guidelines set forth in V.R.A.P. 33.2. The panel may, prior to determining that a unanimous decision cannot be reached, retain the matter and direct that additional briefing be submitted. If argument before the full Court is ordered, the Court may issue an additional order setting forth matters to be reargued or rebriefed.

(e) **(d) Nonprecedential Status of Decisions.** An entry order decision issued by a three-justice panel that is not published in the Vermont Reports may be cited as persuasive authority but shall not be considered as controlling precedent. Such a decision may also be cited and may be controlling with respect to issues of claim preclusion, law of the case, and similar issues involving the parties or facts of the case in which the decision was issued.

### **Reporter's Note – 2010 Emergency Amendment**

Rule 33.1(a) is amended to make clear that in a case to be considered by a three-justice panel the matter will be deemed submitted for decision on the briefs if no party requests oral argument.

New Rule 33.1(b) 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 a three-justice panel. The rule also clarifies that inmates may present argument via telephonic conference as a right and all others by permission. The Court by administrative order will establish standards for video or teleconferencing equipment to be used that presumably will be similar to those in Administrative Order 38, Parts II and III.

2. That this rule, as amended, is prescribed and promulgated to become effective immediately. The Reporter's Notes are advisory.

3. That the Court finds that these emergency amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11, to allow video conference appearance of litigants as soon as possible in the interests of economy and efficiency. The Court's Advisory Committee on Rules of Civil Procedure is directed to consider and report to the Court pursuant to Administrative Order No. 11 by September 30, 2010, on any comments that may be received on these emergency amendments.

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

Dated in Chambers at Montpelier, Vermont, this 15<sup>th</sup> day of July, 2010.

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice