

STATE OF VERMONT
VERMONT SUPREME COURT
JUNE TERM, 2009

**Order Promulgating Emergency Amendments to the Vermont Rules of Appellate
Procedure and Administrative Order No. 4**

1. That Rule 3(d) of the Vermont Rules for Appellate procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 3. APPEAL AS OF RIGHT - HOW TAKEN

* * * * *

(d) **Content of Notice of Appeal.** A notice of appeal must specify the party or parties taking the appeal by naming each appellant in either the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X." A notice of appeal filed pro se is filed on behalf of the party signing the notice and the signer's spouse and minor children, if they are parties, unless the notice of appeal clearly indicates a contrary intent. In a class action, whether or not the class has been certified, it is sufficient for the notice to name one person qualified to bring the appeal as representative of the class. A notice of appeal must also designate the judgment, order, or part thereof appealed from; must name the court to which the appeal is taken; and must be signed by the appellant or the appellant's attorney. A notice of appeal from an order in proceedings under Chapters ~~55~~ 51 and 53 of Title 33 ~~other than delinquency proceedings~~ must indicate that the appeal is from such an order. An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

* * * * *

Reporter's Notes – 2009 Amendment

Rule 3(d) is amended on an emergency basis to incorporate in the rule changes made necessary by the enactment of Act No. 185 of 2007 (Adj. Sess.), which repealed 33 V.S.A. chapter 55 covering juvenile proceedings and replaced it with 33 V.S.A. chapters 51-53, effective January 1, 2009. The change substitutes a reference to the appropriate sections of the newly enacted legislation and removes unnecessary language. Note that the inclusion of chapter 51 in the amendment means that orders such as protective orders and contempt orders in delinquency proceedings will be subject to this rule.

2. That Rule 8(c)(2) of the Vermont Rules for Appellate procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 8. STAY OR INJUNCTION PENDING APPEAL

* * * * *

(c) Stays in Juvenile Proceedings.

* * * * *

(2) Pending appeal, the family court retains jurisdiction to modify or vacate its order under 33 V.S.A. § ~~5532~~ 5113 and to enforce its order under the provisions of 33 V.S.A. §§ ~~5533-5539~~ 5107, 5115-5119, 5202, 5205, 5292 and 5322.

* * * * *

Reporter’s Notes – 2009 Amendment

Rule 8(c)(2) is amended on an emergency basis to incorporate in the rule changes made necessary by the enactment of Act No. 185 of 2007 (Adj. Sess.), which repealed 33 V.S.A. chapter 55 covering juvenile proceedings and replaced it with 33 V.S.A. chapters 51-53, effective January 1, 2009. The change substitutes a reference to the appropriate sections of the newly enacted legislation.

3. That Rule 10(b)(7) of the Vermont Rules for Appellate procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 10. THE RECORD ON APPEAL

* * * * *

(b) The Transcript of the Proceedings; Duty of the Appellant to Order; Stipulation or Order for Abbreviated Transcript.

* * * * *

(7) In any proceeding under Chapters ~~55~~ 51 and 53 of Title 33, ~~other than a delinquency proceeding~~, the appellant shall order the transcript at the same time the notice of appeal is filed, following the procedures set forth in subdivision (b)(1) of this rule.

* * * * *

Reporter’s Notes – 2009 Amendment

Rule 10(b)(7) is amended on an emergency basis to incorporate in the rule changes made necessary by the enactment of Act No. 185 of 2007 (Adj. Sess.), which repealed 33 V.S.A. chapter 55 covering juvenile proceedings and replaced it with 33 V.S.A. chapters 51-53, effective January 1, 2009. The change

substitutes a reference to the appropriate sections of the newly enacted legislation and removes unnecessary language. Note that the inclusion of chapter 51 in the amendment means that orders such as protective orders and contempt orders in delinquency proceedings will be subject to this rule.

4. That Rule 26(b) and (d) of the Vermont Rules for Appellate procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 26. COMPUTATION AND EXTENSION OF TIME

* * * * *

(b) **Enlargement of Time.** The Supreme Court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the Court may not enlarge the time for filing a notice of appeal or a motion for permission to appeal, except as specifically authorized by law or by these rules. Absent extraordinary circumstances, enlargement of time will not be granted in appeals from proceedings under Chapters ~~55~~ 51 and 53 of Title 33, ~~other than delinquency proceedings.~~

* * * * *

(d) **Stipulation for Enlargement of Time on Appeal.** Except for appeals in proceedings under Chapters ~~55~~ 51 and 53 of Title 33 ~~that are not delinquency proceedings,~~ and subject to the provisions of Rules 12(c), 26(e) and 42(b), any period of time prescribed by these rules for doing any act except the time for filing notice of appeal or petition for permission to appeal may be enlarged by the filing of a stipulation, signed by all counsel of record in the case, setting forth clearly and specifically the period of time enlarged and the date to which said period is enlarged, and stating the reason for the enlargement of time. Such stipulation, if filed prior to the transmission of the record on appeal to the Supreme Court, shall be filed with the clerk of the superior or District Court. If filed after filing of the record on appeal in the Supreme Court, such stipulation shall be filed with the clerk of the Supreme Court.

* * * * *

Reporter's Notes – 2009 Amendment

Rules 26(b) and (d) are amended on an emergency basis to incorporate in the rules changes made necessary by the enactment of Act No. 185 of 2007 (Adj. Sess.), which repealed 33 V.S.A. chapter 55 covering juvenile proceedings and replaced it with 33 V.S.A. chapters 51-53, effective January 1, 2009. The change substitutes a reference to the appropriate sections of the newly enacted legislation and removes unnecessary language. Note that the inclusion of chapter 51 in the amendment means that orders such as protective orders and contempt orders in delinquency proceedings will be subject to this rule.

5. That § 4(c)(1) of Administrative Order No. 4 be amended to read as follows (deleted matter struck through; new matter underlined):

**RULES GOVERNING THE ASSIGNMENT OF COUNSEL AND PAYMENT
THEREFOR BY THE DEFENDER GENERAL**

§ 4. Selection of counsel; duration of assignment; right of appeal

(c) In the event a client is adversely affected by the result of a judgment after trial or plenary hearing, the public defender or assigned counsel shall advise the client of the right to appeal. The responsibility for filing notice of appeal shall rest with the trial counsel. Immediately at the conclusion of the case assigned counsel shall notify the Defender General, in writing, concerning whether the case is to be appealed.

(1) An appeal from a proceeding under Chapters ~~55~~ 51-53 of Title 33 is not considered a separate proceeding and thus does not require a separate application for the services of appellate counsel at state expense to be filed with a copy of the Notice of Appeal in the trial court in accordance with § 5 of this Order.

6. That these emergency amendments are prescribed and promulgated to become effective on May 28, 2009. The Reporter's Notes are advisory.

7. 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 because they reflect changes made necessary by Act 185 of 2007 (Adj. Sess.), enacting 33 V.S.A. chapters 51-53 and repealing 33 V.S.A. chapter 55, which took effect on January 1, 2009. The Court's Advisory Committee on Rules for Family Proceedings is directed to consider and report to the Court pursuant to Administrative Order No. 11 by September 30, 2009, on any comments that may be received on these emergency amendments.

8. That the Chief Justice is authorized to report these emergency 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 17th day of June, 2009.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice