

**STATE OF VERMONT
VERMONT SUPREME COURT
FEBRUARY TERM, 2024**

Order Promulgating Amendments to Rule 16.1(b) and (d) of the Vermont Rules of Probate Procedure

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

1. That Rule 16.1(b) and (d) of the Vermont Rules of Probate Procedure be amended as follows (deleted matter struck through; new matter underlined):

RULE 16.1. MEDIATION

(b) **Order to Mediate.** Except as provided in subdivision (c), the court, on its own motion or the motion of a party, at any time after the commencement of an action or proceeding to which this rule applies, may order the parties to participate in mediation of any issue or issues involved in the action or proceeding if the court determines that the issue or issues could be resolved or clarified through mediation and that the interest of the parties and the court in a fair, economical, and efficient resolution of the issues would be served thereby. The court's order shall identify who shall participate in the mediation. The court shall have the discretion to establish the allocation of payment for the fees and expenses of mediation.

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(d) **Conduct of Mediation.** In a mediation ordered under subdivision (b):

(1) The mediation will be conducted by an individual mediator acceptable to the court and the parties. If no mediator who is acceptable to the court and the parties is available to conduct the mediation, the court may designate a mediator.

(2) The mediation may be conducted in-person, remotely, or by hybrid means, as the parties may agree or as the court orders.

(~~2~~ 3) The mediation will be carried out on a schedule prepared by the participants in consultation with the mediator and approved by the court unless the court subsequently, on the request of the parties and mediator, approves a modification.

(~~3~~ 4) The mediator may meet with each party separately prior to the mediation and may meet with any party separately at any time during the mediation.

(4 ~~5~~) The parties are expected to attend all mediation sessions and to mediate in good faith. Attorneys may attend mediation sessions with their clients.

(~~5~~ 6) If at any time the mediator determines that the issues are not suitable for mediation, the mediator may refer the matter back to the court to be determined in further proceedings as ordered by the court.

(6 7) The mediator has no authority to make a decision or impose a settlement upon the parties. Any settlement must be voluntary. The parties may reach a partial settlement on the issues and preserve the right to litigate remaining issues. In the absence of a settlement, the parties retain their rights to a resolution of all issues through litigation.

(7 8) Any agreement reached by the parties through the mediation process on all or some of the disputed issues must be reduced to writing, signed by each party, and filed with the court by the parties.

(8 9) If no settlement is reached by the date specified in the schedule approved or modified under paragraph (2), the parties must notify the court in writing. The matter will then be determined by the court as provided in any agreement reached in the mediation and approved by the court or, in the absence of agreement, as ordered by the court.

Reporter's Notes—2024 Amendment

Rule 16.1(b) is amended to enable the court to limit the participants in the mediation to a subset of parties and interested persons who have an interest in the issue being mediated. An issue to be mediated may only be of interest to a particular subset of parties and interested persons. For example, while a creditor might be an interested person in an issue to be mediated, a creditor is not a party. Likewise, parties who are beneficiaries should not be ordered to participate in mediation if their interest is not at issue. See V.R.P.P. 17 for the definitions of parties and interested persons.

Rule 16.1(d)(2) is added to provide the court and the participants in the mediation with the options of in-person, remote, or hybrid participation in the mediation. Former (d)(2)-(8) are renumbered (d)(3)-(9).

2. That this rule is prescribed and promulgated effective July 1, 2024. The Reporter's Notes are advisory.

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

Dated in Chambers at Montpelier, Vermont, this 5th day of February, 2024.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice