

SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR

PATRICIA GABEL, ESQ.
State Court Administrator
patricia.gabel@vermont.gov



www.vermontjudiciary.org

Mailing Address
Office of the Court Administrator
109 State Street
Montpelier, VT 05609-0701

Telephone (802) 828-3278
FAX: 802 828-3457

TO: Members of the Vermont Bar

FROM: Patricia Gabel, Esq., State Court Administrator

RE: Promulgated, Proposed Rules and Miscellaneous Information

DATE: November 6, 2019

For your information, please find the following information:

- [Order Promulgating Amendments to Rules 55 and 80.1 of the Vermont Rules of Civil Procedure](#)
- [Proposed Order Amending Rule 32\(c\)\(4\) of the Vermont Rules of Criminal Procedure](#)
- [Proposed Order Amending Rules 3, 7, 9, 10 of the Vermont Rules of Small Claims Procedure](#)
- [Proposed Order Amending Rule 6\(15\) and \(26\) of the Rules of the Supreme Court for Disciplinary Control of Judges](#)
- [Proposed Order Amending Rule 40\(e\)\(4\) of the Vermont Rules of Civil Procedure, Rule 27.1\(b\)\(4\) of the Vermont Rules of Appellate Procedure, Rule 50\(d\)\(4\) of the Vermont Rules of Criminal Procedure, and Rule 40\(d\)\(4\) of the Vermont Rules of Probate Procedure](#)
- *Updated Court Forms*
- *Obligations Under A.O. 41*
- *eCabinet Registration*

I. PROMULGATED RULE AMENDMENTS

[Order Promulgating Amendments to Rules 55 and 80.1 of the Vermont Rules of Civil Procedure](#)

This Order was **promulgated on November 5, 2019; effective January 6, 2020.**

Rule 55 is amended to reflect the needs of current practice and to modernize language. The amendment deletes the requirement of subdivision (a) for a separate entry of default by the clerk in favor of a provision allowing the party seeking relief to file a motion for default judgment to initiate the process.

The amendment to Rule 55(a) follows the federal rule by deleting “as provided by these rules,” so that an indication of an intent to defend, even if not in compliance with the rules, does not trigger a default.

Rule 55(d) is now 55(b) and former (b) is now designated (c).

The amendment deletes the first sentence of former Rule 55(b)(1), now (c)(1), requiring an application to the court for a default judgment because it is superfluous in light of the new requirement for a motion. The addition of a sentence to paragraph (1) makes clear that the party

seeking a default judgment has the burden on the issue of minority and must disclose any information in that party's possession on the issue of competency.

The amendment to Rule 55(c)(2) eliminates the formal reference to entry of judgment by the clerk. The amendment changes the time for notice in Rule 55(c)(4) from five to seven days.

The amendment to Rule 80.1(c) provides consistency with the simultaneous amendment of Rule 55(a).

II. PROPOSED RULE AMENDMENTS

(NOTE: THE FOLLOWING AMENDMENTS HAVE BEEN PROPOSED AND HAVE NOT BEEN APPROVED BY THE SUPREME COURT.)

a. [Proposed Order Amending Rule 32\(c\)\(4\) of the Vermont Rules of Criminal Procedure](#)

The proposal amends Rule 32(c)(4) for consistency with State v. Lumumba, 2018 VT 40, 207 Vt. 254, 187 A.3d 353, State v. Bostwick, 2014 VT 97, 197 Vt. 345, 103 A.3d 476, and State v. Cornell, 2014 VT 82, 197 Vt. 294, 103 A.3d 469. These decisions address the necessity for procedures requiring parties to object to recommended probation conditions. The proposed amendment makes the rule consistent with, yet not as expansive as, the provisions of Federal Rule of Criminal Procedure 32(f)(1), which requires specific written objection not only to factual assertions pertinent to sentence, but to all material information, sentencing guideline ranges, and policy statements in presentence investigation reports.

The proposal amends subparagraph (c)(4)(A) to require written objections to PSI content in 7 instead of 5 days. The proposed amendment also includes an express requirement that copies of any written objections be provided to the opposing party.

The proposal adds new subparagraph (c)(4)(C), which requires that before pronouncing sentence and concluding the sentencing hearing, the sentencing judge must provide opportunity for comment and objection to what are in effect any "unnoticed" conditions of probation. This proposed amendment is intended to expressly provide a defendant with an opportunity to articulate objection to conditions of probation that may not have reasonably featured at all in the course of the sentencing record, and thus to preserve claims of error as to purportedly unnoticed or "surprise" conditions, without the necessity of filing a motion for correction of sentence under V.R.Cr.P. 35.

Comments on this proposed amendment should be sent by **January 6, 2020**, to Hon. Thomas A. Zonay, Chair of the Advisory Committee on Rules of Criminal Procedure, at the following address:

Honorable Thomas A. Zonay, Chair
Advisory Committee on Rules of Criminal Procedure
Vermont Superior Court
Orange Unit
5 Court Street
Orange, VT 05038
Thomas.zonay@vermont.gov

b. *Proposed Order Amending Rules 3, 7, 9, 10 of the Vermont Rules of Small Claims Procedure*

The proposed amendment to Rule 3, along with simultaneous proposed amendments to Rules 7, 9, and 10 address the lack of a current requirement that the plaintiff serve the defendant with a small claims default judgment.

Under the existing rules, because it is a default judgment the court has no good address for the defendant and therefore only sends a copy of the judgment to the plaintiff. However, Rule 7(a) provides for payment within 30 days of “entry of judgment,” meaning the date that the judgment is docketed. If no such payment is made, plaintiff may file a motion for financial disclosure, and there is no requirement in Rule 7(a) that the plaintiff prove that the defendant has received or seen the judgment. The plaintiff is only required to file a certificate of service showing that the motion was sent to the defendant by regular mail. The plaintiff may also seek trustee process or a writ of execution, or may file a judgment lien, before the defendant knows of the judgment. V.R.S.C.P. 9. It is not until the next enforcement step (a motion for contempt for not complying with whatever order comes out of the financial disclosure hearing) that the plaintiff is required to have the sheriff personally serve the defendant. Even then, the judgment itself is not served, only the judicial summons to come to the hearing. V.R.S.C.P. 8(b)(2). Rule 10(a) presents a similar problem with appeals.

Accordingly, the proposed amendment to Rule 3(f) requires service by sheriff or other authorized person and the filing of proof of service in every case before enforcement proceedings are taken. Rule 3(g) is amended to conform to the amendment of Rule 3(f).

The proposal amends Rule 7(a)(1)(A) and (c) to conform to the simultaneous amendment of Rule 3(f).

The proposed amendments to Rule 9(a), (b)(1), and (c) incorporate the appropriate 30-day period provided in Rule 10(a)(1) as simultaneously amended. If the defendant has appeared, enforcement proceedings may be undertaken within 30 days from the entry of judgment. If the judgment is a default judgment, the date is 30 days from the date of service on the defendant. The latter provision is intended to conform to the simultaneous amendment of Rule 3(f).

The proposed amendment to Rule 10(a)(1) conforms appellate practice to the simultaneous amendment of Rule 3(f) requiring service of a default judgment on the defendant before enforcement proceedings are commenced.

Comments on these proposed amendments should be sent by **January 6, 2020**, to Allan Keyes, Esq., Chair of the Advisory Committee on the Rules of Civil Procedure, at the following address:

Allan Keyes, Esq., Chair
Civil Rules Committee
Ryan Smith & Carbine, Ltd.
P.O. Box 310
Rutland, VT 05702 0310
ark@rsclaw.com

c. [Proposed Order Amending Rule 6\(15\) and \(26\) of the Rules of the Supreme Court for Disciplinary Control of Judges](#)

The proposed amendments to Rule 6(15) and (26) update the cross references to the Code of Judicial Conduct 2019, which became effective October 7, 2019.

Comments on these proposed amendments should be sent by **January 6, 2020**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
emily.wetherell@vermont.gov

d. [Proposed Order Amending Rule 40\(e\)\(4\) of the Vermont Rules of Civil Procedure, Rule 27.1\(b\)\(4\) of the Vermont Rules of Appellate Procedure, Rule 50\(d\)\(4\) of the Vermont Rules of Criminal Procedure, and Rule 40\(d\)\(4\) of the Vermont Rules of Probate Procedure](#)

The proposed amendments update the cross references to the Code of Judicial Conduct 2019, which became effective October 7, 2019.

Comments on these proposed amendments should be sent by **January 6, 2020**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
emily.wetherell@vermont.gov

II. MISCELLANEOUS

a. *Court Forms*

Court forms are constantly being updated. Please refer to the judiciary website for the most up-to-date forms. <https://www.vermontjudiciary.org/court-forms>.

Please use the link below to report any form question, concern or issue <http://www.vermontjudiciary.org/website-feedback-form> or you can access our Website Feedback program at the bottom of each web page

b. *Obligation under A.O. 41*

Attorneys are reminded that an “attorney must report to the State Court Administrator within thirty days any change of the office mailing or electronic mail address” and that “[n]otice sent to a reported address is sufficient even if not received by the attorney because of failure to report the proper address or failure of delivery not caused by the court.” A.O. 41, § 4(c); see A.O. 44, § 1.

Please email those changes to JUD.AttyLicensing@vermont.gov. Your cooperation is very much appreciated.

To ensure you continue to receive these emails, please add JUD.AttyLicensing@vermont.gov to your Safe Senders list.

c. eCabinet Registration

Administrative Order No. 44 requires attorneys in active status to register up to three email addresses in **eCabinet** for purposes of receiving notices of hearing and other documents. *You may include staff email addresses in the three email addresses that you specify. eCabinet registration is required whether you practice in court or not.*

If you have already registered in **eCabinet**, the email address(es) you provided as part of that process will be used.

If you have not already registered in **eCabinet**, please go to <https://efiling.eservices.crt.state.vt.us/>, click **Register Now**, and follow the simple prompts. Attorneys will need their attorney license numbers to register. Helpful information about the Attorney Email Registration process is also available on the *Electronic Filing* page of the judiciary website at <https://www.vermontjudiciary.org/about-vermont-judiciary/electronic-access/electronic-filing>. Please contact jud.helpdesk@vermont.gov or call the Helpdesk at 802-828-4357 with any questions in the meantime.

You are also reminded that you are required to update the email address(es) and other contact information you have registered as soon as there are any changes, including changes to staff email addresses you may have included with your registration. To revise the information, please go to <https://efiling.eservices.crt.state.vt.us/>, log into **eCabinet**, click “**Account**,” choose “**My Profile**,” and make the necessary changes to your contact information.

Notification to JUD.AttyLicensing@vermont.gov or in **eCabinet** of a change to your contact information does not automatically notify the other. It is your responsibility to notify both. If you are a member of the Vermont Bar Association, you will also need to separately notify the VBA.