

**STATE OF VERMONT
VERMONT SUPREME COURT
APRIL TERM, 2021**

Promulgation Order Adding Rule 73 to 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 73 of the Vermont Rules of Probate Procedure be added to read as follows:

RULE 73. REFERRAL TO THE CIVIL DIVISION

(a) **Motion.** In any proceeding under Title 14, Chapter 3, Vermont Statutes Annotated, at any time after the filing of the petition, the court, on motion of an interested person or the court's own motion, may, as provided in subdivision (b) of this rule, refer a matter to the Civil Division of the Superior Court pursuant to 14 V.S.A. § 118 for the purpose of conserving judicial resources.

(b) **Consent of the Civil Division.** If the court decides that the matter should be referred to the Civil Division under subdivision (a), the court shall send to the superior judge assigned to the corresponding unit of the Civil Division a request for consent to make the transfer, accompanied by a brief statement of the manner in which a transfer will conserve judicial resources. The superior judge shall respond to the request within 21 days, granting or denying consent for the transfer. If consent is granted, the matter shall be immediately transferred. The decision of the superior judge is final and is not appealable.

Reporter's Notes

Rule 73 is added to implement 14 V.S.A § 118, added by Act 195, Acts of 2017 (Adj. Sess.), § 2, providing for referral of a Probate Division matter to the Civil Division, with the consent of the Civil Division.

Rule 73(a) specifically limits applicability of the process to will construction proceedings under Title 14, Chapter 3. Though § 118 does not contain such a limitation, the placement of that section in Chapter 3 indicates an intention to confine its applicability to proceedings under that chapter. Like the statute, Rule 73(a) provides that referral may be sought on the court's own motion or that of an interested person, a term the meaning of which depends on whether the motion is made at the commencement of the action (specified in the rule as the filing of the petition), or at a later stage. See V.R.P.P. 17(a)(1), (b). Rule 73(a) also carries forward the

limitation in the statute that referrals be “for the purpose of conserving judicial resources.”

Rule 73(b) provides a more specific procedure than that of the statute. If the Probate Judge decides to seek referral to the Civil Division, the judge is to request consent for the referral from the superior judge assigned to the corresponding Civil Division unit by the Chief Superior Judge pursuant to 4 V.S.A. § 73 and Administrative Orders 12, 13, and 18—presumably the unit embracing the county in which the Probate Court sits. The request must explain how transfer will serve the statutory purpose of conserving resources. To avoid delay, the rule provides that the Civil Division judge is to respond to the request within 21 days. If the request is granted, the rule requires immediate transfer. In any event, like the statute, the rule provides that the decision is final and not appealable.

2. That this rule is prescribed and promulgated effective June 7, 2021. 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 April, 2021.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice