

**STATE OF VERMONT
SUPREME COURT
OCTOBER TERM, 2023**

Order Amending Administrative Order No. 11

Pursuant to Chapter II, § 37, of the Vermont Constitution, it is ordered:

1. Administrative Order No. 11 be amended as follows (new matter underlined; deleted matter struck through):

**PUBLIC NOTICE AND OPPORTUNITY TO COMMENT RELATIVE TO PROPOSED RULES
OR CHANGES IN RULES**

§ 1. For purpose of this order, the term “proponent of rule-making” shall mean any committee or board of the Supreme Court, when it proposes that the Court adopt or change rules, or the Supreme Court when it proposes directly to adopt or change rules.

§ 2. This administrative order shall govern notice, hearing and opportunity to comment relative to any additions to or amendments in the following:

Vermont Rules of Appellate Procedure
Vermont Rules of Civil Procedure
Vermont Rules of Criminal Procedure
Vermont Rules of Evidence
Vermont Rules of Probate Procedure
Vermont Rules for Family Proceedings
Vermont Rules for Environmental Court Proceedings
Vermont Rules for Electronic Filing
Rules of Small Claims Procedure
Rules of Admission to the Bar of the Vermont Supreme Court
Rules for Mandatory Continuing Legal Education
Rules of Supreme Court for Disciplinary Control of Judges
Rules Governing Assignment of Counsel and Payment Thereof by the Defender General
Permanent Rules Governing Establishment and Operation of the Professional Responsibility Program
Code of Judicial Conduct
Rules of Professional Conduct
Rules Governing Medical Malpractice Arbitration
Rules Governing the Qualification, List, Selection and Summoning of All Jurors
Rules for Public Access to Court Records

It shall also govern any rules, not enumerated above, if proposed to the Supreme Court by the Advisory Committee on the Rules of Criminal Procedure, Advisory Committee on the Rules of Civil Procedure, Advisory Committee on the Rules of Evidence, Advisory Committee on the Rules of Probate Procedure, Advisory Committee on Rules for Family Proceedings, Advisory Committee on Rules of Public Access to Court Records, Advisory Committee on Rules for Electronic Filing, Board of Bar Examiners, Judicial Conduct Board or the Professional Responsibility Board.

§ 3. The proponent of rule-making shall afford notice of, and opportunity to comment upon, any proposed rules, or changes in rules, in accordance with the procedures hereinafter set forth.

§ 4. Prior to submitting to the Court for adoption any proposed rule or change in existing rule or, if the Court is the proponent of rule-making, prior to adoption of the proposed rule or change in existing rule, the proponent of rule-making shall:

(a) send the proposal to the clerk of each Superior, District, Family and Environmental Court by first class or electronic mail for posting in the clerk's office;

(b) send the proposal or a reasonable summary thereof by electronic mail directly to each member of the bar; and

(c) notify interested persons of the date by which they may submit written comments with respect to the proposal.

§ 5. The proponent shall consider whether the proposed rule or change in existing rule substantially affects members of the public who are not lawyers and, if it so finds, the proponent shall report the finding to the Court Administrator who may ~~cause~~ publicize a notice of rule-making, together with a summary of the content of the proposal, ~~to be published in~~ through reasonable means including by inclusion in one or more newspapers in the state. The notice shall give interested persons a reasonable time certain within which to submit written comments with respect to the proposal and may include notice of one or more public hearings pursuant to § 6.

§ 6. The proponent of rule-making may hold one or more public hearings on a proposed rule or change in existing rule. On request of the proponent of rule-making, the Court Administrator shall give appropriate notice to the public of the time, place and subject of public hearings.

§ 7. When a board or committee of the Court is the proponent of rule-making, it shall submit to the Court, along with its final recommendation for adoption of any rule or change in an existing rule, a report on the steps taken to comply with this administrative order. It shall also forward to the Court:

(a) copies or a reasonable summary of any written comments submitted;

(b) a summary of the testimony taken in any public hearing, together with a ~~tape recording~~ transcript or audio recording of that testimony; and

(c) the action of the proponent of rule-making with respect to any comments or testimony and the reasons for that action.

§ 8. When the Supreme Court finds that the effectiveness of the rule-making process will be enhanced thereby, it may order that a hearing before the full Court be held at a time and place convenient to the Court, as well as the bar and the public. This hearing will be in addition to any held under § 6 of this order. The Court may specify that the board or committee that has proposed the adoption of the rules or change in rules, or such other person directed by the Court, present the rules or changes to the Court, orally summarizing the proposed changes and the reasons therefor. Members of the bar and the public may reserve time in which to make oral comments upon the proposals by so notifying the clerk of the Supreme Court not less than 30 minutes prior to the commencement of the hearing and may also file written comments or alternative proposals with the clerk at any time before the

end of the next business day following the hearing. The time and place of the hearing shall be advertised in one or more newspapers of statewide distribution not less than 14 days prior to the hearing or as otherwise ordered by the Supreme Court.

§ 9. Ordinarily, when the Supreme Court promulgates a rule, the effective date will be at least 60 days from the date of promulgation and with an effective date of January 1 or July 1.

§ 9 10. The Court may, where the public interest so requires, dispense with some or all requirements of this administrative order, but the order promulgating a rule or change in existing rule under such circumstances shall specifically state the reasons for so dispensing with those requirements.

Reporter's Notes—2024 Amendment

Administrative Order No. 11 § 2 is amended to update the list of rules committees to which it explicitly applies to add the Advisory Committee on Rules for Electronic Filing, which was made permanent by the adoption of Administrative Order 53, effective September 12, 2022. The list of rules in § 2 is also updated to add the Vermont Rules for Environmental Court Proceedings, Vermont Rules for Electronic Filing, Rules of Small Claims Procedure, and Rules for Mandatory Continuing Legal Education.

Section 5 is amended to update the language regarding publishing a notice of rule-making by the Court Administrator. In addition to publication in a newspaper, the Court Administrator may provide public notice through the Judiciary website, social media, and on-line forums.

Section 7(b) is amended to replace “tape recording” with “transcript or audio recording” to update the language given current technology.

New § 9 is added to provide guidance regarding the effective date for rules. Section 9 provides that ordinarily rules will be adopted with an effective date at least 60 days from the date of promulgation. This is consistent with 12 V.S.A. § 3(e), which states that promulgated rules should be submitted to the Legislative Committee on Judicial Rules at least 60 days prior to their effective date. Section 9 also states that ordinarily rules should have an effective date of either July 1 or January 1. This change was prompted by a suggestion to the Advisory Committee on the Rules of Civil Procedure by a member of the bar regarding the difficulty of following rule changes and the varied effective dates. The civil rules committee, with agreement from the criminal, probate, family, evidence, public access, and electronic filing committees, requested that the Court adopt regularized effective dates. Normalizing the effective date for amendments to rules will allow more predictability for both the bench and the bar.

Former § 9 is renumbered § 10 and continues to provide that some or all requirements of the administrative order may be dispensed with when the public interest requires. This section applies to the provisions of new § 9. There may be situations where a rule needs to become effective before the 60-day period passes and outside of the regularized effective dates of July 1 or January 1.

2. This order shall become effective on January 1, 2024.

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

Dated in Chambers at Montpelier, Vermont, this 10th day of October, 2023.



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