

**STATE OF VERMONT
VERMONT SUPREME COURT
MAY TERM, 2022**

**Order Amending Rule 6 of the Vermont Rules of Civil Procedure and Rules 26 and 31(a) of
the Vermont Rules of Appellate Procedure**

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

1. That Rule 6 of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through).

RULE 6. TIME

* * * * *

~~(e) **Additional Time After Certain Kinds of Service.** When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2) (mailing), (3) (leaving with the clerk), or (4) (sending by electronic means), 3 days are added after the period would otherwise expire under Rule 6(a).~~

Reporter's Notes—2022 Amendment

V.R.C.P. 6(e) and V.R.A.P. 26(c), which is virtually identical, are simultaneously deleted. As most recently amended in 2018, Rule 6(e) provided:

(e) Additional Time After Certain Kinds of Service.

When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2) (mailing), (3) (leaving with the clerk), or (4) (sending by electronic means), 3 days are added after the period would otherwise expire under Rule 6(a).

Deleting this provision is overdue, given the general simplification of counting time that occurred when the “day is a day” method of counting was adopted in 2018, see Reporter’s Notes to 2018 amendment of Rule 6(a), and the widespread use of service by electronic means.

Federal Rule 6(d), which had been virtually identical to V.R.C.P. 6(e), was amended in 2016 to remove service by electronic means under F.R.C.P. 5(b)(2)(E) from the modes of service that allow 3 days to be added after the prescribed period runs. The federal amendment reflected the fact that initial concerns that electronic service might be unreliable had been alleviated by advances in technology and familiarity with it in use. See Federal Advisory Committee Notes to 2016 amendment.

Vermont trial courts, and the Vermont Supreme Court, are now fully operational under the Odyssey File and Serve system. Registered attorneys and registered self-represented litigants are required to use the system and receive service of case related documents through it. Nonelectronic service is limited to cases involving self-represented litigants who do not opt to use the Odyssey system or to special instances where electronic service is inappropriate. See 2020 V.R.E.F. 3. Timing difficulties caused by electronic filing outside of normal business hours, or arising in the limited number of cases involving nonelectronic service, can be addressed case by case by the trial court.

2. That Rule 26 of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through).

RULE 26. COMPUTING AND EXTENDING TIME

* * * * *

~~(e) **Additional Time After Certain Kinds of Service.** When a party may or must act within a prescribed period after service and service is made under V.R.C.P. 5(b)(2), (3), or (4), 3 days are added to the prescribed period after the period would otherwise expire under V.R.C.P. 6(a).~~

(d c) Stipulation to Extend Time to File Appellate Briefs.

(1) *Stipulations to Extend Time to File Briefs.* The parties may stipulate one time to extend the time to file each type of brief. The stipulated extension of time may not exceed:

(A) Appellant's principal brief— ~~30~~ 40 days;

(B) Appellee's principal brief— ~~24~~ 30 days;

(C) Appellant's reply brief and appellee's reply brief in a case with a cross appeal— ~~14~~ 21 days.

(2) *Exception.* The parties may not by stipulation extend the period to file briefs in appeals in proceedings under Chapters 51 and 53 of Title 33.

(3) *Form of Stipulation.* The stipulation must be signed by all counsel of record and must set forth in clear and specific terms:

(A) the period being extended;

(B) the date to which the period is extended; and

(C) the reason for the extension.

Reporter's Notes—2022 Amendment

V.R.C.P. 6(e) and V.R.A.P. 26(c), which are virtually identical, are simultaneously deleted. As most recently amended in 2018, V.R.A.P. 26(c) provided:

(c) Additional Time After Certain Kinds of Service. When a party may or must act within a prescribed period after service and service is made under V.R.C.P. 5(b)(2), (3), or (4), 3 days are added to the prescribed period after the period would otherwise expire under V.R.C.P. 6(a).

Deleting this provision is overdue, given the general simplification of counting time that occurred when the “day is a day” method of counting was adopted in 2018 and the prevalence of service using the electronic filing system or email. See Reporter's Notes to simultaneous deletion of V.R.C.P. 6(e).

Rule 26(d) is renumbered 26(c). New Rule 26(c)(1) is amended to extend the maximum time limits to which filing times for briefs may be extended by stipulation. Under subparagraph (1)(A), the extension for the appellant's principal brief is increased from 30 to 40 days. The extension for appellee's principal brief is increased by subparagraph (1)(B) from 21 to 30 days, and that for reply briefs is increased by subparagraph (1)(C) from 14 to 21 days. These time limits are identical to those in the Federal Rules of Appellate Procedure, which were put in place when the federal three-day rule was eliminated for electronic filing. Now that electronic filing has been adopted for appeals to the Vermont Supreme Court, and the three-day rule is being eliminated by deleting of V.R.C.P. 6(e) and V.R.A.P. 26(c), the longer time periods are appropriate for Vermont.

3. That Rule 31(a) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 31. SERVING AND FILING BRIEFS

(a) Filing Deadlines.

(1) *Appellant's Brief.* Except as provided by Rule 10(c)(2), the appellant must serve and file a brief within ~~30~~ 40 days after the record on appeal is complete.

(2) *Appellee's Brief.* The appellee must serve and file a brief within ~~21~~ 30 days after the appellant's brief is served.

(3) *Reply Brief*. The appellant may serve and file a reply brief within ~~14~~21 days after service of the appellee’s brief. In a case with a cross-appeal, the appellee may serve and file a reply brief in accordance with Rule 28(c) within ~~14~~ 21 days after service of the appellant’s reply brief.

Reporter’s Notes—2022 Amendment

Rule 31(a) is amended to extend the serving and filing times for principal and reply briefs. Under paragraph (1), the time for the appellant’s principal brief is increased from 30 to 40 days. The time for appellee’s principal brief is increased by paragraph (2) from 21 to 30 days, and that for reply briefs is increased by paragraph (3) from 14 to 21 days. These time limits are identical to those in the Federal Rules of Appellate Procedure, which were put in place when the federal three-day rule was eliminated for electronic filing. Now that electronic filing has been adopted for appeals to the Vermont Supreme Court, and the three-day rule is deleted in V.R.C.P. 6(e) and V.R.A.P. 26(c), the longer time periods are appropriate for Vermont.

4. That these amendments be prescribed and promulgated, effective on September 6, 2022. The Reporter’s Notes are advisory.

5. That the Chief Justice is authorized to report these 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 9th day of May, 2022.



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