

STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2016

Order Promulgating Emergency Amendments to Rule 80.11 of the Vermont Rules of Civil Procedure

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

1. That Rule 80.11 of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 80.11. PROCEDURE IN EXPEDITED ACTIONS

* * * * *

(b) **Scheduling Conference.** Unless the parties file a stipulation on a form to be provided by the Court Administrator as to the matters enumerated in V.R.C.P. 16.2(i)-(v) and a certificate and report or stipulation as to the scheduling of ~~alternative dispute resolution~~ mediation under subdivision (d) of this rule, the court shall hold a scheduling conference within 21 days after the filing of the last answer to consider those matters and shall issue a scheduling order as provided in V.R.C.P. 16.2.

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(d) ~~Alternative Dispute Resolution~~ **Mediation.** Unless the parties have filed a certificate and report of voluntary ~~alternative dispute resolution~~ mediation as provided in V.R.C.P. 16.3(a)(4 2)(B), they must undertake ~~alternative dispute resolution~~ mediation in the manner provided in V.R.C.P. 16.3(e)(2)-(7), ~~(d)-(f)~~, except that:

(1) Scheduling of the ~~alternative dispute resolution~~ mediation proceeding must take place within 21 days after the filing of the last answer.

(2) The ~~alternative dispute resolution~~ mediation proceeding must be completed within 90 days after the filing of the last answer unless the court extends the date on motion of a party.

(3) The ~~alternative dispute resolution~~ mediation proceeding shall not last more than 6 hours unless the parties agree to extend the time.

(4) The cost of ~~alternative dispute resolution~~ mediation must be divided equally among the parties except as otherwise provided in V.R.C.P. 16.3(e c)(1)-(3). If one or both parties are unable to pay, the court shall determine whether ~~alternative dispute resolution~~ mediation is required.

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Reporter's Notes—2016 Amendment

Rule 80.11 as added June 15, effective August 15, 2016, is amended to reflect the abrogation and replacement of V.R.C.P. 16.3. New Rule 16.3 significantly simplifies the procedure of the former

rule and provides only for mediation, rather than for a variety of alternative dispute resolution methods. The present amendments are intended to reflect those changes by substituting “mediation” for “alternative dispute resolution” wherever it appears and replacing cross-references to former Rule 16.3 with references to the appropriate provisions of the new rule.

For clarity and convenience, the paragraph of the original Reporters Notes to V.R.C.P.80.11 referring to “ADR” under former Rule 16.3 is repeated here with references corrected to substitute “mediation” for the former term and correct cross-references:

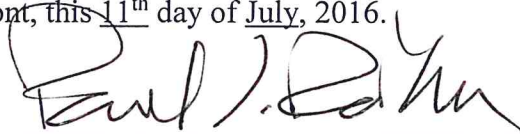
Unless the parties stipulate as to the matters listed in V.R.C.P. 16.2 and the provisions of Rule 80.11(d) for scheduling mediation, Rule 80.11(b) requires a scheduling conference and scheduling order early in the case to address those matters. Under Rule 80.11(c), there are important limitations on motion practice, including a requirement that the party filing a nondispositive motion must certify that the party has made a good faith attempt to obtain the opposing party’s agreement to the requested relief. Rule 80.11(d) requires parties who have not voluntarily undertaken mediation to engage in mediation in accordance with V.R.C.P. 16.3 but on a tight schedule and under other limitations. Paragraph (d)(4) requires the court to make a specific determination as to whether to require mediation if either or both parties cannot pay its cost.

2. That the Court finds that these amendments must be promulgated without the notice and comment period required by Administrative Order No. 11 so that they may take effect on the effective date of the abrogation and replacement of V.R.C.P. 16.3, in order to avoid confusion that would result because these amendments incorporate references to new Rule 16.3 but make no substantive change.

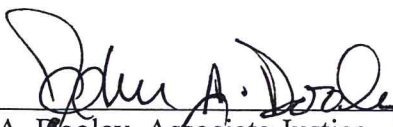
3. That this rule as amended is prescribed and promulgated effective September 12, 2016, and is subject to the review and termination provisions of paragraph 3 of the Court’s order of June 15, 2016, originally promulgating V.R.C.P. 80.11. The Reporter's Notes are advisory.

4. 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.

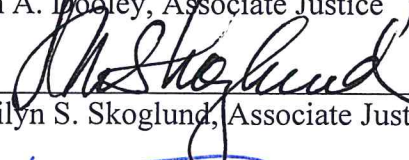
Dated in Chambers at Montpelier, Vermont, this 11th day of July, 2016.



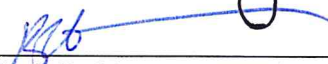
Paul L. Reiber, Chief Justice



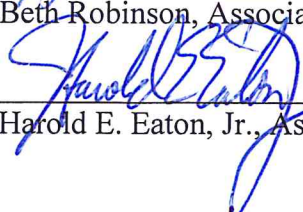
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice