

**STATE OF VERMONT
VERMONT SUPREME COURT
JANUARY TERM, 2016**

**Order Promulgating Permanent Amendment to Rule 4(r)(3) of the Vermont Rules for
Family Proceedings**

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

1. That Rule 4(r)(3) of the Vermont Rules for Family Proceedings, as previously adopted as an emergency amendment, be adopted as a permanent amendment to read as follows:

**RULE 4. DIVORCE, ANNULMENT AND LEGAL SEPARATION; ABUSE
PREVENTION**

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(r) Property Masters.

(1) *Appointment by the Court.* In any action subject to this rule where equitable division of the marital estate or spousal maintenance is in issue, the court may appoint a master to determine the following matters:

- (A) The value of any items of tangible property such as household furnishings;
- (B) The value of assets and debts, including but not limited to the value of businesses owned by either or both parties;
- (C) The amount of each party's annual income from all sources;
- (D) The amount of each party's annual living expenses.

(2) *Appointment by Agreement.* In any action subject to this rule where equitable division of the marital estate or spousal maintenance is in issue, the court, with the agreement of the parties, may appoint a master to determine the matters set forth in paragraph (1) of this subdivision and also to determine the fair allocation of the marital estate between the parties and an award of spousal maintenance if appropriate.

(3) *Compensation and Necessary Expenses.* The compensation and necessary expenses to be allowed to a master shall be fixed by the court.

(A) In an appointment pursuant to paragraph (1) of this subdivision, such compensation and necessary expenses shall be paid by the state, except that if

(i) the distribution of property is contested and governed by 15 V.S.A. § 751 and the value of the property to be distributed exceeds \$500,000, or

(ii) one or both parties seek an award of maintenance under 15 V.S.A. § 752 and the parties have nonwage income of \$150,000 or more, excluding up to \$500,000 of income from the sale of a primary residence or jointly owned business,

the court may order the compensation and necessary expenses of a master to be shared by the parties, with the shares specified in the order.

(B) In an appointment pursuant to paragraph (2), such compensation and necessary expenses shall be paid by the parties as agreed or ordered by the court.

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Reporter's Notes—2016 Amendment

An emergency amendment to Rule 4(r)(3) was promulgated effective July 1, 2015, to conform the rule to an amendment of 32 V.S.A. § 1758 by § E.204.10 of Act 58 of 2015, effective July 1, 2015. No comments having been received on the emergency amendment, it is now made permanent.

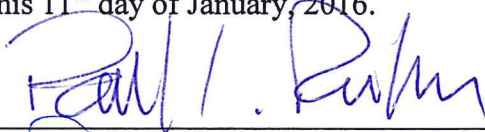
Amended Rule 4(r)(3)(A) incorporates virtually verbatim the language of amended 32 V.S.A. § 1758, permitting the Superior Court to order the parties to share the cost of a master in a contested distribution of property exceeding \$500,000 in value or a claim for maintenance where there is nonwage income of \$150,000 or more, excluding up to \$500,000 of income from the sale of a primary residence or jointly owned business.

The amended rule makes clear that the statutory term “cost” of a master includes compensation and necessary expenses. Note that under the amended statute and rule, the court continues to fix the amount of compensation and expenses to be paid. The court also retains discretion to require the state to pay the amount fixed for a master appointed under paragraph (1) of the existing rule to determine property and asset values and income and expense amounts even if the statutory criteria now incorporated in new subparagraph (3)(A) are met. If the appointment is made by agreement under paragraph (2) of the existing rule, allowing the master also to allocate the marital estate and determine a maintenance award, new subparagraph (3)(B) continues to require that compensation and expenses be paid by the parties as agreed or ordered.

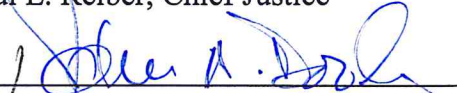
2. That Rule 4(r)(3) as previously amended as an emergency amendment is prescribed and promulgated to take effect as a permanent amendment on March 11, 2016. The Reporter's Notes are advisory.

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

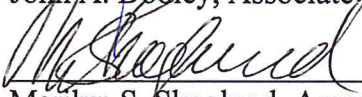
Dated in Chambers at Montpelier, Vermont, this 11th day of January, 2016.



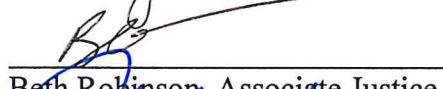
Paul L. Reiber, Chief Justice



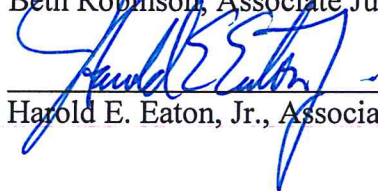
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice