

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

**Order Promulgating Amendments to Rule 6 of the Vermont Rules of Small Claims
Procedure and Rule 80.6 of the Vermont Rules of Civil 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 Small Claims Procedure be amended as follows (new matter underlined; deleted matter struck through):

RULE 6. TRIAL PROCEDURE

(a) Usual procedure.

(1) *General Procedure.* Unless a trial by jury has been properly requested, the court will conduct the hearing on the merits of a small claim in a summary manner.

(2) *Conduct of Hearing.*

(A) In a nonjury hearing, the court may preside by remote audio or video and require all parties, witnesses, counsel, and other persons to participate by remote audio or video. In advance of the hearing date, participants may request an in-person hearing based on the relevant factors in V.R.C.P. 43.1. The court may grant an in-person hearing based on a consideration of the relevant factors. ~~Upon motion in a nonjury hearing, participation of a party or testimony of a witness may be allowed by telephone in the judge's discretion.~~

(B) In a trial by jury, participation by video or audio is governed by V.R.C.P. 43.1.

(3) *Examination.* All witnesses will testify under oath and will be examined by the judge with the objective of laying out the evidence pertaining to the contentions reasonably available to the parties. The parties or their attorneys may supplement the judge's examination subject to the judge's authority to protect witnesses against unfair imposition and to avoid needless repetition.

(4) *Findings.* The judge shall make findings of fact orally on the record after the close of evidence, state the relevant conclusions of law, and enter a judgment. Alternatively, the judge may take a case under advisement and issue a written decision.

(b) Evidence. If the trial is by jury, the Vermont Rules of Evidence apply. If the trial is by court, evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and the Vermont Rules of Evidence are inapplicable except for the rules respecting privilege.

(c) Record. Trials will be electronically or stenographically recorded. If no appeal is taken within the prescribed time, the record may be discarded or erased.

(d) **Representation.** Any party is entitled, but not required, to be represented by an attorney. The appearance and withdrawal of attorneys is governed by Rule 79.1 of the Vermont Rules of Civil Procedure.

(e) **Form of judgment.** A judgment in favor of the plaintiff on a claim, or in favor of the defendant on a counterclaim, may include a provision allowing payment of the judgment in specified installments and will include the filing fees, costs of service of process, and other court costs incurred by the prevailing party.

Reporter's Notes—2022 Amendment

Rule 6 is amended to incorporate provisions regarding remote hearings for small claims actions and for judicial bureau proceedings. See V.R.C.P. 80.6(d)(4) (making V.R.S.C.P. 6 applicable to judicial bureau proceedings). In response to health concerns related to the COVID-19 pandemic, the Supreme Court declared an emergency in March 2020 and issued Administrative Order 49 making temporary changes to court rules and operations. Under ¶ 5(a), A.O. 49 authorized remote participation by video or audio in the civil division. Under ¶ 5(c), A.O. 49 authorized the hearing officer in judicial proceedings to preside remotely and ordered other persons to participate by remote audio or video.

Remote hearings were very effective in the judicial bureau and the current amendments allow remote proceedings to continue. Existing 6(a) is divided into four paragraphs. New 6(a)(2)(A) provides that in a nonjury hearing, the court may preside remotely and require other persons to participate remotely by either audio or video. It is expected that the hearing notice will notify the parties if the hearing will be remote and provide information on how participants can request an in-person hearing. The court can grant the motion based on its consideration of the relevant factors in V.R.C.P. 43.1. A request for an in-person hearing need not comply with the formal motion requirements of Vermont Rule of Civil Procedure 7, which does not apply in small claims proceedings. V.R.S.C.P. 4. For trial by jury, Rule 6(a)(2)(B) incorporates the procedures in V.R.C.P. 43.1.

2. That Rule 80.6 of the Vermont Rules of Civil Procedure be amended as (new matter underlined; deleted matter struck through):

RULE 80.6. JUDICIAL BUREAU PROCEDURES

(a) **Applicability of Rule.** This rule applies to proceedings held pursuant to 4 V.S.A., chapter 29, before the judicial bureau or on appeal to the ~~district court~~ Criminal Division of the Superior Court.

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(c) **Summons; Complaint; Answer.** An action is commenced by filing with the judicial bureau or serving upon the defendant a complaint against a single defendant. If the action is commenced by filing, the complaint shall be served upon the defendant within 30 days. If the action is commenced by service upon the defendant, the complaint shall be filed within 30 days.

(1) The summons and complaint shall be in a form approved by the Supreme Court and distributed by the Court Administrator. They shall be signed by an officer and shall be served by delivery to the defendant in person or by first class mail to the address obtained pursuant to subdivision (b).

(2) If the defendant is a corporation, the complaint shall be served by delivery in person or by first class mail to its registered owner or registered agent or a corporate officer.

(3) A defendant shall file with the judicial bureau an answer within 21 days after service of the summons and complaint upon the defendant.

(4) The Court Administrator shall provide a form for municipalities to indicate those persons authorized to issue municipal complaints under 24 V.S.A. § 1977(a) ~~1979(e)~~.

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(i) Appeal.

(1) Any party entitled thereto by law may appeal to ~~a district court~~ the Criminal Division of the Superior Court from a decision of the hearing officer by filing with the judicial bureau a notice of appeal in the manner and within the time provided in Rules 3 and 4 of the Vermont Rules of Appellate Procedure, together with the entry fee required by 32 V.S.A. § 1431(d). Upon the filing thereof, the judicial bureau clerk shall serve a copy of the notice of appeal upon each party and shall ~~mail~~ transmit a copy of the notice and a copy of the docket entries with the entry fee, if any, to the clerk of the ~~district court~~ Criminal Division in the county in which the complaint was issued. The hearing officer may decide a motion to extend time to file an appeal in accordance with Rule 4 of the Vermont Rules of Appellate Procedure.

(2) Appeal on the Record.

(A) Unless otherwise requested in the defendant's notice of appeal, the appeal shall be on the record. The record on appeal shall consist of the papers and exhibits filed in the judicial bureau, a certified copy of the docket entries, and the electronic recording of the hearing or the transcript thereof. No pleadings shall be required in the ~~district court~~ Criminal Division. Within 30 days of the filing of the notice of appeal, the judicial bureau clerk shall transmit the papers and exhibits filed to the clerk of the ~~district court~~ Criminal Division in the manner provided in Rule 11(b) of the Vermont Rules of Appellate Procedure. The appeal shall be docketed and the record deemed complete as provided in Rule 12 of the Vermont Rules of Appellate Procedure. If the proceedings in the judicial bureau were not

electronically recorded, the appellant shall procure a transcript of the proceedings and cause the record to be completed in the manner provided by Rules 10 and 11 of the Vermont Rules of Appellate Procedure.

(B) After the record has been deemed complete, the ~~district court~~ Criminal Division shall schedule oral argument, unless waived by all parties, and notify the parties. The appeal shall be heard and decided based on the record made in the judicial bureau.

(3) *De Novo Appeal*. If the defendant requests a de novo review and a jury trial in the notice of appeal, the case shall be tried to a jury; otherwise, the case shall be tried to the ~~district court~~ Criminal Division. To the extent applicable, subdivisions (d), (e), (f) and (g) of this rule shall provide the procedure governing de novo appeals. However, in the discretion of the ~~district court~~ Criminal Division, discovery and pretrial motions may be allowed.

(4) Rule 6(b) of the Vermont Rules of Appellate Procedure governs appeals from the ~~district court~~ Criminal Division.

(5) Fourteen days after the entry of judgment in the ~~district court~~ Criminal Division, if no request for permission to appeal to the supreme court has been filed, or 7 days after permission to appeal has been denied, the clerk shall certify the decision of the ~~district court~~ Criminal Division to the judicial bureau, returning therewith any original document transmitted as part of the record on appeal. Upon receipt of such certificate, the same proceedings shall be had in the judicial bureau as though the decision had been made there.

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(k) ~~**[Reserved] Municipal Fine Contempt Proceedings.** Upon motion to commence contempt proceedings filed by a municipality pursuant to 24 V.S.A. § 1981(d), the judicial bureau clerk shall review the payment records and determine whether any portion of the fine remains unpaid. If the fine has been paid in full, the clerk shall deny the motion and notify the municipality that the judgment has been satisfied. If any portion of the fine has not been paid, the clerk shall grant the motion and send the requested notice to the defendant. If the defendant does not satisfy the judgment as required by the notice, the clerk shall notify the district court to commence contempt proceedings.~~

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(m) **Definitions.** Unless specified to the contrary, the following words whenever used in this rule shall have the following meanings:

(1) “Officer” means the law enforcement officer, municipal attorney, grand juror, or other legally authorized person who issued the complaint.

(2) “Complaint” means traffic complaint, municipal complaint, fish and wildlife complaint, littering and illegal dumping complaint, or other complaint authorized by statute, as the context requires, filed on a form approved by the Court Administrator under 4 V.S.A. § 1105.

(3) “License” means a license, permit, or privilege issued by the department of motor vehicles or the equivalent agency or official in another jurisdiction, or by the department of fish and wildlife, as the context requires.

(4) “Hearing officer” means a person appointed by the ~~Administrative Judge~~ Chief Superior Judge pursuant to 4 V.S.A. § 1104 or temporarily appointed to serve pursuant to 4 V.S.A. § 22.

(5) “Judicial bureau clerk” means the clerk or a designee of the clerk.

(n) **Applicability of Civil Rules.** The following rules shall not apply to proceedings under this rule: Rules 3 (Commencement of Action), 4-4.3 (Process), 7(a) (Pleadings Allowed; Form of Motions), 8 (General Rules of Pleading), 9 (Pleading Special Matters), 10(b) (Form of Pleadings), 12 (Defenses and Objections), 13 (Counterclaim and Cross-Claim), 14 (Third-Party Practice), 16.1 (Complex Actions), 16.3 (Alternative Dispute Resolution), 18-24 (Joinder and Parties), 40(a)-(d) (Calendar; Continuances), 41 (Dismissal of Actions), 43.1 (Participation or Testimony by Video or Audio Conference), 53 (Masters), 55 (Default), 56 (Summary Judgment), 57 (Declaratory Judgment), 62 (Stay), 64 (Replevin), 65 (Injunctions), 65.1 (Security), 66 (Receivers), 67 (Deposit in Court), 68 (Offer of Judgment), 70-76 (Judgments, Process, Appeals), 80.1-80.2 (Mortgage Foreclosure and Naturalization), 80.4 (Habeas Corpus), 80.5 (Civil Suspension for D.W.I.), and 80.7 (Procedures for Immobilization and Forfeiture). The remaining rules do apply, provided that where the court finds that a procedure provided for in those rules would be inconsistent with the summary procedures contemplated by statute, it may order that a different procedure be followed. Rules 38, 39, 47, 48, 49, 50 and 51 shall apply only in the Criminal Division ~~district court~~, and Rules 26-37 shall apply when permission to undertake discovery has been granted pursuant to paragraph (1) of subdivision (d) or paragraph (3) of subdivision (i) of this rule. In case of a conflict between this rule and another Civil Rule, the provisions of this rule shall govern.

Reporter’s Notes—2022 Amendment

Rule 80.6 is amended in several places to correct statutory references and update terminology.

Rule 80.6(a), (i), and (m) are amended to remove reference to “district court” and replace it with “Criminal Division of the Superior Court” to reflect the statutory change made by 2009, No. 154 (Adj. Sess.), §§ 236, 238, codified at 4 V.S.A § 1107(a).

Rule 80.6(c)(4) is amended to correct a statutory reference by substituting 24 V.S.A. § 1977(a) for 24 V.S.A. § 1979(c). Section 1977(a) provides that the complaint in a municipal civil case in the judicial bureau is to be signed by the issuing municipal official. Section 1979(c) is part of a section providing a procedure for a judicial bureau hearing on a municipal ordinance violation. Paragraph 86(c)(4) relates to the issuance of municipal complaints rather than their hearing. Thus, § 1977(a) is the appropriate statutory reference.

Rule 80.6(i)(1) is amended to substitute the word “transmit” for “mail” in reference for how the judicial bureau clerk should send the notice of appeal to the Criminal Division to reflect the change to electronic case records.

Rule 80.6(k) is deleted and reserved. The rule referred to municipal fine contempt proceedings filed by a municipality pursuant to 24 V.S.A. § 1981(d), which was repealed in 2012. 2011, No. 83 (Adj. Sess.), § 1. The remedies of civil contempt and referral to a collections agency for failure to pay a judicial bureau judgment are now provided in 4 V.S.A. § 1109(c) and (d).

Rule 80.6(m) is amended in accord with a statutory change substituting “Chief Superior Judge” for “Administrative Judge.” See 2021, No. 147 (Adj. Sess.), §§ 8, 9, 21, codified at 4 V.S.A. §§ 21a, 22, 1104; Administrative Order No. 18 (creating Chief Superior Judge).

Rule 80.6(n) is amended to add V.R.C.P. 43.1 to the list of civil rules that do not apply in judicial bureau proceedings. Remote hearings are covered by the provisions of Rule 6 of the Vermont Rules of Small Claims Procedure.

3. That these amendments be prescribed and promulgated, effective on October 1, 2022. The Reporter’s Notes are advisory.

4. 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 13th day of September, 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