

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2017

Order Promulgating Amendments to the Vermont Rules of Appellate Procedure

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

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

RULE 3. APPEAL AS OF RIGHT—HOW TAKEN

(e) **Docketing Statements.** After taking an appeal the parties must each file a docketing statement with the Supreme Court clerk using a form prescribed by the clerk. Appellant’s docketing statement must be filed and served within ~~10~~ 14 days of taking the appeal. Appellee’s docketing statement must be filed and served within ~~10~~ 14 days thereafter.

Reporter’s Notes—2017 Amendment

Rule 3(e) is amended to conform its 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a). See Reporter’s Notes to that amendment.

2. That Rule 4 of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 4. APPEAL AS OF RIGHT—WHEN TAKEN

(a) **Time for Filing a Notice of Appeal.**

(1) Except as provided in paragraph (2), the notice of appeal required by Rule 3 must be filed with the superior court clerk within 30 days after entry of the judgment or order appealed from.

(2) In a criminal case, the State must file an appeal within 7 business days after entry of the judgment or order, but in a criminal case resulting in a sentence of life imprisonment—where the defendant has not waived appeal—the State may file a notice of appeal within 30 days of the judgment entry date.

* * * * *

(b) **Tolling.** If a party timely files in the superior court any of the motions referenced below, the full time for appeal begins to run for all parties from the entry of an order disposing of the last remaining motion:

* * * * *

(7) granting or denying a motion for relief under V.R.C.P. 60 if the motion is filed no later than ~~40~~ 28 days after the entry of judgment. If, however, the order is one denying a motion under V.R.C.P. 60(b) for relief from a default judgment, the motion need only be timely under that rule;

* * * * *

(c) Reopening the Time To File an Appeal Based on Lack of Notice. In a civil action, the superior court may, upon motion, reopen the time to file an appeal for 14 days after the date when its order to reopen is entered if:

(1) the reopening motion is filed within 90 days of entry of the judgment or order or within ~~7~~ 14 days of receipt of notice of the judgment or order, whichever is earlier; and

* * * * *

(d) Motion for Extension of Time To File Notice of Appeal.

* * * * *

(3) No extension under this subdivision may exceed 30 days after the time originally prescribed by Rule 4(a) or ~~40~~ 14 days after the date the order granting the motion is entered, whichever is later.

Reporter's Notes—2017 Amendment

Rule 4(a)(2) is amended to clarify that the State must file an appeal with 7 business days. This conforms to the concurrent amendment to 13 V.S.A. § 7403(e).

Rule 4(b)(7) is amended for internal consistency with V.R.C.P. 50 and 52.

Rules 4(c)(1) and 4(d)(3) are amended to conform their 7-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

3. That Rule 5(b) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 5. APPEALS BEFORE FINAL JUDGMENT

(b) Appeal of Interlocutory Order by Permission.

* * * * *

(5) Timing of Motion and Content of Order.

(A) The motion must be filed within ~~10~~ 14 days after entry of the order or ruling appealed from, but the State’s motion in a criminal action must be filed within 7 days after the decision, judgment, or order appealed from.

* * * * *

(7) Permission To Appeal Denied.

(A) If the superior court denies the request for permission to appeal, the moving party may, within ~~10~~ 14 days after entry of the order of denial, file the motion in the Supreme Court with a statement containing:

* * * * *

(C) Within ~~5~~ 14 days after service of the motion, an adverse party may file and serve an opposition.

* * * * *

Reporter’s Notes—2017 Amendment

Rules 5(b)(5)(A) and 5(b)(7)(A) and (C) are amended to conform their 5-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a) and for internal consistency with appellate motion practice.

4. That Rules 5.1(a)(2) and 5.1(b)(2) and (4) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 5.1. COLLATERAL FINAL ORDER APPEALS

(a) Motion for Permission To Appeal.

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(2) A request for permission to appeal must be filed within ~~10~~ 14 days after entry of the order or ruling appealed from.

* * * * *

(b) Motion for Permission Denied.

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(2) If the motion is denied, the moving party may, within ~~10~~ 14 days after entry of the denial, file the motion in the Supreme Court with a statement containing:

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(4) Within ~~5~~ 14 days after service of the motion, an adverse party may file and serve an answer in opposition to the motion.

* * * * *

Reporter’s Notes—2017 Amendment

Rules 5.1(a)(2) and 5(b)(2) and (4) are amended to conform their 5-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a) and for internal consistency with appellate motion practice.

5. That Rules 6(a)(1), (4) and (6), and 6(b)(2) and (10)(B) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 6. DISCRETIONARY APPEALS

(a) Appeals from Final Judgment Based on Superior Court Permission.

(1) When an appeal from a final judgment may be taken only with the superior court’s permission, the party seeking the appeal must file a motion for permission to appeal with the clerk within ~~10~~ 14 days of the date of the entry of the judgment or order to be appealed from. The running of the time for filing a motion for permission is tolled to the extent provided, and for the grounds stated, in Rule 4(b).

* * * * *

(4) If the superior court denies permission to appeal, the party seeking permission may, within ~~10~~ 14 days after entry of the order of denial, file a motion in the Supreme Court with a statement containing:

* * * * *

(6) Within ~~5~~ 14 days after service of the motion, an adverse party may file and serve an answer in opposition to the motion.

* * * * *

(b) Appeals from Final Judgment Based on Supreme Court Permission.

* * * * *

(2) The request for permission must be filed within ~~10~~ 14 days of the date of the entry of the judgment or order to be appealed from, except that the running of the time for filing a request for permission is terminated to the extent provided, and for the grounds stated, in Rule 4.

* * * * *

(10) If the Supreme Court grants permission:

* * * * *

(B) the appellant must pay to the superior court clerk the entry fee required under 32 V.S.A. § 1431 within ~~10~~ 14 days after the decision is entered in the superior court; and

* * * * *

Reporter's Notes—2017 Amendment

Rules 6(a)(1), (4) and (6), and Rules 6(b)(2) and (10)(B) are amended to conform their 5-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a) and for internal consistency with appellate motion practice.

6. That Rules 10(b)(1), (3), and (5) and 10(d) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 10. THE RECORD ON APPEAL

(b) Transcript.

(1) *Appellant's Responsibility.* The appellant must either file and serve a statement that no transcript is necessary or order from a Court-approved transcription service a transcript, or a video recording if paragraph (c)(2) applies, of all parts of the proceedings relevant to the issues raised by the appellant and necessary to demonstrate how the issues were preserved. Except as provided in paragraphs (b)(3) and (4), the statement or order must be filed within ~~10~~ 14 days of filing the notice of appeal. By failing to order a transcript, the appellant waives the right to raise any issue for which a transcript is necessary for informed appellate review.

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(3) *Life Imprisonment Cases.* In any criminal case resulting in a sentence of life imprisonment where the defendant has not waived appeal or entered a plea of guilty or nolo contendere to the underlying charge, the superior court clerk must, within ~~10~~ 14 days of the entry of judgment, order from a Court-approved transcription service a complete transcript of the proceedings.

* * * * *

(5) *Appellee's Responsibility.* If the appellee deems a transcript of other parts of the proceedings necessary, the appellee must, within ~~10~~ 14 days after service of the appellant's transcript order and docketing statement, file and serve a designation of additional parts to be

included. If, within ~~10~~ 14 days after service of that designation, the appellant has not ordered those parts, the appellee may, within the following ~~10~~ 14 days, either order the parts at the appellee's own expense or request a prehearing conference.

* * * * *

(d) **When the Transcript Is Unavailable.** If a transcript is unavailable, the appellant may prepare a statement of the evidence from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within ~~10~~ 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the superior court for settlement and approval. As settled and approved, the statement will be included by the superior court clerk in the record on appeal.

Reporter's Notes—2017 Amendment

Rules 10(b)(1), (3) and (5) and 10(d) are amended to conform their 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

7. That Rules 11(a)(2) and (b)(1) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 11. FORWARDING THE RECORD

(a) Time for Forwarding: Appellant's Duty.

* * * * *

(2) If there are multiple appeals from a judgment or order, each appellant must comply with the provisions of Rule 10(b) and this subdivision, and the clerk must forward a single record within ~~15~~ 14 days after the last notice of appeal is filed.

(b) Clerk's Duty To Forward the Record; Transcript.

(1) Within ~~15~~ 14 days after filing of the notice of appeal, the superior court clerk must forward any entry fee, and the record on appeal, including necessary exhibits, but not including the transcript, to the Supreme Court, unless the time is shortened or extended under Rule 11(d). When the superior court clerk receives a statement to be filed under Rule 10(c) or (d), the superior court clerk must forward that statement to the Supreme Court clerk.

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Reporter's Notes—2017 Amendment

Rules 11(a)(2) and (b)(1) are amended to conform their 14-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

8. 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

(a) **Computing Time.** V.R.C.P. 6(a) governs the computation of any period of time prescribed by these rules, by any applicable statute, or by court order.

(b) **Extending Time.** For good cause, the Supreme Court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the Court may not extend the time for filing:

(1) a notice of appeal or a motion for permission to appeal, unless specifically authorized by law or by these rules; or

(2) materials in appeals under Chapters 51 and 53 of Title 33, absent extraordinary circumstances.

(c) **Additional Time After Certain Kinds of Service.** When a party is ~~required or permitted to~~ may or must act within a prescribed period after a paper is served on that party service and service is made under V.R.C.P. 5(b)(2), ~~or~~ (3), or (4) three calendar days are added to the prescribed period after the period would otherwise expire under V.R.C.P. 6(a). ~~has been computed under Rule 26(a), unless:~~

~~(1) the Court serves the paper; or~~

~~(2) a party receives a paper served by nonelectronic means on the date of service.~~

* * * * *

(d) **Stipulation To Extend Time on Appeal.**

(1) Subject to the provisions of Rules 12(c), 26(e), and 42(b), the parties may extend any period of time prescribed by these rules by filing a stipulation. But the parties may not by stipulation extend the period to file:

(A) a notice of appeal or a request for permission to appeal; or

(B) materials in appeals in proceedings under Chapters 51 and 53 of Title 33.

(2) 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.

(3) Filing procedure.

(A) If filed before the record on appeal is sent to the Supreme Court, the stipulation must be filed with the superior court clerk.

(B) If filed after the record on appeal is sent to the Supreme Court, the stipulation must be filed with the Supreme Court clerk.

(e) **Stipulations Limited.** No stipulated extension of time may exceed 30 days for appellant or 21 days for appellee. Only one Rule 26(d) extension may be filed for the appellant's brief and printed case and the appellee's brief.

Reporter’s Notes—2017 Amendment

Rule 26 is amended to incorporate a specific reference to the simultaneous amendment of V.R.C.P. 6(a). Rule 26(c) is amended to conform with the simultaneous amendment to V.R.C.P. 6(e).

9. That Rule 27(a)(3) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 27. MOTIONS

(a) **In General.**

* * * * *

(3) *Response.* Except as provided in Rule 40 and Rule 27(b), any party may file a response to a motion within 7 ~~14~~ days after service of the motion, unless the Court shortens or extends the time.

Reporter’s Notes—2017 Amendment

Rule 27(a)(3) is amended to conform its 7-day time period to the simultaneous amendment of V.R.C.P. 6(a).

10. That Rule 28(i) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 28. BRIEFS

(i) **Length of Briefs.**

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(2) A request for permission to exceed these limits must specify the number of additional words requested, and must be filed no later than ~~5~~ 7 days before the filing deadline for the brief involved.

Reporter’s Notes—2017 Amendment

Rule 28(i)(2) is amended to conform its 5-day time period to the simultaneous amendment of V.R.C.P. 6(a).

11. That Rule 31(a)(3) 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.

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(3) *Reply Brief.* The appellant may serve and file a reply brief within ~~40~~ 14 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 ~~40~~ 14 days after service of the appellant’s reply brief.

Reporter’s Notes—2017 Amendment

Rule 31(a)(3) is amended to conform its 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

12. That Rule 33.1(b) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 33.1. SUMMARY PROCEDURES ON APPEAL

(b) Oral Argument.

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(2) *Argument by Video Conference.* Parties may present oral argument either in person or by video conference. Parties intending to present oral argument by video conference must notify the Court no later than ~~three business~~ 7 days before the scheduled argument date.

* * * * *

(3) *Argument by Telephone.* Incarcerated parties may present oral argument by telephone as long as the telephone conference can be arranged at the place of incarceration. Incarcerated parties must notify the Court no later than three business days before the scheduled argument

date. Other parties may present oral argument by telephone with the Court's permission, which must be requested at least ~~three business~~ 7 days before the scheduled argument date.

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Reporter's Notes—2017 Amendment

Rules 33.1(b)(2) and (3) are amended to conform their 3-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

13. That Rule 39(d) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 39. COSTS

(d) Bill of Costs: Objections; Insertion in Mandate.

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(2) Objections must be filed within ~~10~~ 14 days after service of the bill of costs, unless the Court extends the time.

* * * * *

(B) The deputy clerk will determine all questions that arise concerning unnecessary matter, subject to review by the justice who signed the opinion if that review is requested within ~~7~~ 14 days after costs are taxed.

Reporter's Notes—2017 Amendment

Rules 39(d)(2)(B) are amended to conform their 7-day and 10-day time periods to the simultaneous amendment of V.R.C.P. 6(a).

14. That Rule 45.1(e) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 45.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

(e) Withdrawal: In General.

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(3) The Court will not consider a motion to withdraw until the clerk has given notice to the party of the motion with either the date and time of hearing thereon, or at least ~~7~~ 14 days to file a written response to the motion.

Reporter’s Notes—2017 Amendment

Rule 45.1(e)(3) is amended to conform its 7-day time period to the simultaneous amendment of V.R.C.P. 6(a).

15. That these rules and forms, as added or amended, are prescribed and promulgated effective _____. The Reporter's Notes are advisory.

16. 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 ____ day of _____, 2017.

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice