

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2017

Order Promulgating Amendments to the Vermont Rules of Probate Procedure

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

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

RULE 4. NOTICE; PROCESS

(e) **Service by publication.** When service by publication is required by this rule or by order of the court, the person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published in a newspaper of general circulation in the probate district where the petition was filed, or such other location as the court may direct. The publication of the notice shall be made within ~~20~~ 21 days after the petition is filed or the order is granted. Service by publication is complete on the day of publication.

Reporter's Notes—2017 Amendment

Rule 4(e) is amended to extend its 20-day time period to 21 days consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6.

2. That Rule 6 of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 6. TIME

(a) **Computing time.** The following rules apply in computing any time period specified in these rules, in any court order, or in any applicable statute that does not specify a method of computing time. **Computation.** ~~In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a State or federal legal holiday, or when the act to be done is the filing of some paper in court, a day on which weather or other conditions have made the office of the clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.~~

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and state or federal legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or state or federal legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Period Stated in Hours. When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or state or federal legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) Inaccessibility of the Register's Office. Unless the court orders otherwise, if the register's office or the court's electronic filing system is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or state or federal legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or state or federal legal holiday.

(4) "Last Day" Defined. Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight; and

(B) for filing by other means, when the register's office is scheduled to close.

(5) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) “Business Day” Defined. A “business day” is a day that is not a Saturday, Sunday, or state or federal legal holiday.

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 52(b), 60(b) and (c), ~~except to the extent and under the conditions stated therein.~~

(c) **Affidavits on motions.** When a motion is supported by affidavit, the affidavit shall be served with the motion; and, opposing affidavits may be served not later than ~~one~~ 7 days before the hearing, unless the court permits them to be served at some other time.

(d) **Additional time after service by mail.** ~~Whenever a party has the right or is required to do some act within a prescribed period~~ When a party may or must act within a specified time after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days ~~shall be added to the prescribed period unless the notice or other paper is served by the court~~ are added after the period would otherwise expire under Rule 6(a).

Reporter’s Notes—2017 Amendment

Rule 6(a) is amended to adopt the “day is a day” rule, a simplified method of computing time periods. The amendment incorporates, with minor changes, the language of the simultaneous amendment of V.R.C.P. 6(a), which, in turn, is based upon a 2009 amendment of F.R.C.P. 6(a). The amendment serves the purposes of both achieving simplicity and maintaining uniformity with the Vermont Civil Rules and the federal practice.

As the Federal Advisory Committee’s Notes point out, this computation method does not apply when a statute prescribes a specific method for computing time. Amended V.R.P.P. 6(a) retains the language of the former rule making its computation provisions apply to a time period “prescribed or allowed by... any applicable statute” (emphasis added) and clarifies that it is applicable only where the statute “does not specify a method of computing time.” Federal Rule 6(a) as amended in 2009 omitted “applicable” from the prior federal rule in adopting language otherwise substantially identical to the language of amended V.R.C.P. 6(a). The Federal Advisory Committee’s Note does not address the question whether “statute” standing alone includes every enacted provision containing a time period.

The retention of “applicable” in the amended Vermont rule is intended to preserve the effect of two Vermont Supreme Court decisions making clear that the test of whether a statute is “applicable” under former V.R.C.P. 6(a) is whether the statute concerns matters to which the Rules of Civil Procedure apply under V.R.C.P. 1. See *Allen v. Vt. Emp’t Sec. Bd.*, 133 Vt. 166, 168, 333 A.2d 122, 124 (1975), and *State v. Hanlon*, 164 Vt. 125, 128, 665 A.2d 603, 604 (1995), further discussed in the Reporter’s Notes to the simultaneous amendment of V.R.C.P. 6(a).

The Federal Advisory Committee’s Notes provide a helpful further explanation of the change in the computation method:

Under former Rule 6(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 6(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day—and the 10-day period not infrequently ended later than the 14-day period....

Under [the amended rule], all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days—including intermediate Saturdays, Sundays, and legal holidays—are counted, [except that if] the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday.

Of course, if the register’s office is inaccessible or the electronic filing system unavailable on the last day or the day to which the period has been extended, the deadline falls on the next accessible or available day. Note that “act, event, or default” has been changed to “event” for brevity and simplicity. The change is not intended as a change in meaning.

Periods of less than 11 days in other provisions of the rules would be shortened by the inclusion of intermediate Saturdays, Sundays, and legal holidays. Accordingly, shorter time periods in other rules are being extended by simultaneous amendments, generally following guidelines stated in the Federal Advisory Committee’s Notes:

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method—two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period—the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting 7-day periods to replace some of the periods set at less than 10 days, and 21-day periods to replace 20-day periods.

In sum, in the Vermont rules, most periods of three days are changed to five unless there is a specific reason for the shorter time. Periods of five to 20 days are converted to seven or multiples of seven for convenience. Thus, five days becomes seven. Seven days remains seven. Ten and 15 days become 14. Twenty days become 21. Several 10-day time periods were enlarged and changed to 28 days for consistency with the changed federal standard for motion practice. Thirty-day time periods remain unchanged. Forty-five and 50-day periods, not found in the Federal Rules, have been changed to 42 and 49 days, consistent with the “multiple of 7” simplification adopted in the Federal Rules.

Note that time periods may be either forward-looking or backward-looking. Thus, amended V.R.P.P. 4(e) is forward-looking, requiring publication of notice “within 21 days after the petition is filed or the order is granted.” Amended V.R.P.P. 6(c) is backward-looking, requiring service of affidavits supporting a motion “not later than seven days before the hearing” unless the court approves a shorter time. The last day of a period ending on a weekend or holiday should be determined by counting in the same direction that the time period runs. For example, the Federal Advisory Committee’s Notes suggest, that if

a filing is due within 30 days after an event, and the thirtieth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 21 days before an event, and the twenty-first day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk’s office is inaccessible on August 31, then [the rule] extends the filing deadline forward to the next accessible day that is not a

Saturday, Sunday, or legal holiday—no later than Tuesday, September 4.

In either the “after” or “before” situation, if the clerk’s office in this example were inaccessible on Tuesday, September 4, the extension would continue until the office was accessible.

Rule 6(a)(6) is added consistent with Act ___ of 2017 in order to make clear that an applicable statute, or another provision of these or other court procedural rules, computing a time period in “business days” creates an exception to the “day is a day” counting method generally made applicable by Rule 6(a)(1): Cf. 14 V.S.A. § 2625(f)(2), as amended by Act ___ of 2017. Intermediate Saturdays, Sundays, and state or federal legal holidays will not be counted in computing a period specified to be in “business days,” contrary to the practice specified by Rule 6(a)(1) for computing periods not so labeled.

Rule 6(b) is amended for consistency with the simultaneous amendment of V.R.C.P. 6(b). In Rule 6(c), the one-day time period for service of opposing affidavits on motions is changed to 7 days for consistency with other time provisions.

Rule 6(d), providing an additional 3 days for actions required after service by mail, has been revised to be consistent with the amendments to V.R.C.P. 6(e).

3. That Rules 7(b)(4) and (c) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 7. PLEADINGS AND MOTIONS

(b) Motions.

* * * * *

(4) Unless a different time is fixed by the court, any party opposing the motion may file a memorandum in opposition within ~~10~~ 14 days after service of the motion.

(c) **Failure to Timely File.** Unless the court decides otherwise, a pleading, motion, or memorandum filed less than ~~five~~ 7 days before a hearing will not be considered at the hearing.

Reporter's Notes—2017 Amendment

Rules 7(b)(4) and (c) are amended to extend their 10- and 5-day time periods to 14 and 7 days consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6.

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

RULE 12. NOTICE OF INITIAL HEARING; DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED

(b) **Preliminary motion.** At the option of the pleader, the objections of lack of jurisdiction of the person, improper venue, and legal insufficiency of the petition may be raised by motion at any time before a hearing set under subdivision (a). The court may determine the issues raised before hearing or may postpone determination until the hearing. Any further pleading required shall be served within ~~10~~ 14 days after notice for the court's action.

Reporter's Notes—2017 Amendment

Rule 12(b) is amended to extend its 10-day time period to 14 days consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6.

5. That Rule 15(a) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) **Amendments.** A party may amend the petition once as a matter of course at any time before an answer is served. A party may amend an answer at any time within ~~20~~ 21 days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of all other parties; and leave shall be freely given when justice so requires. A party may file an answer to an amended petition within ~~10~~ 14 days after service of the amended petition.

Reporter's Notes—2017 Amendment

Rule 15(a) is amended to extend its 20- and 10-day time periods to 21 and 14 days consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6.

6. That Rule 52(b) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 52. FINDINGS BY THE COURT

(b) **Amendment.** Upon motion of a party made not later than ~~10~~ 28 days after entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly.

Reporter’s Notes—2017 Amendment

Rule 52(b) is amended to extend its 10-day time period to 28 days consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6 and for consistency with the new standard of V.R.C.P. 52(b), adopted to conform to the federal rule.

7. That Rules 53(d)(1) and (e)(2)(iii) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 53. MASTERS

(d) Proceedings.

(1) *Meetings.* When a reference is made, the register shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within ~~20~~ 21 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to expedite the proceedings and make a report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master’s discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

* * * * *

(e) Report.

* * * * *

(2) Effect.

* * * * *

(iii) Except where the reference is by agreement without reservation of the right to object, any party may, within ~~10~~ 14 days after being served with notice of the filing of the report, serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion. Except as otherwise provided in this paragraph (2), the court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may

recommit it with instructions.

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Reporter's Notes—2017 Amendment

Rules 53(d)(1) and (e)(2)(iii) are amended to extend their 20- and 10-day time periods to 21 and 14 days consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6.

8. That Rule 58 of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 58. ENTRY OF JUDGMENT

The judge shall approve and sign the judgment, and the register shall thereupon enter it. A judgment is effective only when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall submit forms of judgment upon direction of the court. A form of judgment submitted in accordance with this rule shall be served upon all parties, who shall file any objections within 5 7 days after service upon them unless the court orders such objections to be filed earlier.

Reporter's Notes—2017 Amendment

Rule 58 is amended to extend its 5-day time period to 7 days consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6.

9. That Rule 60(c) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(c) **Motion to alter or amend a judgment.** A motion to alter or amend the judgment shall be served not later than ~~40~~ 28 days after entry of the judgment.

Reporter's Notes—2017 Amendment

Rules 60(c) is amended to extend its 10-day time period to 28 days consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6 and for consistency with the new standard of the comparable Civil Rule, V.R.C.P. 59(e), adopted for consistency with the federal rule.

10. That Rules 64(a), (d), and (e) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 64. CREDITORS' CLAIMS AGAINST DECEDENTS' ESTATES

(a) **Notice to creditors.** Unless notice to creditors has already been given or unless subsection (b) applies, an executor or administrator upon appointment shall publish, pursuant to Rule 4(e), notice to creditors of the estate to present their claims within four months after the date of publication of the notice or be forever barred from their claims. Unless the court orders otherwise, publication of the notice to creditors shall occur within 30 days after the issuance of letters testamentary or letters of administration. A copy of the notice shall be filed with the court, within ~~10~~ 14 days after publication. The executor or administrator shall also promptly send by first class mail a similar notice, or a copy of the published notice, to any creditor known to or reasonably ascertainable by the executor or administrator.

* * * * *

(d) **Determination of claims in the court.** If a claim is disallowed, the creditor may appeal to the court pursuant to law. The executor or administrator shall, within ~~10~~ 14 days after a creditor has appealed to the court, file a written statement showing why the claim should be rejected or should be reduced in amount.

(e) **Petition for order that a claim be paid.** When a petition is filed seeking an order directing the executor or administrator to pay a claim the executor or administrator shall within ~~10~~ 14 days file a written statement showing the assets in the estate, the provision made for homestead, family and support allowances, the nature and amount of claims that have been allowed, the nature and expected amount of unbarred claims that have not been presented and the costs and expenses of administration that have accrued.

Reporter's Notes—2017 Amendment

Rules 64(a), (d), and (e) are amended to extend their 10-day time periods to 14 days consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6.

11. That Rule 66(e) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 66. INVENTORY AND ACCOUNTS

(e) **Accounts; necessity of a written objection.** Unless the court directs otherwise, no party who fails to file a written objection to the allowance of an account, specifying the grounds of objection, at least ~~3~~ 7 days before the hearing on the account shall be heard in opposition to the account. In the absence of any objections, the court may allow a verified account without hearing.

Reporter’s Notes—2017 Amendment

Rule 66(e) is amended to extend its 3-day time period to 7 days consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6.

12. That Rule 72(b)(2) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 72. CIVIL CONTEMPT PROCEEDINGS

(b) Procedure.

* * * * *

(2) *Notice; Service.* The order of the court initiating the proceeding shall set the matter for evidentiary hearing and shall order that notice of the hearing, together with a copy of the order initiating the proceeding and any motion and affidavit, shall be served upon the respondent by the appropriate method provided in Rule 5(b) of these rules. The notice shall set forth the title of the action and the date, time, and place of the hearing and shall allow the respondent a reasonable time, not less than ~~15~~ 14 days before the date set for hearing, to file an answer and prepare a defense. The notice may include an order to produce documents requested by the moving party or the court. The notice shall contain a warning that if the court finds the respondent to be in contempt, the court may impose sanctions, whether or not the respondent has answered or appeared in the proceeding. If the court has determined that it may consider imprisonment as a sanction, the notice shall so state and shall also advise the respondent that failure to retain or request counsel will result in a waiver of the right to be represented by counsel at the hearing.

Reporter’s Notes—2017 Amendment

Rule 72(b)(2) is amended to change its 15-day time period to 14 days, consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6.

13. That Rule 80(c) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 80. CONVEYANCE OF PROPERTY WHEN RECORD HOLDER DECEASED

(c) **Answer.** Unless the court directs otherwise, a person receiving notice shall serve an answer within ~~20~~ 21 days after service of the summons and petition or, with respect to a person receiving notice served pursuant to Rule 4(e), 4(f) or 4(k) outside the United States or Canada, within ~~50~~ 49 days after such service. The service of a motion permitted by these rules alters these periods of time as provided in Rule 12(a) of the Vermont Rules of Civil Procedure.

Reporter’s Notes—2017 Amendment

Rule 80(c) is amended to change its 20-day time period to 21 days and its 50-day time period to 49 days, consistent with the simultaneous “day is a day” amendments to V.R.P.P. 6.

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

15. 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

PROPOSED