

STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_ TERM, 2021

**Order Amending Rules 43(e) and 54(d)(2)(C) 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 43(e) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 43. EVIDENCE**

(e) **Evidence on Motions.** Except as provided in Rule ~~78(b)(2)~~ 7(b)(6), when a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition, or on a written statement, agreed to and signed by the parties or their attorneys.

**Reporter's Notes—2021 Amendment**

Rule 43(e) is amended to replace the reference to V.R.C.P. 78(b)(2) (evidence on motions if requested), which was abrogated by order of June 7, effective August 9, 2021, with a reference to V.R.C.P. 7(b)(6), added by that order and embodying the provisions of V.R.C.P. 78(b)(2) in revised form. See Reporter's Notes to 2021 amendment of V.R.C.P. 7(b) and abrogation of V.R.C.P. 78.

2. That Rule 54(d)(2)(C) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 54. JUDGMENTS; COSTS**

(d) **Allowance of Costs; Attorneys' Fees.**

(2) *Attorneys' Fees.*

(C) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(e) or Rule ~~78 7(b)(4)-(6)~~. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in Rule 52(a), and a separate judgment shall be entered as provided in Rule 58.

**Reporter’s Notes—2021 Amendment**

Rule 54(d)(2)(C) is amended to replace the reference to V.R.C.P. 78 (Motion Day), which was abrogated by order of June 7, effective August 9, 2021, with a reference to V.R.C.P. 7(b)(4)-(6) added by that order and embodying its relevant provisions in revised form. See Reporter’s Notes to 2021 amendment of V.R.C.P. 7(b) and abrogation of V.R.C.P. 78.

3. That these amendments be promulgated without having been sent out for comment as proposed amendments because they are intended only for consistency with previously promulgated amendments.

4. That these amendments be prescribed and promulgated, effective on \_\_\_\_\_.  
The Reporter’s Notes are advisory.

5. 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 \_\_\_\_\_, 2021.

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice