

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2021

Order Abrogating Rule 6(e) of the Vermont Rules of Civil Procedure and Rule 26(c) of the Vermont Rules of Appellate Procedure and Amending V.R.A.P. 26(d)(1) and 31(a)

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

1. That Rule 6(e) of the Vermont Rules of Civil Procedure be abrogated.

Reporter's Notes—2021 Amendment

V.R.C.P. 6(e) is abrogated. V.R.A.P. 26(c), which is virtually identical, is abrogated simultaneously. As most recently amended in 2018, Rule 6(e) provided:

(e) Additional Time After Certain Kinds of Service.

When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2) (mailing), (3) (leaving with the clerk), or (4) (sending by electronic means), 3 days are added after the period would otherwise expire under Rule 6(a).

Abrogation is overdue, given the general simplification of counting time that occurred when the “day is a day” method of counting was adopted in 2018. See Reporter's Notes to 2018 amendment of Rule 6(a).

Federal Rule 6(d), which is virtually identical to V.R.C.P. 6(e), was amended in 2016 to remove service by electronic means under F.R.C.P. 5(b)(2)(E) from the modes of service that allow 3 days to be added after the prescribed period runs. That amendment reflected the narrower scope given to electronic service under the Federal Rules.

Vermont trial courts, and the Vermont Supreme Court, are now fully operational under the Odyssey File and Serve system. Registered Attorneys and registered self-represented litigants are required to use the system and receive service of case related documents through it. Nonelectronic service is limited to cases involving self-represented litigants who do not opt in to the Odyssey system or to special instances where electronic service is inappropriate. See V.R.C.P. 5(b), as amended effective _____, 2021. Timing difficulties caused by electronic filing outside of normal business hours, or arising in the

limited number of cases involving nonelectronic service, can be addressed case by case by the trial court.

2. That Rule 26(c) of the Vermont Rules of Appellate Procedure be abrogated.

Reporter's Notes—2021 Amendment

V.R.A.P.26(c) is abrogated, simultaneously with virtually identical V.R.C.P. 6(e). As most recently amended in 2018, V.R.A.P. 26(c) provided:

(c) Additional Time After Certain Kinds of Service. When a party may or must act within a prescribed period after service and service is made under V.R.C.P. 5(b)(2), (3), or (4). 3 days are added to the prescribed period after the period would otherwise expire under V.R.C.P. 6(a).

Abrogation is overdue, given the general simplification of counting time that occurred when the “day is a day” method of counting was adopted in 2018. See Reporter’s Notes to simultaneous abrogation of V.R.C.P. 6(e).

3. That Rule 26(d)(1) 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

(d) Stipulation to Extend Time to File Appellate Briefs.

(1) *Stipulations to Extend Time to File Briefs.* The parties may stipulate one time to extend the time to file each type of brief. The stipulated extension of time may not exceed:

(A) Appellant’s principal brief— ~~30~~ 40 days;

(B) Appellee’s principal brief— ~~21~~ 30 days;

(C) Appellant’s reply brief and appellee’s reply brief in a case with a cross appeal— ~~14~~ 21 days.

Reporter's Notes—Second 2021 Amendment

Rule 26(d)(1) is amended to extend the maximum limits on times to which filing times for briefs may be extended by stipulation. Under subparagraph (1)(A), the extension for the appellant’s principal brief is increased from 30 to 40 days. The extension for appellee’s principal brief is increased by subparagraph (1)(B) from 21 to 30 days, and that for reply briefs is increased by

subparagraph (1)(C) from 14 to 21 days. These time limits are identical to those in the Federal Rules of Appellate Procedure, which were put in place when the federal three-day rule was eliminated for electronic filing. Now that electronic filing has been adopted for appeals to the Vermont Supreme Court, and the three-day rule is being eliminated by simultaneous abrogation of V.R.C.P. 6(e) and V.R.A.P. 26(c), the longer time periods are appropriate for Vermont.

4. That Rule 31(a) 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.

(1) *Appellant's Brief.* Except as provided by Rule 10(c)(2), the appellant must serve and file a brief within ~~30~~ 40 days after the record on appeal is complete.

(2) *Appellee's Brief.* The appellee must serve and file a brief within ~~21~~ 30 days after the appellant's brief is served.

(3) *Reply Brief.* The appellant may serve and file a reply brief within ~~14~~ 21 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 ~~14~~ 21 days after service of the appellant's reply brief.

Reporter's Notes—Second 2021 Amendment

Rule 31(a) is amended to extend the serving and filing times for principal and reply briefs. Under paragraph (1), the time for the appellant's principal brief is increased from 30 to 40 days. The time for appellee's principal brief is increased by paragraph (2) from 21 to 30 days, and that for reply briefs is increased by paragraph (3) from 14 to 21 days. These time limits are identical to those in the Federal Rules of Appellate Procedure, which were put in place when the federal three-day rule was eliminated for electronic filing. Now that electronic filing has been adopted for appeals to the Vermont Supreme Court, and the three-day rule is being eliminated by simultaneous abrogation of V.R.C.P. 6(e) and V.R.A.P. 26(c), the longer time periods are appropriate for Vermont.

5. That these amendments be prescribed and promulgated, effective on _____. The Reporter's Notes are advisory.

6. 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.

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

PROPOSED