

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2019

**Order Promulgating Addition of Rule 4.3(f) and Rule 6.2
to the Vermont Rules for Family Proceedings**

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

1. That Rule 4.3(f) of the Vermont Rules for Family Proceedings be added to read as follows:

RULE 4.3 SPECIAL PROCEDURES

(f) Enforcement of Orders to Pay Money.

(1) Except as provided in paragraphs (2) and (3), in any proceeding under Rules 4.0-4.3, the provisions of a final order or judgment for the payment of money may be enforced in the Family Division by writ of attachment or by trustee process pursuant to V.R.C.P. 4.1 and 4.2.

(2) Actions for wage withholding are governed by Rule 4.3(b)(2).

(3) Actions to enforce a final order or judgment for the payment of money in foreclosure proceedings pursuant to V.R.C.P. 80.1(l), and by statute, are by separate action in the Civil Division.

Reporter's Notes—2019 Amendment

Rule 4.3(f) is added to provide a uniform procedure in the Family Division for the enforcement of judgments or orders to pay money rendered in Family Division proceedings under V.R.F.P. 4.0-4.3. Paragraph (1) provides that V.R.C.P. 4.1 (attachment) and 4.2 (trustee process) apply in the Family Division and may be used to enforce such judgments or orders with two exceptions.

The first exception, in paragraph (2), is that wage withholding actions will continue to be brought as provided in V.R.F.P. 4.3(b)(2). Orders or judgments to pay money that may be issued in the event of violation of the terms of a Rule 4.3(b)(2) order could be enforceable under new Rule 4.3(f)(1). The second exception, in paragraph (3), clarifies that a foreclosure action to enforce a judgment lien arising from any Family Division order or judgment to pay money must be brought in the Civil Division pursuant to V.R.C.P. 80.1(l). See 12 V.S.A. §§ 2901-2905.

2. That Rule 6.2 of the Vermont Rules for Family Proceedings be added to read as follows:

RULE 6.2. MENTAL HEALTH PROCEEDINGS

(a) Applicability of Rules.

(1) *In General.* This rule applies to all proceedings under 18 V.S.A. Chapters 179 and 181 (Involuntary Treatment); 18 V.S.A. § 8840 (Commitment to the Commissioner for Custody, Care, and Habilitation); and 18 V.S.A. Chapter 215 (Guardianship Services for People with Developmental Disabilities).

(2) Rules of Civil Procedure.

(A) The Vermont Rules of Civil Procedure apply to proceedings under this rule except as provided in subparagraph (B).

(B) The following Vermont Rules of Civil Procedure do not apply to proceedings under this rule: Rules 9.1, 16.1, 16.3, 23, 23.1, 23.2, 26-37, 38, 39, 42, 47, 48, 49, 50, 51, 54, 64, 65.1, 66, 67, 68, 69, 72, 74, 75, 80.1, 80.2, 80.5, 80.6, 80.7, 80.8, 80.9, 80.10, 80.11.

(b) Venue; Changes of Venue.

(1) *In General.* Petitions and applications in proceedings under this rule must be filed in the unit of the Superior Court in which the respondent resides except as provided in subparagraphs (A) and (B).

(A) Applications for involuntary treatment for nonresidents may be filed in any unit.

(B) Applications for involuntary treatment filed under 18 V.S.A. § 7508 or § 7620 while a respondent is in a hospital or facility in this state must be filed in the unit in which the hospital is located.

(C) If the respondent moves to a residence in a different unit or is transferred to a hospital or facility in a different unit during the pendency of involuntary treatment proceedings, any party may move to change the venue of the proceedings to that unit. The court will grant the motion if it determines it is in the interests of justice.

(2) *Orders of Nonhospitalization.* A notice of noncompliance and request for hearing and/or revocation during the period of an order of non-hospitalization under 18 V.S.A. § 7618 must be filed in the unit that issued the order of non-hospitalization, in the docket in which that order was issued. If the respondent no longer resides in that unit, the notice of noncompliance must be accompanied by a motion for change of venue to the unit in which the respondent currently resides or is in a hospital or facility.

(c) Appointment of Counsel; Notice to Parties.

(1) *In General.* The filer must include the last known mailing address and physical address of the respondent in the application or petition. When an application or petition is filed, the court

must appoint counsel for the respondent. The court must transmit a copy of the petition or application and all supporting documents, and a notice of the initial status conference or hearing to the respondent, respondent's attorney, respondent's guardian or any person having custody and control of respondent, and the State's Attorney or the Attorney General.

(2) *Service*. Service on the respondent must be made by regular first-class mail unless the court orders service to be made by a different method. All other parties may be served by regular first-class mail or by reliable electronic means.

(d) **Scheduling.**

(1) *Initial Status Conference*. In all cases governed by this rule, the court must schedule an initial status conference at which the parties must advise the court as to whether the matter will require a contested hearing.

(A) The initial status conference must be scheduled to occur within

(i) Seven (7) days of filing for Applications for Involuntary Treatment and Applications for Involuntary Medication;

(ii) Twenty (20) days of filing for Applications for Continued Treatment, Applications for Judicial Review and Notices of Noncompliance;

(iii) Seventy-two (72) days of filing for Petitions for Guardianship for a Developmentally Disabled Adult.

(B) In the event that a contested hearing is requested, the parties must be prepared at the initial status conference to advise the court as to the expected duration of the hearing. If a contested hearing is not requested a stipulation must be provided to the court within 30 days.

(2) *Motions*. All pretrial motions must be filed not less than 14 days before trial. Motions not resolved before trial may be taken up on the day of the trial.

(e) **Discovery**. In all cases governed by this rule, the court must issue a standardized discovery order for disclosure and discovery between the state and the respondent. All discovery must be completed at least 30 days before trial in contested cases. Motions related to additional discovery and releases of records must be filed within 14 days of the issuance of the discovery order.

(f) **Consolidation of Proceedings**. If multiple applications are pending under 18 V.S.A. Chapters 179 and 181, whether for involuntary treatment, continued treatment, notice of noncompliance, or involuntary medication, all such petitions must presumptively be consolidated and heard in the unit in which the respondent currently resides, in one hearing. The court may order such consolidation on its own motion, or any party may file a motion to request such consolidation, and unless the interests of justice require otherwise, the motion must be granted.

(g) **Electronic Submission of Documents**. Except where the court orders otherwise for good cause, parties may file all case documents electronically by email to the general email box of the unit of the superior court in which the application or petition is filed, or by other reliable electronic means.

Reporter's Notes

Rule 6.2 is added to provide a single procedure for mental health proceedings under 18 V.S.A. Chapters 179 and 181 (Involuntary Treatment); 18 V.S.A. § 8840 (Commitment to the Commissioner for Custody, Care, and Habilitation); and 18 V.S.A. Chapter 215 (Guardianship Services for People with Developmental Disabilities). See Rule 6.2(a)(1). The rule applies to those proceedings for which V.R.F.P. 6 and 6.1 or the listed statutory provisions require the appointment of an attorney or guardian ad litem for a respondent.

Rule 6.2(a)(2)(A) provides generally that the Rules of Civil Procedure apply under the new rule, except for those provisions listed in Rule 6.2(a)(2)(B). The inapplicable Civil Rules are: (i) those governing specialized proceedings: credit card debt (Rule 9.1), complex actions (Rule 16.1), mediation (Rule 16.3), class actions (Rules 23-23.2), replevin (Rule 64), appeals to the superior court (Rules 72, 74, 75), foreclosure (Rule 80.1), naturalization (Rule 80.2), criminal license suspension (Rule 80.5), Judicial Bureau (Rule 80.6), immobilization or forfeiture (Rule 80.7), transfer from district court (Rule 80.8), municipal parking violations (Rule 80.9), stalking or sexual assault (Rule 80.10), and expedited actions (Rule 80.11); and (ii) those providing procedures inappropriate for mental health proceedings: complex actions (Rule 16.1), discovery (Rules 26-37), jury trial (Rules 38, 39, 47-49), consolidation (Rule 42), judgment (Rules 50, 51, 54), security (Rule 65.1), and post-judgment remedies (Rules 66-69).

Rule 6.2(b) provides for venue and change of venue in proceedings under the rule. The provisions of Rule 6.2(b)(1)(A) and (C) for venue of proceedings against residents and nonresidents and for change of venue are consistent with the basic statutory venue provisions for the Superior Court and Family Division. See 4 V.S.A. §§ 37, 458; 12 V.S.A. §§ 402, 404; 18 V.S.A. § 7612(c). The provisions of Rule 6.2(b)(1)(B) and (2) for applications for involuntary treatment of a respondent who is in a hospital or facility in the state are consistent with 18 V.S.A. §§ 7612-7618.

Rule 6.2(c) requires appointment of counsel and service by first-class mail on the respondent and for service by first-class mail or electronic service on all others.

Rule 6.2(d) requires and provides time periods for an initial status conference at which the court is to be advised whether a contested hearing will be required and its duration, as well as a time for filing motions.

Because V.R.C.P. 26-37 are inapplicable, Rule 6.2(e) requires the court to issue a discovery order based on a standardized discovery order that will be developed. Standardized discovery times will be necessary as part of the implementation of the new case management system. Time periods for discovery are also provided in this subdivision.

Rule 6.2(f) requires consolidation of multiple applications under 18 V.S.A. Chapters 179 and 181 and hearing in the respondent's unit of residence, either on the court's own motion or on the motion of a party unless the interests of justice require otherwise.

Rule 62(g) permits the parties to file documents electronically unless the court orders otherwise for good cause. This is the current practice in such cases.

3. That these rules as amended are prescribed and promulgated, effective on _____ . 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 ___ day of _____, 2019

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

Vacancy, Associate Justice