

**STATE OF VERMONT  
VERMONT SUPREME COURT  
DECEMBER TERM, 2008**

**Order Promulgating Emergency Amendments to the Vermont Rules of Civil, Criminal,  
Probate, and Appellate Procedure**

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

1. That Rule 77(d) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 77. SUPERIOR COURTS AND CLERKS**

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**(d) ~~Notice of Orders or Judgments~~ by the Clerk.**

(1) Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall ~~serve~~ give notice of the entry ~~by mail in the manner provided for in Rule 5-  
upon~~ to every party who is not in default for failure to appear, and shall make a note in the docket of the ~~mailing~~ notice. Any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4 of the Rules of Appellate Procedure.

(2) Method of Giving Notice. The clerk shall give notice under paragraph (1), and shall give any other notice that these rules require the clerk to give, by a method that the Supreme Court has provided by administrative order or directive. That notice shall be sufficient for all purposes for which notice by the clerk is required under these rules.

**Reporter's Notes—2009 Emergency Amendment**

V.R.C.P. 77(d) is amended to provide that notice of entry of an order or judgment, and any other notice that the rules require the clerk to give, is to be given by a method that the Supreme Court will provide by administrative order or directive. In language taken from V.R.Cr.P. 56(d), paragraph (2) provides that notice pursuant to that order or directive will be sufficient under the rules. The amended rule will apply to Family and

Environmental Court proceedings by virtue of its incorporation in the Vermont Rules for Family Proceedings and the Vermont Rules for Environmental Court Proceedings. Similar amendments are being made simultaneously to V.R.Cr.P. 56(d), V.R.P.P. 77(d), and V.R.A.P. 45(c). These are emergency amendments to allow the Supreme Court to take appropriate steps to reduce the costs of service in the face of economic exigencies.

2. That Rule 56(d) of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

## **RULE 56. COURTS AND CLERKS**

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### **(d) Notice of Orders or Judgments by the Clerk.**

(1) Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall ~~serve~~ give notice of the entry ~~by mail in the manner provided for in Rule 49 upon~~ to every party, and shall make a note in the docket of the ~~mailing notice. Such mailing is sufficient notice for all purposes for which notice of entry of an order is required by these rules; but a~~ mailing notice. ~~Any party may in addition serve a notice of such entry in the manner provided in Rule 49 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4 of the Rules of Appellate Procedure.~~

(2) Method of Giving Notice. The clerk shall give notice under paragraph (1), and shall give any other notice that these rules require the clerk to give, by a method that the Supreme Court has provided by administrative order or directive. That notice shall be sufficient for all purposes for which notice by the clerk is required under these rules.

### **Reporter's Notes—2009 Emergency Amendment**

V.R.Cr.P. 56(d) is amended to provide that notice of entry of an order or judgment, and any other notice that the rules require the clerk to give, is to be given by a method that the Supreme Court will provide by administrative order or directive. Similar amendments are being made simultaneously to V.R.C.P. 77(d), V.R.P.P. 77(d), and V.R.A.P. 45(c). For consistency with those rules, the second sentence of the former rule, providing that notice pursuant to the Court's order or directive will be sufficient under

the rules, has been carried forward in paragraph (2). These are emergency amendments to allow the Supreme Court to take appropriate steps to reduce the costs of service in the face of economic exigencies.

3. That Rule 77(d) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

## **RULE 77. PROBATE COURTS AND REGISTERS**

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### **(d) ~~Notice of Orders or Judgments~~ by the Register.**

(1) Orders or Judgments. Immediately upon the entry of an order or judgment the register shall ~~serve~~ give notice of the entry, with a conformed copy of the judgment, ~~by mail in the manner provided for in Rule 5 upon~~ to every party who was served with the paper or received notice of the hearing on which the order or judgment is based. The register shall make a note in the docket of the mailing notice. ~~Such mailing is sufficient notice for all purposes for which notice of entry of an order is required by these rules; but~~ Any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the register does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 72 of the Vermont Rules of Civil Procedure.

(2) Method of Giving Notice. The register shall give notice under paragraph (1), and shall give any other notice that these rules require the register to give, by a method that the Supreme Court has provided by administrative order or directive. That notice shall be sufficient for all purposes for which notice by the clerk is required under these rules.

### **Reporter's Notes—2009 Emergency Amendment**

V.R.P.P. 77(d) is amended to provide that notice of entry of an order or judgment, and any other notice that the rules require the register to give, is to be given by a method that the Supreme Court will provide by administrative order or directive. Similar amendments are being made simultaneously to V.R.C.P. 77(d), V.R.Cr.P. 56(d), and V.R.A.P. 45(c). For consistency with those rules, the second sentence of the former rule, providing that notice pursuant to the Court's order or directive will be sufficient under the rules, has been carried forward in paragraph (2). These are emergency amendments to allow the

Supreme Court to take appropriate steps to reduce the costs of service in the face of economic exigencies.

4. That Rule 45(c) of the Vermont Rules of Appellate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

#### **RULE 45. DUTIES OF THE CLERK**

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##### **(c) Notice of Orders or Judgments by the Clerk.**

(1) Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall ~~serve a~~ give notice of entry ~~by mail upon~~ to each party to the proceeding ~~in the manner provided in Rule 25,~~ together with a copy of any opinion respecting the order or judgment, or, if no opinion was written, of the order or judgment, and shall make a note in the docket of the ~~mailing~~ notice.

(2) Method of Giving Notice. The clerk shall give notice under paragraph (1), and shall give any other notice that these rules require the clerk to give, by a method that the Supreme Court has provided by administrative order or directive. That notice shall be sufficient for all purposes for which notice by the clerk is required under these rules.

#### **Reporter's Notes—2009 Emergency Amendment**

V.R.A.P. 45(c) is amended to provide that notice of entry of an order or judgment, and any other notice that the rules require the clerk to give, is to be given by a method that the Supreme Court will provide by administrative order or directive. In language taken from V.R.Cr.P. 56(d), paragraph (2) provides that notice pursuant to that order or directive will be sufficient under the rules. Similar amendments are being made simultaneously to V.R.C.P. 77(d), V.R.Cr.P. 56(d), and V.R.P.P. 77(d). These are emergency amendments to allow the Supreme Court to take appropriate steps to reduce the costs of service in the face of economic exigencies.

5. That these emergency amendments are prescribed and promulgated to become effective on January 1, 2009. The Reporter's Notes are advisory.

6. That the Court finds that these emergency amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11, because they reflect changes that will allow the Court to take appropriate steps to reduce the costs of service in the face of economic exigencies. The Court's Advisory Committee on Rules for Civil,

Criminal, and Probate Procedure are directed to consider and report to the Court pursuant to Administrative Order No. 11 by September 30, 2009, on any comments that may be received on these emergency amendments.

7. That the Chief Justice is authorized to report these emergency 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 17th day of December, 2008.

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice