

**STATE OF VERMONT
VERMONT SUPREME COURT
APRIL TERM, 2024**

Order Promulgating Amendments to Rules 3(e) and 27(a)(3) of the Vermont Rules of Appellate Procedure

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

1. That Rule 3(e) of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter struck through):

RULE 3. APPEALS OF RIGHT—HOW TAKEN

(e) **Docketing Statements.** ~~After~~ Within 14 days after taking an appeal, appellant ~~the parties~~ must ~~each~~ file a docketing statement ~~with the Supreme Court clerk~~ using a form prescribed by the clerk. ~~Appellant's docketing statement must be filed and served within 14 days of taking the appeal. Appellee's~~ Appellee may file a docketing statement ~~must be filed and served within 14 days thereafter~~ after service of appellant's docketing statement.

Reporter's Note—2024 Amendment

Rule 3(e) is amended to make the appellee's docketing statement optional. In many appeals, the appellee's docketing statement is cumulative and not necessary for the Court or parties. Although the filing is no longer mandatory, as a matter of practice an appellee should consider whether filing one is useful in a particular case. For example, an appellee who wants to state a position different from the appellant on summary disposition under V.R.A.P. 33.2 should file a docketing statement to do so. In some cases an appellee may wish to correct a material error or omission in the appellant's docketing statement.

In practice, an appellee should also file a docketing statement to note a disagreement with appellant regarding transcripts or other record issues. The appellee remains responsible under V.R.A.P. 10(b)(5) to timely designate additional parts of the proceeding to be included in the record on appeal if the appellee disagrees with the appellant's designation of transcripts.

An appellee who intends to participate in the appeal but does not file a docketing statement should enter a timely appearance. See V.R.A.P. 25(b) (documents filed after deadline for filing appellee's docketing statement do not need to be served on party that has neither filed docketing statement nor entered appearance in Supreme Court.)

The phrase “taking an appeal” usually means the date the notice of appeal is filed, but it also refers to the date an appeal is accepted under Rules 5, 5.1, or 6 of the Vermont Rules of Appellate Procedure. Typically, the order accepting an appeal under those rules includes a deadline for filing a docketing statement.

2. That Rule 27(a)(3) of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined):

RULE 27. MOTIONS

(a) In General.

(3) *Response and Reply.* Except as provided in Rule 40 and Rule 27(b), any party may file a response to a motion within 14 days after service of the motion, unless the Court shortens or extends the time. The movant may reply to a response within 7 days after service of the response, unless the Court shortens or extends the time.

Reporter’s Notes—2024 Amendment

Rule 27(b)(3) is amended to allow a reply in support of a motion. This is consistent with the federal appellate rule, as is the time allowed for the reply—7 days after service of the response unless otherwise ordered. The former rule, by which practitioners requested leave to file a reply or filed without leave, led to delay and uncertainty. The time to reply is kept short to avoid delay in resolution of motions but can be extended under V.R.A.P. 26(b). Leave to extend should be freely granted in cases of delay in mail service of the response. This amendment does not affect V.R.A.P. 27(b)(1), which allows the Court to act on a motion for a procedural order without notice to, or response from, other parties.

3. That these amendments be prescribed and promulgated, effective on July 1, 2024. 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 1st day of April, 2024.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice