

SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR

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TO: Members of the Vermont Bar

FROM: Patricia Gabel, Esq., State Court Administrator

RE: Appellate Bench-Bar Meeting, Proposed Rule Amendments, List of Approved Financial Institutions and Miscellaneous Information

DATE: December 17, 2018

For your information, please find the following information:

- *Appellate Bench-Bar Meeting*
- [Proposed Order Amending Rule 26\(b\)\(5\)\(A\) of the Vermont Rules of Civil Procedure](#)
- [Proposed Order Amending Rules 55 and 80.1 of the Vermont Rules of Civil Procedure](#)
- [Proposed Order Amending Rule 41 of the Vermont Rules of Civil Procedure](#)
- *List of Approved Financial Institutions*
- *Updated Court Forms*
- *Obligations Under A.O. 41*
- *eCabinet Registration*

I. APPELLATE BENCH-BAR MEETING

Please bring your lunch and join the Vermont Supreme Court for an appellate bench-bar meeting on Wednesday, January 30, 2019 from 12:00-1:30 p.m. in the Supreme Court courtroom at 111 State St. in Montpelier. There will be a question-and-answer period, but if you have suggestions for the agenda, please contact Emily Wetherell, Deputy Clerk of the Supreme Court, at emily.wetherell@vermont.gov.

II. PROPOSED RULE AMENDMENTS

(NOTE: THE FOLLOWING AMENDMENTS HAVE BEEN PROPOSED AND HAVE NOT BEEN APPROVED BY THE SUPREME COURT.)

a. [Proposed Order Amending Rule 26\(b\)\(5\)\(A\) of the Vermont Rules of Civil Procedure](#)

The proposed amendment to Rule 26(b)(5)(A) adapts the language of F.R.C.P. 26(a)(2)(A) for the provision of the Vermont Rule identifying expert witnesses whose identity must be disclosed in response to an interrogatory. The amended rule applies to “each person” who may be used at trial to present expert testimony under Vermont Rules of Evidence 702, 703, and 705. To remove uncertainty regarding whether this requirement applies to witnesses whose testimony falls within those Evidence Rules but who were not specially retained to develop their opinions, the proposed amendment makes clear that Rule 26(b)(5) applies “whether or not the witness may also testify from personal knowledge as to any fact in issue in the case.”

Comments on these proposed amendments should be sent by **February 19, 2019**, to Allan Keyes, Esq., Chair of Advisory Committee on the Vermont Rules of Civil Procedure, at the following address:

Allan Keyes, Esq., Chair
Civil Rules Committee
Ryan Smith & Carbine, Ltd.
P.O. Box 310
Rutland, VT 05702 0310
ark@rsclaw.com

b. [Proposed Order Amending Rules 55 and 80.1 of the Vermont Rules of Civil Procedure](#)

The proposed amendment conforms Rule 55 to reflect the needs of current practice. The proposal deletes the requirement of subdivision (a) for a separate entry of default by the clerk in favor of a provision allowing the party seeking relief to file a motion for default judgment to initiate the process.

The proposed amendment to Rule 55(a) follows the federal rule by deleting “as provided by these rules,” so that an indication of an intent to defend, even if not in compliance with the rules, does not trigger a default.

The proposed amendment deletes the first sentence of Rule 55(b)(1) requiring an application to the court for a default judgment because it is superfluous in light of the provision for a motion added to subdivision (a). The proposed addition of a sentence to paragraph (1) makes clear that the party seeking a default judgment has the burden on the issue of minority and must disclose any information in that party’s possession on the issue of competency.

The proposed amendment to Rule 55(b)(2) eliminates the formal reference to entry of judgment by the clerk. The proposal changes the time for notice in Rule 55(b)(4) from five to seven days. The proposal makes other minor wording changes in Rule 55(b) and (c) for consistency.

The proposed amendment to Rule 80.1(c) provides consistency with the simultaneous proposed amendment of Rule 55(a).

Comments on these proposed amendments should be sent by **February 19, 2019**, to Allan Keyes, Esq., Chair of Advisory Committee on the Vermont Rules of Civil Procedure, at the following address:

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c. [Proposed Order Amending Rule 41 of the Vermont Rules of Civil Procedure](#)

At the request of the Civil Division Oversight Committee, the proposed amendments to Rule 41(a) and (b) reorganize the rule and conform it to current practice and eliminate outdated terminology.

The proposed amendment to Rule 41(a)(1) retains, with some clarification of language, the existing provision of Rule 41(a)(1)(i) that an action may be dismissed without order of court if a notice of voluntary dismissal is filed at any time before an answer or motion for summary judgment has been filed. The proposed addition of “claim” makes clear that, as now provided in new paragraph (a)(5), one or more claims that have been joined in a single action may be dismissed without dismissal of the entire action.

The proposal separates provisions of former paragraph (a)(1) into new paragraphs (a)(2)-(6). Proposed new paragraph (a)(2) carries forward the provision of Rule 41(a)(1)(ii) that a stipulation of dismissal signed by all appearing parties may be filed at any time. Proposed new paragraph (a)(3) carries forward the first and final sentences of former paragraph (a)(2) concerning dismissal by order of the court with a language clarification. Proposed new paragraph (a)(4) is the second sentence of former paragraph (a)(2) concerning counterclaims, with a language clarification. Proposed new paragraph (a)(5), permitting dismissal of some or all claims, is carried forward without change from former paragraph (a)(1). Proposed new paragraph (a)(6) carries forward the final sentence of former paragraph (a)(1) concerning adjudication on the merits.

The proposed amendment deletes former Rule 41(b)(1)(i), providing for involuntary dismissal of an action on a trial list that has been pending more than two years. The proposal renumbers former subparagraphs (b)(ii) and (iii) as (i) and (ii) and shortens their time periods to allow more expeditious elimination of stale actions. Proposed language has been added in (b)(ii) to make clear that the shorter time periods may be extended by the court and that dismissal may be entered against defendants who have not been served, leaving the action pending against those who have been served.

Comments on these proposed amendments should be sent by **February 19, 2019**, to Allan Keyes, Esq., Chair of Advisory Committee on the Vermont Rules of Civil Procedure, at the following address:

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III. LIST OF APPROVED FINANCIAL INSTITUTIONS

a. List of Approved Financial Institutions

Rule 1.15B(a)(1) of the Vermont Rules of Professional Conduct requires lawyers to maintain their trust accounts only in financial institutions approved by the Professional Responsibility Board. Financial institutions which have not been so approved may obtain information as to how to become certified by contacting the Office of Disciplinary Counsel (802) 859-3000. For a complete list of Approved Financial Institutions, please click on the following link and select “Attorney Trust Accounts”:

<https://www.vermontjudiciary.org/about-vermont-judiciary/boards-and-committees/professional-responsibility>

IV. MISCELLANEOUS

a. Court Forms

Court forms are constantly being updated. Please refer to the judiciary website for the most up-to-date forms. <https://www.vermontjudiciary.org/court-forms>

b. Obligation under A.O. 41

Attorneys are reminded that an “attorney must report to the State Court Administrator within thirty days any change of the office mailing or electronic mail address” and that “[n]otice sent to a reported address is sufficient even if not received by the attorney because of failure to report the proper address or failure of delivery not caused by the court.” A.O. 41, § 4(c); see A.O. 44, § 1.

Please email those changes to JUD.AttyLicensing@vermont.gov. Your cooperation is very much appreciated.

To ensure you continue to receive these emails, please add JUD.AttyLicensing@vermont.gov to your Safe Senders list.

c. eCabinet Registration

Administrative Order No. 44 requires attorneys in active status to register up to three email addresses in **eCabinet** for purposes of receiving notices of hearing and other documents. *You may include staff email addresses in the three email addresses that you specify. eCabinet registration is required whether you practice in court or not.*

If you have already registered in **eCabinet**, the email address(es) you provided as part of that process will be used.

If you have not already registered in **eCabinet**, please go to <https://efiling.eservices.crt.state.vt.us/>, click **Register Now**, and follow the simple prompts. Attorneys will need their attorney license numbers to register. Helpful information about the Attorney Email Registration process is also available on the *Electronic Filing* page of the judiciary website at <https://www.vermontjudiciary.org/about-vermont-judiciary/electronic->

[access/electronic-filing](#). Please contact jud.helpdesk@vermont.gov or call the Helpdesk at 802-828-4357 with any questions in the meantime.

You are also reminded that you are required to update the email address(es) and other contact information you have registered as soon as there are any changes, including changes to staff email addresses you may have included with your registration. To revise the information, please go to <https://efiling.eservices.crt.state.vt.us/>, log into **eCabinet**, click “**Account**,” choose “**My Profile**,” and make the necessary changes to your contact information.

Notification to JUD.AttyLicensing@vermont.gov or in **eCabinet** of a change to your contact information does not automatically notify the other. It is your responsibility to notify both. If you are a member of the Vermont Bar Association, you will also need to separately notify the VBA.