

SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR

PATRICIA GABEL, ESQ.
State Court Administrator
patricia.gabel@vermont.gov



Mailing Address
Office of the Court Administrator
109 State Street
Montpelier, VT 05609-0701

Telephone (802) 828-3278
FAX: 802 828-3457

www.vermontjudiciary.org

TO: Members of the Vermont Bar

FROM: Patricia Gabel, State Court Administrator

RE: Application for Service on Boards and Committees, Promulgated and Proposed Rule Amendments, and Miscellaneous Information

DATE: January 24, 2018

For your information, please find the following information:

- [Application for Service on Boards and Committees](#)
- [Order Promulgating Amendments to V.R.Pr.C. 1.7 and 1.8](#)
- [Order Promulgating Amendment to Administrative Order No. 29](#)
- [Proposed Addition of V.R.C.P. Rule 23\(g\)](#)
- [Proposed Amendments to V.R.C.P. 16.2 and 26](#)
- [Proposed Amendments to Vermont Rules of Civil Procedure, the Vermont Rules for Family Proceedings, and the Vermont Rules of Probate Procedure](#)
- [Proposed Administrative Order No. 47](#)
- Updated Court Forms
- Obligations Under A.O. 41
- eCabinet Registration

I. APPLICATION FOR SERVICE ON BOARDS AND COMMITTEES

If you would like to be considered for upcoming vacancies on a specific Vermont Supreme Court committee or board, please complete the [Application for Service on Boards and Committees](#). **Even if you completed this application in the past, please complete and return the form to be considered for any upcoming vacancies.**

II. PROMULGATED RULE AMENDMENT

- a. [Order Promulgating Amendments to V.R.Pr.C. 1.7 and 1.8](#)

This Order was promulgated on January 8, 2018, effective March 12, 2018.

Rule 1.8(j) is added to prohibit sexual relations between a lawyer and client unless a consensual sexual relationship existed when the client-lawyer relationship commenced. Comment [17] is amended to clarify that the rule applies to all sexual relationships formed after the commencement of the professional client-lawyer relationship, including consensual sexual relationships and sexual relationships in which there is no prejudice to the client's interests in the matter that is the subject of the professional relationship. Comment [18] is added to provide guidance on sexual relationships that predate the commencement of the client-lawyer relationship.

Comment [12] to Rule 1.7 is deleted due to the simultaneous amendment to Rule 1.8(j), which explicitly precludes a lawyer from having a sexual relationship with a client unless a consensual sexual relationship existed when the client-lawyer relationship began.

b. [Order Promulgating Amendment to Administrative Order No. 29](#)

This Order was promulgated on December 20, 2017, effective immediately.

The amendment increases the membership on the Advisory Committee on Rules for Family Proceedings from sixteen members to seventeen members and clarifies the language regarding the Superior Court clerk appointment.

III. PROPOSED RULE AMENDMENTS

(NOTE: THE FOLLOWING AMENDMENTS HAVE BEEN PROPOSED BY THE COMMITTEES OR BOARDS AND HAVE NOT BEEN REVIEWED BY THE SUPREME COURT.)

a. [Proposed Addition of V.R.C.P. Rule 23\(g\)](#)

The proposed addition of Rule 23(g) provides for the disbursement of residual funds that remain after satisfaction of all claims under a class action judgment or settlement.

Comments on this proposed amendment should be sent by **March 23, 2018**, to Allan Keyes, Esq., Chair of the Civil Rules Committee, at the following address:

Allan Keyes, Esq., Chair
Civil Rules Committee
Ryan, Smith & Carbine, Ltd.
P.O. Box 310
Rutland, VT 05202-0310
ark@rsclaw.com

b. [Proposed Amendments to V.R.C.P. 16.2 and 26](#)

The proposed amendment to Rule 16.2 adds a reference to the use of a scheduling order provided in the proposed simultaneous amendment of V.R.C.P. 26(b)(5)(A)(i)-(v) and conforms the designation of the provisions of the rule to the format of other rules.

The proposed amendments to V.R.C.P. 26(b)(4) and (5) clarify their provisions and bring them more closely in line with comparable provisions of the Federal Rules of Civil Procedure and the realities of current Vermont practice. The proposed amendments to V.R.C.P. 26(b)(5)(A) provide for automatic pretrial disclosure of all witnesses who will be offered as experts and the nature of their expected testimony. The proposed amendment to V.R.C.P. 26(b)(5)(A)(i) adapts language from the federal rule requiring automatic disclosure of all opinion witnesses qualified and testifying as experts under V.R.E. 702, 703, and 705 who may be used at trial. This disclosure requirement does not extend to lay opinion witnesses testifying under V.R.E. 701. The proposed amendment to V.R.C.P. 26(b)(5)(A)(ii) departs significantly from both prior Vermont practice and F.R.C.P. 26(a)(2) by giving the same treatment to witnesses retained or employed solely to provide expert testimony and to fact witnesses with expert qualifications. The amended

rule provides a simplified report requirement for all categories of experts. The proposed amendment to Rule 26(b)(5)(A)(iii) provides that the disclosures under subparagraphs (A)(i) and (ii) must ordinarily be made by stipulation or a scheduling order under Rule 16.2. Otherwise, the disclosures must be made by the earlier of the trial date or the date by which the case is to be ready for trial, except that evidence attacking another party's evidence must be made within 30 days of that party's disclosure. The proposed amendments to Rules 26(b)(5)(A)(iv) and (v) adapt the provisions of former Rules 26(b)(5)(A)(i) and (iii) to the disclosure requirements of amended Rule 26(b)(5)(A). Minor conforming amendments have been made in Rules 26(b)(5)(B), (C), and (E). No amendments have been made to Rule 26(b)(5)(D).

The proposed amendment to V.R.C.P. 26(e) adapts provisions of F.R.C.P. 26(e) as most recently amended in 2007, and makes it consistent with the simultaneous amendments to V.R.C.P. 26(b)(5). The new proposed V.R.C.P. 26(e)(1) follows the federal rule in spelling out a general duty to supplement both a disclosure made under V.R.C.P. 26(b)(5) and a response to other forms of discovery. The new proposed V.R.C.P. 26(e)(2) departs from the federal rule by including party-deponents within the duty to supplement.

Comments on this proposed amendment should be sent by **March 23, 2018**, to Allan Keyes, Esq., Chair of the Civil Rules Committee, at the following address:

Allan Keyes, Esq., Chair
Civil Rules Committee
Ryan, Smith & Carbine, Ltd.
P.O. Box 310
Rutland, VT 05202-0310
ark@rsclaw.com

c. *Proposed Amendments to Vermont Rules of Civil Procedure, the Vermont Rules for Family Proceedings, and the Vermont Rules of Probate Procedure*

The proposed amendment to V.R.C.P. 43(a) reflects the fact that new Rule 43.1 and proposed simultaneous amendments to the family and probate rules, permit testimony to be presented by video or audio conference in appropriate circumstances. The proposed amendment provides expressly that proceedings under Rule 43.1 are an exception to the existing requirement that "testimony... shall be taken orally in open court" unless otherwise provided by specific rules. That provision has been held to prohibit testimony by telephone or other means except by agreement of the parties.

The proposed addition of V.R.C.P. 43.1 provides a uniform procedure and standards for video or audio conference participation of parties and other necessary persons, as well as testimony of witnesses, in civil actions and in the civil division of the superior court.

The proposed amendment to V.R.F.P. 17 deletes the present text of the rule and the adds new subdivisions (a)-(d) providing that V.R.C.P. 43.1 applies in family division proceedings other than juvenile proceedings under V.R.F.P. 1, subject to specific provisions for certain statutory mental health and guardianship proceedings.

The proposed amendment to V.R.P.P. 43(b) reflects the fact that new V.R.C.P. 43.1, promulgated simultaneously, is applicable in the probate division and permits testimony to be presented by video or audio conference in appropriate circumstances. The proposed amendment provides expressly that proceedings under V.R.C.P. 43.1 are an exception to the existing requirement that “testimony . . . shall be taken orally in open court” unless otherwise provided by specific rules.

Comments on these proposed amendments should be sent by **March 23, 2018**, to the Hon. John A. Dooley at the following address:

Hon. John A. Dooley, Chair
Special Committee on Video and Electronics in the Courtroom
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
John.Dooley@vermont.gov

d. [Proposed Administrative Order No. 47](#)

Proposed Administrative Order No. 47 implements V.R.C.P. 43.1 and related rules that are simultaneously promulgated to provide for video and audio conference participation of parties and other necessary persons, as well as testimony of witnesses, in actions in the civil, environmental, family, and probate divisions of the superior court. See V.R.C.P. 43.1(e), Reporter’s Notes to simultaneous adoption of V.R.C.P. 43.1, and simultaneous amendments of V.R.F.P. 17 and V.R.P.P. 43(b). The technical standards are adopted by administrative order rather than by rule to permit more rapid and flexible change as necessary to take advantage of changing technological capabilities.

Comments on this proposed amendment should be sent by **March 23, 2018**, to the Hon. John A. Dooley at the following address:

Hon. John A. Dooley, Chair
Special Committee on Video and Electronics in the Courtroom
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
John.Dooley@vermont.gov

III. 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.**