

SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR

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TO: Members of the Vermont Bar
FROM: Patricia Gabel, State Court Administrator
RE: Promulgated, Emergency and Proposed Rule Amendments, and Miscellaneous Information
DATE: October 18, 2017

For your information, please find the following information:

- [Promulgation Order for V.R.Cr.P. 5\(e\)](#)
- [Promulgation Order for V.R.Cr.P. 11.1](#)
- [Promulgation Order for A.O. 10, Application](#)
- [Promulgation Order for A.O. 10, Canon 4](#)
- [Promulgation Order Making V.R.A.P. 11\(b\)\(3\) Permanent](#)
- [Promulgation Order for V.R.P.P. 47\(d\)](#)
- [Emergency Promulgation Order for V.R.P.P. 52\(b\) and 60\(c\)](#)
- [Proposed Amendment to V.R.Cr.P. 54\(a\)\(2\)](#)
- [Proposed Amendments to V.R.C.P. 45](#)
- [Proposed Amendment to V.R.Pr.C. 1.7 and 1.8](#)
- [Proposed Amendment to V.R.C.P. 80.6](#)
- *Updated Court Forms*
- *Obligations Under A.O. 41*
- *eCabinet Registration*

I. PROMULGATED RULE AMENDMENTS

a. [Promulgation Order for V.R.Cr.P. 5\(e\)](#)

This Order was promulgated on October 17, 2017, effective December 18, 2017. The amendments to Rule 5 revise the rule to conform to amendments to 13 V.S.A. § 7554c, which relates to pretrial risk assessments and needs screenings. Under the amendments, the results of the pretrial risk assessment and needs screenings are provided directly to defendants and their attorneys, the prosecutors, and the court. The amendment also clarifies that while the court may order a defendant to meet with a pretrial services coordinator and participate in a needs screening, to participate in a clinical assessment by a substance abuse or mental health treatment provider and follow the recommendations of the provider, and to otherwise participate in pretrial services, such orders are deemed to be in addition to conditions of release authorized by law, and do not serve to limit the discretion of the court to impose conditions of release authorized under 13 V.S.A. § 7554.

b. [Promulgation Order for V.R.Cr.P.11.1](#)

This Order was promulgated on October 17, 2017, effective December 18, 2017. The amendments to Rule 11.1 to reflect changes necessitated by enactment of Act 133 of 2015 (Adj. Sess.), which expressly prescribes the consequences resulting from the court's failure to provide the defendant with notice of collateral consequences. The amendment also clarifies that the rule is of application only to convictions for violation of 18 V.S.A. § 4230(a) and not for all offenses prescribed by § 4230.

c. [Promulgation Order for A.O. 10, Application](#)

This Order was promulgated on October 17, 2017, effective February 1, 2019. The amendment to section B(1) of the "Application of the Code of Judicial Conduct" removes the exemption for financial reporting for continuing part-time judges, which the Terminology section [3] defines as including "judges of probate and assistant judges." The amendment will now require continuing part-time judges to submit a financial disclosure form to make their sources of income more transparent. The rule change becomes effective February 1, 2019 to coincide with the beginning of the terms for part-time judges.

d. [Promulgation Order for A.O. 10, Canon 4](#)

This Order was promulgated on October 17, 2017, effective December 18, 2017. The amendment to Canon 4 § H(2) clarifies that in addition to reporting compensation received as a result of extra-judicial activities, a judge is required to report rental income. The amendment to Canon 4 § I adds a title and subdivision (1), which requires a judge to disclose any investment over \$5,000 in an entity appearing as a party before the judge.

e. [Promulgation Order Making V.R.A.P. 11\(b\)\(3\) Permanent](#)

This Order was promulgated on October 17, 2017, effective December 18, 2017. The emergency amendment to Rule 11(b)(3) promulgated on March 9, 2015, effective April 10, 2015, has been made permanent. The emergency amendment had been made as part of the Supreme Court's effort to obtain cost savings in the operations of the clerk's offices in all courts by saving clerk time.

f. [Promulgation Order for V.R.P.P. 47\(d\)](#)

This Order was promulgated on October 17, 2017, effective December 18, 2017. The amendment conforms Rule 47(d) to current practice regarding recording of court proceedings, and deletes language that is unnecessary and inappropriate.

g. [Emergency Promulgation Order for V.R.P.P. 52\(b\) and 60\(c\)](#)

This emergency Order was promulgated on October 17, 2017, effective January 1, 2018. These emergency amendments make changes to the day-is-a-day order. It further amends Rule 52(b), as amended September 20, 2017, effective January 1, 2018, to provide a 14-day time period consistent with the basic purpose of the day-is-a-day amendments of the civil and probate rules rather than the 28 days adopted initially for consistency with the comparable provisions of the Federal Rules of Civil Procedure. The amendment to Rule 60(c), as amended September 20, 2017, effective January 1, 2018, is further amended to provide a 14-day time period consistent

with the basic purpose of the day-is-a-day amendments of the Civil and Probate rules rather than the 28 days adopted initially for consistency with the comparable provisions of the Federal Rules of Civil Procedure. Both changes reflect the significant differences between probate and civil practice. Matters in probate court generally involve important personal concerns that could be adversely affected by the additional extension of the time for appeal resulting from the longer period. Moreover, there is less need in probate practice to be concerned with uniformity with the Federal Rules.

II. PROPOSED RULE AMENDMENTS

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

a. [Proposed Amendment to V.R.Cr.P. 54\(a\)\(2\)](#)

The proposed amendment to Rule 54(a)(2) comports with statutory amendments. 23 V.S.A. §§ 2201-2207, referred to in the former rule as the “Traffic Act,” were repealed per 2015, No. 47, § 38. The offenses and tickets formerly covered under the repealed statutes were placed under the jurisdiction of the Judicial Bureau and subject to enforcement under 4 V.S.A. Chapter 29, under procedural rules promulgated by the Supreme Court. See 4 V.S.A. § 1106(f). The rules governing Judicial Bureau proceedings are prescribed in V.R.C.P. 80.6.

In consequence, references to proceedings under the “Traffic Act” in Rule 54(a)(2) are deleted.

Comments on this proposed amendment should be sent by **December 18, 2017**, to the Hon. Thomas A. Zonay, Chair of the Criminal Rules Committee, at the following address:

Honorable Thomas A. Zonay, Chair
Advisory Committee on Rules of Criminal Procedure
Vermont Superior Court
Caledonia Unit
1126 Main Street, Suite 1
St. Johnsbury, VT 05819
Thomas.zonay@vermont.gov

b. [Proposed Amendments to V.R.C.P. 45](#)

The proposed amendments to Rule 45 were made at the request of the Civil Division Oversight Committee to conform the rule to current practice and to assure uniformity among the clerks’ offices.

The proposed amendment to Rule 45(a)(3) deletes “notary public” from the list of those empowered to issue a subpoena. Notaries do not have express power to issue subpoenas. See 24 V.S.A. § 445.

The proposed amendment to Rule 45(a)(4) simplifies language and provides for prior or simultaneous service on the parties to avoid warning the witness before the parties can act. The proposed amendment to Rule 45(b)(1) adds the requirement that witness fees be tendered with the subpoena to avoid issues of enforcement that might arise in the event of later nonpayment.

The proposed amendment to Rule 45(f)(3)(A) clarifies the application of the interstate deposition and discovery provisions of the rule to lawyers not admitted in Vermont and unrepresented litigants.

The proposed amendment to Rule 45(f)(3)(B) incorporates the provisions of former Rule 45(f)(6), substituting “motion” for “application” for consistency with the general provisions of the Rules and adding the requirement that the practice on such motions is limited to Vermont-admitted lawyers because they are adversary proceedings.

The proposed amendment to Rule 45(f)(3)(C) (formerly (B)) states that when a party submits a foreign subpoena judicial approval is now required before the clerk signs it. This provision and the amendment to paragraph Rule 45(f)(4) spell out that the clerk is to deliver the signed subpoena to the requesting party, who is responsible for service and payment of the witness fee. Former subparagraph (C) is redesignated (D).

The proposed amendment to former Rule 45(f)(6) deletes the rule because it is now incorporated in Rule 45(f)(3)(B).

Comments on this proposed amendment should be sent by **December 18, 2017**, 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 Amendment to V.R.Pr.C. 1.7 and 1.8

The proposed amendment deletes Comment 12 to Rule 1.7 due to the simultaneous proposal to add 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.

The proposed amendment to Rule 1.8(j) adds a prohibition on sexual relations between a lawyer and client unless a consensual sexual relationship existed when the client-lawyer relationship commenced. The proposed amendment to Comment 17 clarifies 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. In such instances, a lawyer must withdraw from continued representation. See V.R.Pr.C. 1.16(a)(1). The proposed addition of Comment [18] provides guidance on sexual relationships that pre-date the commencement of the client-lawyer relationship. The proposed amendment renumbers former Comment [18] as Comment [19] and clarifies that the conflict created by Rule 1.8(j) is personal for purposes of imputation. See V.R.Pr.C. 1.10.

The proposed new rule 1.8(j) tracks Rule 1.8(j) of the ABA Model Rules of Professional Conduct. Vermont joins 31 other states in adopting a specific prohibition on client-lawyer sexual relationships. The proposed amendment is a “bright-line” rule that recognizes the serious risk to

a client's interest in receiving candid, competent, and conflict-free legal advice that is presented when the professional relationship turns sexual. Further, the proposed amendment is consistent with the fact that at least 18 of Vermont's other licensed professions have adopted rules that specifically ban sexual relationships between a licensee and a client, patient, or person with whom the licensee has a professional relationship.

Comments on this proposed amendment should be sent by **December 18, 2017**, to Michael Kennedy, Bar Counsel, at the following address:

Michael Kennedy, Bar Counsel
Office of Bar Counsel
32 Cherry Street, Suite 213
Burlington, VT 05401
Michael.kennedy@vermont.gov

d. [Proposed Amendment to V.R.C.P. 80.6](#)

Rules 80.6(c)(3) and (e)(1), as previously amended September 20, 2017, effective January 1, 2018, are proposed to be further amended to bring the filing deadlines to 30 days for both parties. The proposed amendments simplify the process and relieve the Judicial Bureau staff of some work in having to explain and justify the different deadlines to litigants.

The proposed amendment to Rule 80.9(b)(3) as previously amended September 20, 2017, effective January 1, 2018, would conform the rule with the simultaneous amendment of Rule 80.6(c)(3).

Comments on this proposed amendment should be sent by **November 27, 2017**, 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

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.