

STATE OF VERMONT  
VERMONT SUPREME COURT  
FEBRUARY TERM, 2017

**Order Promulgating Amendments to  
Rule 30 of the Vermont Rules of Criminal Procedure and  
Rule 51(b) of the Vermont Rules of Civil Procedure**

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

1. That Rule 30 of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 30. INSTRUCTIONS**

**(a) In General.** At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests ~~shall~~ must be furnished to adverse parties. The court ~~shall~~ must inform ~~counsel~~ the parties of its proposed instructions ~~prior to delivering them.~~, and include a copy of its proposed instructions in the record. The court must inform the parties of its action upon any requests made prior to their arguments to the jury.

**(b) Objections.** All parties ~~shall~~ must have the opportunity to present objections to the instructions before their delivery. No party may assign as error any portion of the charge or omission therefrom unless the party objects thereto on the record either at a charge conference or before the jury retires to consider its verdict, stating distinctly the matter to which objection is made and the ground of the objection. Opportunity ~~shall~~ must be given to make the objection out of the hearing of the jury. The court ~~shall~~ must give a written copy of the instructions to the jury before it retires.

**(c) Preservation of Objections.** An objection made at a charge conference to an instruction proposed by the court need not be repeated to be preserved. If any portion of the charge read to the jury differs in substance from the last version approved by the court on the record at the charge conference to which a party has objected in conformity with this rule, the party must object to that portion of the charge before the jury retires in order to preserve objection. A written copy of the version to which the party has objected must be included in the record.

**Reporter's Notes—2017 Amendment**

Rule 30 is amended contemporaneously with an amendment of V.R.C.P. 51(b) to clarify those circumstances in both criminal and civil trials in which objections to proposed jury instructions fully articulated at a charge conference may be preserved, without the necessity for their reassertion after the court's reading of the

instructions and prior to the jury's retirement for deliberations. The amendment essentially shifts the objection process to the charge conference, excepting the need for post-instruction objections in the event that the court's instructions as actually given differ from that indicated on the record at the charge conference.

Rule 30 is reorganized into three separate paragraphs, and subdivision (c) is added to clarify the circumstances under which an objection to a jury instruction is sufficiently preserved. The amendments are intended to address the circumstances in issue in State v. Vuley, 2013 VT 9, ¶¶ 36-40, 193 Vt. 622, 70 A.3d 940, and Straw v. Visiting Nursing Ass'n, 2013 VT 102, ¶¶ 10-13, 195 Vt. 152, 86 A.3d 1016 (construing V.R.C.P. 51(b)), to clarify that while an objection to an instruction must still be distinctly articulated with the grounds thereof, the objection may be preserved if it is so articulated in conformity with the rule at a charge conference so that the court can fully appreciate the objection and consider whether changes to the instructions are appropriate. Cf. State v. Kolibas, 2012 VT 37, ¶¶ 10-12, 191 Vt. 474, 48 A.3d 610 (construing as sufficient for preservation post-charge objections which briefly, but succinctly, stated grounds thereof, where there had been "lengthy debate" at the charge conference as to the instruction in issue). The amendments address perceived problems under prior practice with unnecessary delay, and extension of the time for commencement of deliberations, in order for the court to receive and address lengthy and detailed repetition of prior objections to instructions that have already been ruled upon.

The amendments do not obviate the need for fair and reasonable articulation of specific objections to jury instructions, asserted distinctly and stating the bases thereof. However, the amendments contemplate that where the record of an objection to a jury instruction is well developed, with distinct articulation at a charge conference in the case, a lengthy repetition of the specific objection and its bases is not required postcharge and predeliberation, provided that the instructions as actually given do not differ from those approved by the court as a result of the charge conference.

The amendments do not require reassertion of objections to instructions given in the manner prescribed, unless the court's instruction as given does not comport with the particular language of an instruction that has been indicated by the court in a precharge ruling, or the court has omitted a particular instruction to the jury altogether. Nor does the rule preclude assertion of objection to an instruction the basis for which is first presented in the court's instructions as actually stated to the jury. In such circumstances, preservation of objection would require full articulation of a party's

objection, distinctly and stating the bases thereof, postcharge, and predeliberation, to provide the court with the opportunity to reasonably address any claim of error.

In order to provide a clear record of the assertion of requests for particular instructions, the court's actions thereon, and objections thereto, the amendments contemplate that the court will file for record a copy of the original proposed instructions that are subject to review at the charge conference, as well as a copy of the written instructions actually read to the jury and provided to them for purposes of their deliberations. It is often difficult to reasonably discern, and assess upon review, transcript objections and argument as to proposed instruction content of pages, paragraphs and lines referred to only by those references, without examination of the documents in the hands of the parties and the court at the pertinent time.

References to "shall" are generally amended to "must" consistent with general restyling of the rules of procedure by the Court. The change in terminology is stylistic rather than substantive.

2. That Rule 51(b) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

#### **RULE 51. ARGUMENT ~~OF COUNSEL~~; INSTRUCTIONS TO JURY**

(b) **Instructions to Jury; Objections.** At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. Prior to the parties' arguments to the jury, the court shall inform must provide counsel them with a copy of its proposed jury instructions and include a copy in the record, inform them of its action upon the any requests prior to their arguments to the jury, and give them the opportunity to state any objections to the proposed instructions on the record out of the hearing of the jury. The court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto either at a charge conference or before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury. An objection made at a charge conference to an instruction proposed by the court need not be repeated to be preserved. If any portion of the charge read to the jury differs in substance from the last version approved by the court at the charge conference to which the party has objected in conformity with this rule, the party must object to that portion of the charge before the jury retires in order to preserve the objection. A written copy of the version to which the party has objected must be included in the record.

## Reporter's Notes—2017 Amendment

Rule 51(b) is amended contemporaneously with an amendment of V.R.Cr.P. 30 to clarify that, in both civil and criminal trials, objections to proposed jury instructions fully articulated at a charge conference may be preserved without the necessity for their reassertion after the court's reading of the instructions and prior to the jury's retirement for deliberations.

To facilitate the process, the court is required to give the parties a copy of the proposed charge and to include a copy in the record, informing the parties of its action on any requested instructions. The parties may then make objections to the instructions on the record at the charge conference or otherwise before the jury retires.

The amendment does not obviate the need for fair and reasonable articulation of specific objections to jury instructions, asserted distinctly and stating the bases thereof. However, the amendment contemplates that where the record of an objection to a jury instruction is well developed, with distinct articulation at an earlier juncture in the case, a lengthy repetition of the specific objection and its bases is not required postcharge and predeliberation, provided that the instructions as actually given do not differ in substance from those approved by the court as a result of the charge conference.

The amendment does not require reassertion of objections to instructions given in the manner that it prescribes unless the court's instruction as given does not comport with the particular language of an instruction that has been indicated by the court in a precharge ruling, or the court has omitted a particular instruction to the jury altogether. Nor does the amended rule preclude assertion of an objection to an instruction, the basis for which is first presented in the court's instructions as actually stated to the jury. In such circumstances, preservation of the objection would require full articulation of a party's objection, distinctly stating the bases thereof, postcharge, and predeliberation, to provide the court with the opportunity to reasonably address any claim of error. A written copy of the version objected to must be included in the record.

3. That these rules as amended are prescribed and promulgated effective April 10, 2017. 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 6<sup>th</sup> day of February, 2017.

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice