

STATE OF VERMONT
VERMONT SUPREME COURT
AUGUST TERM, 2011

**Order Promulgating Amendments to the
Vermont Rules of Civil and Appellate Procedure**

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

1. That Rule 5(g) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

(g) **Social Security Numbers.** Before filing any paper containing the social security number of any person, the filer shall redact the social security number unless the social security number is specifically requested by the court or is required by law.

Reporter's Notes—2011 Amendment

Rule 5(g) is amended to permit continued inclusion of a social security number in a document where it is required by federal law. In particular, retirement fund administrators might decline to honor an instrument such as a Qualified Domestic Relations Order (QDRO) in which the litigants' social security numbers had been redacted as required by V.R.C.P. 5(g) in the absence of a specific request from the court.

As under prior practice, when a social security number has not been redacted from a document because required under this rule, the clerk will redact the number before permitting public access to the document. See Reporter's Notes to Rule 6(b)(29) of the Vermont Rules for Public Access to Court Records; 2001 amendment adding V.R.C.P. 5(g). In a case filed pursuant to the Vermont Rules for Electronic Filing, the provisions of Rule 3(c) of the Vermont Rules Governing Dissemination of Electronic Court Records, as amended, apply to redaction of required social security numbers.

2. That Rule 45(f) of the Vermont Rules of Civil Procedure be added to read as follows:

(f) Interstate Depositions and Discovery.

(1) Purpose. This rule governs depositions and discovery conducted in Vermont in connection with a civil action brought in another state.

(2) Definitions. In this rule:

(A) “Foreign jurisdiction” means a state other than Vermont.

(B) “Foreign subpoena” means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(C) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(D) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(E) “Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:

(i) attend and give testimony at a deposition;

(ii) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(iii) permit inspection of premises under the control of the person.

(3) Issuance of Subpoena for Interstate Depositions and Discovery.

(A) To request issuance of a subpoena under this rule, a party must submit a foreign subpoena to the clerk of court in the county in which discovery is sought to be conducted. A request for the issuance of a subpoena under this rule does not constitute an appearance in the courts of this state.

(B) When a party submits a foreign subpoena to a clerk of court, the clerk shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(C) A subpoena under subparagraph (B) must:

(i) conform to the requirements of Rule 45 and other applicable provisions of these rules, but may otherwise incorporate the terms used in the foreign subpoena so long as they conform to these rules;

(ii) advise the person to whom the subpoena is directed that such a person has a right to move in the Vermont court under Rule 45(c) for an order to quash or modify the subpoena; and

(iii) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding

to which the subpoena relates and of any party not represented by counsel.

(4) Service of Subpoena. A subpoena issued under paragraph (3) must be served in compliance with Rule 45(b), except that the officer or individual responsible for service shall not return a certificate of service or affidavit to the court that issued the subpoena. Instead the officer or individual responsible for service shall deliver a certificate of service or affidavit to the party who requested the subpoena.

(5) Deposition, Production, and Inspection. Rules 45(a), 45(b), 45(d) apply to subpoenas issued under paragraph (3).

(6) Application to Court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued under paragraph (3) must comply with Rule 45(c) and be submitted to the court in the county in which discovery is to be conducted.

Reporter's Notes—2011 Amendment

Rule 45(f) is added to incorporate the provisions of the Uniform Interstate Depositions and Discovery Act (UIDDA), with modifications appropriate to Vermont practice. The Act has been adopted in 17 states and the District of Columbia since 2008 and is pending in four other states and the U.S. Virgin Islands. Idaho, Montana, and New Mexico have adopted the provisions of the Act by court rule. In applying and construing the present rule, consideration should be given to the purpose of the uniform act to promote uniformity of the law with respect to its subject matter among states that adopt it. For the Uniform Act and Comments, see http://www.law.upenn.edu/bll/archives/ulc/idda/2007act_final.htm.

The Commissioners on Uniform State Laws have summarized the purposes of the Act as follows

The Act sets forth an efficient and inexpensive procedure for litigants to depose out of state individuals and for the production of discoverable materials that may be located out of state. Uniform procedures have become necessary as the amount of litigation involving individuals and documents located outside of the trial state has increased.

Under the [Act], litigants can present a clerk of the court located in the state where discoverable materials are sought with a subpoena issued by a court in the trial state. Once the clerk receives the foreign subpoena, the clerk will issue a

subpoena for service upon the person or entity on which the original subpoena is directed. The terms of the issued subpoena must incorporate the same terms as the original subpoena and contain the contact information for all counsel of record and any party not represented by counsel.

The Act requires minimal judicial oversight and eliminates the need for obtaining a commission or local counsel in the discovery state, letters rogatory, or the filing of a miscellaneous action during the discovery phase of litigation. Discovery authorized by the subpoena is to comply with the rules of state in which it occurs. Furthermore, motions to quash, enforce, or modify a subpoena issued pursuant to the Act shall be brought in and governed by the rules the discovery state.

http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-uidda.asp.

Rule 45(f)(1) makes clear the purpose of the rule to provide a procedure enabling litigants in a proceeding in another state to use the procedures of the Vermont rules to obtain the forms of discovery covered by the rule.

Rule 45(f)(2) contains the definitions set forth in UIDDA § 2. Note that the definition of “foreign subpoena” in subparagraph (B) limits the applicability of the rule to subpoenas “issued under the authority of a court of record,” thus excluding subpoenas issued by other tribunals such as administrative agencies or boards of arbitration. Cf. UIDDA § 3, Comment. Note also that the definition of “subpoena” includes a subpoena duces tecum and an order to permit inspection of premises but does not include an order to appear for a physical examination. See UIDDA § 2, Comment.

Rule 45(f)(3) is based on UIDDA § 3, with variations to adapt the rule to Vermont practice.

Rule 45(f)(4) is based on UIDDA § 4, with variations to adapt the rule to Vermont practice and to eliminate any requirement of a return to the issuing court.

Rule 45(f)(5) adapts UIDDA § 5 to the provisions of the Vermont rule.

Rule 45(f)(6) adapts UIDDA § 6 to the provisions of the Vermont rule.

3. That Rule 80.5(j) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

(j) **Entry of Judgment; Stay.** The court's findings and judgment shall not be entered until five days after they have been delivered to the parties or eight days after they have been mailed to the parties. The defendant may, within that time period, move for a stay of the suspension on the grounds that the defendant intends to appeal and is reasonably likely to prevail on appeal that the appeal will raise a question of law as to which there is a substantial ground for difference of opinion. The court may rule upon the motion during the same time period, regardless of whether a memorandum in opposition has been filed.

Reporter's Notes—2011 Amendment

Rule 80.5(j) is amended to substitute a more functional standard of review based on the language of V.R.A.P. 5(b). The present language provides a circular standard. A judge who thinks that the defendant is likely to prevail on appeal should simply enter judgment for the defendant.

4. That Rule 25(a) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined):

(a) **Filing.**

(1) Method. [present Rule 25(a) unchanged].

(2) Social Security Numbers. Before filing any paper, including a paper in the printed case, that contains the social security number of any person, the filer shall redact the social security number unless the social security number is specifically requested by the Supreme Court or is required by law.

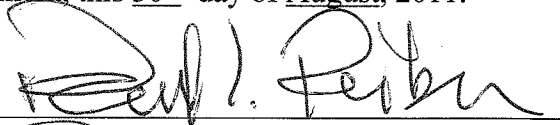
Reporter's Notes—2011 Amendment

Rule 25(a)(2) is added to include in the Vermont Rules of Appellate Procedure a requirement like that of V.R.C.P. 5(g), as simultaneously amended, and V.R.Cr.P. 49(c) (incorporating the Civil Rule) that social security numbers must be redacted from any paper to be filed unless otherwise requested by the Supreme Court or required by law. See Reporter's Notes to simultaneous amendment of V.R.C.P. 5(g). The number must be redacted from a paper in the printed case even if the number was requested by the trial court and included in the trial court filing, unless the Supreme Court requests the number or it is required by law.

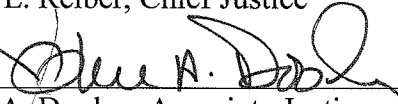
5. That these rules, as adopted or amended, are prescribed and promulgated to become effective on October 31, 2011. The Reporter's Notes are advisory.

6. 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 30th day of August, 2011.



Paul L. Reiber, Chief Justice



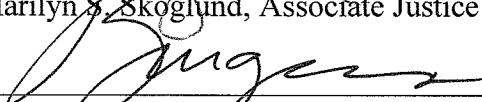
John A. Dooley, Associate Justice



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice