

STATE OF VERMONT  
VERMONT SUPREME COURT  
APRIL TERM, 2017

**Order Promulgating Emergency Amendments to Rule 77(e) of the Vermont Rules of Civil Procedure and Rule 6(b) of the Rules for Public Access to Court Records**

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

1. That Rule 77(e) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 77. SUPERIOR COURTS AND CLERKS**

**(e) Confidentiality of Records.** ~~The clerk shall not disclose the filing of an action or release any records, proceedings, or minutes pertaining to it unless; (i) the action has been finally disposed of; or (ii) at least one defendant has actual notice of the pendency of the action by service or otherwise, and the time for service upon any defendants without notice, including any extension of that time ordered by the court, has expired. Nor shall the~~ The clerk shall not disclose any materials or information required by law to be kept confidential.

**Notes—2017 Emergency Amendment**

Rule 77(e) of the Vermont Rules of Civil Procedure was promulgated in 1984 to align the Rules of Civil Procedure with the existing confidentiality provision set forth in 4 V.S.A. § 652(4), enacted in 1972. With the legislative repeal of 4 V.S.A. § 652(4) in 2013, the residual confidentiality provision of Rule 77(e), which precluded disclosure of records pertaining to the filing of an action until the action was disposed or at least one defendant was served, is superfluous, and is therefore removed.

2. That Rule 6(b) of the Rules for Public Access to Court Records be amended to read as follows (deleted matter struck through; new matter underlined):

**§ 6. Case Records**

(b) *Exceptions.* The public shall not have access to the following judicial branch records:

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~~(25) Records filed or generated in connection with the filing of a civil action prior to service or disposition as provided in Rule 77(e) of the Vermont Rules of Civil Procedure.~~

~~(2625)~~ A will deposited with the probate court for safekeeping, and indices thereof, as provided by 14 V.S.A. § 2 and Rule 77(e) of the Vermont Rules of Probate Procedure;

(~~2726~~) The complaint and affidavit filed pursuant to 15 V.S.A. §§ 1103, 1104, or 12 V.S.A. §§ 5133, 5134, but not a temporary order, until the defendant has an opportunity for a hearing pursuant to 15 V.S.A. §§ 1103(b) or 1104(b) or 12 V.S.A. §§ 5133(b) or 5134(b);

(~~2827~~) Records of criminal proceedings involving participants in an adult diversion program sealed pursuant to 3 V.S.A. § 164(e);

(~~2928~~) Records containing a social security number of any person, but only until the social security number has been redacted from the copy of the record provided to the public;

(~~3029~~) Records with respect to jurors or prospective jurors as provided in the Rules Governing Qualification, List, Selection and Summoning of All Jurors;

(~~3130~~) Any transcript, court reporter's notes, or audio or videotape of a proceeding to which the public does not have access;

(~~3231~~) Any evidence introduced in a proceeding to which the public does not have access; and

(~~3332~~) Affidavits of income and assets as provided in 15 V.S.A. § 662 and Rules 4.0-4.2 of the Vermont Rules for Family Proceedings.

(~~3433~~) Records from a juvenile proceeding that are filed with the court or admitted into evidence in a divorce or parentage proceeding.

(~~3534~~) Records containing information obtained from a person during his or her risk assessment or needs screening pursuant to 13 V.S.A. § 7554c.

(~~3635~~) Any other record to which public access is prohibited by statute.

### **Notes—2017 Emergency Amendment**

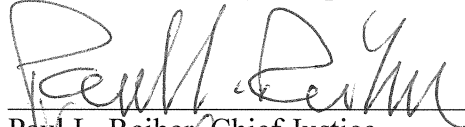
Rule 6(b)(25), which excluded from public access records related to the filing of a civil action prior to service, is removed to conform with the removal of the referenced confidentiality provision in Rule 77(e) of the Rules of Civil Procedure. Former paragraphs (26) to (36) have been renumbered (25) to (35).

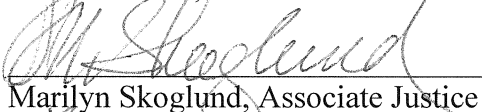
3. That the Court finds that these amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11 for the purpose of bringing court procedure immediately into conformity with the policies underlying the Rules for Public Access to Court Records.


4. That these rules, as added or amended, are prescribed and promulgated effective April 24, 2017.

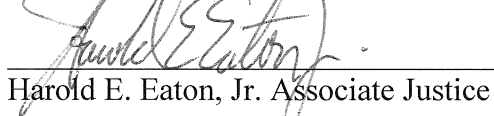
5. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 20<sup>th</sup> day of April, 2017.

  
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Paul L. Reiber, Chief Justice

  
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Marilyn Skoglund, Associate Justice

  
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Beth Robinson, Associate Justice

  
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Harold E. Eaton, Jr. Associate Justice