Order Promulgating Amendments to Administrative Order No. 49

Pursuant to the Vermont Constitution, Chapter II, § 30 and Administrative Order No. 48, it is hereby ordered:

1. That ¶ 21 of Administrative Order No. 49 be added to read as follows:

21. Pleading Requirements in Eviction Proceedings:

a. Notwithstanding the provisions of Rules 8 and 9 of the Vermont Rules of Civil Procedure, in any action for eviction of a tenant of residential housing filed on or after March 27, 2020, the plaintiff must attach to the complaint the plaintiff's certification that the filing complies with the federal CARES Act. In particular, the plaintiff must certify either that the plaintiff has complied with the restrictions of the CARES Act, or that the CARES Act is inapplicable to the property from which plaintiff seeks to evict a tenant.

b. If the complaint was filed without the certification required in ¶ 21(a), such certification must be filed with the court by August 14, 2020.

c. The certification required in ¶ 21(a) must be in substantially the form reflected in Appendix A to this amendment.

2. That ¶ 22 of Administrative Order No. 49 be added to read as follows:

22. Pleading Requirements in Foreclosure Proceedings:

a. Notwithstanding the provisions of Rule 80.1 of the Vermont Rules of Civil Procedure, in any action for residential foreclosure filed between March 27, 2020, and December 31, 2020, the plaintiff must attach to the complaint the plaintiff's certification that the filing complies with the federal CARES Act and Regulation X, 12 C.F.R. § 1024.39, or that the CARES Act does not apply to the filing.

b. If the complaint was filed without the certification required in ¶ 22(a), such certification must be filed with the court by August 14, 2020.

c. The certification required in ¶ 22(a) must be in substantially the form reflected in Appendix B to this amendment.

3. That ¶ 7(a)(ii) of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

ii. Individuals who seek to enter for the purpose of participating in a hearing (that has not been suspended pursuant to this order) will be permitted to enter. This

includes parties, witnesses, lawyers and legal staff, guardians ad litem, interpreters, communications specialists, ~~and~~ qualified mental-health professionals, and crime victims and victim advocates. In relief-from-abuse and civil-stalking proceedings, each party may be accompanied by one support person, whether a domestic-violence advocate, family member or friend.

4. That ¶ 15(f) of Administrative Order No. 49 be amended to read as follows (new matter underlined):

f. **MCLE Rule Waivers:**
For the license renewal period ending June 30, 2020, under the Mandatory Continuing Legal Education Rules that were in effect through June 30, 2020:

i. The 10-hour limit on the number of self-study hours that can be claimed for a reporting period, as specified in Mandatory Continuing Legal Education Rules § 5(a)(2), is suspended for the 2018-2020 reporting period.

ii. The limits on the number of hours that can be claimed under § 5(b)(10) for a reporting period, including both the limits for specific types of activities and the 10-hour limit on the total number of hours for all such activities, are suspended for the 2018-2020 reporting period.

For the license renewal period ending June 30, 2021, under the Mandatory Continuing Legal Education Rules as amended effective July 1, 2020:

iii. The 6-hour limit on the number of hours for programs delivered as Non-Moderated Programming Without Interactivity that can be claimed for a reporting period, as specified in Rule 3(A)(3) of Rules of Mandatory Continuing Legal Education, is suspended for the 2019-2021 reporting period.

iv. The 12-hour minimum number of hours for programs delivered as either Moderated Programming or Non-Moderated Programming With Interactivity as a Key Component that must be taken in a reporting period, as specified in Rule 3(A)(2), is suspended for the 2019-2021 reporting period.

v. The limits on the number of hours that can be claimed under all sections of Rule 6 for a reporting period are suspended for the 2019-2021 reporting period.

5. That the following Explanatory Note be added:

Explanatory Note—July 23, 2020, Amendment

The July 23 amendments add ¶¶ 21 and 22 to establish special pleading requirements for eviction and foreclosure proceedings potentially affected by the federal CARES Act, Pub. L. No. 116-136. That Act provides specific requirements for evictions for nonpayment from, and foreclosures of, properties financed by federally backed loans or participating in certain federal housing programs.

Paragraph 21 requires that in any eviction action of a tenant in residential housing commenced on or after March 27, 2020, the effective date of the CARES Act, the plaintiff must attach to the complaint a certificate that either the Act does not apply to the leased property or that the plaintiff has complied with the applicable provisions of the Act, specifically § 4024, codified at 15 U.S.C. § 9058. The Act imposes a moratorium on issuing a notice to vacate for property covered by the Act and filing such an action until July 25, 2020, and provides that thereafter plaintiff may not require the tenant to vacate such a property until 30 days after issuing the notice to vacate. 15 U.S.C. § 9058(b), (c). Paragraph 21(b) provides that if the certification was not filed with the complaint, it must be filed by August 14, 2020.

A form for the plaintiff's certification attached as Appendix A is incorporated by reference in ¶ 21(c). Certifications must be in substantially this form. The form requires the plaintiff to make specific statements concerning compliance with the CARES Act under penalty of perjury or other sanctions that the court may impose. If the action was commenced after July 25, 2020, the plaintiff must either certify that plaintiff complied with the 30-day notice period required by the CARES Act, or that the property is not covered by the CARES Act. To establish that the CARES Act requirements do not apply to the property, the plaintiff must attest to conducting a full investigation of the circumstances of the property. Specifically, the plaintiff must certify that no unsatisfied mortgage on the property is subject to a federally backed mortgage and must state that the property does not benefit from any federal housing program. Because mortgagees do not necessarily know whether unsatisfied mortgages are federally backed, in order to determine whether the property is subject to a federally backed mortgage, the plaintiff must search in two databases to see whether unsatisfied mortgages are federally backed: KnowYourOptions.com/loanlookup (Fannie Mae) and FreddieMac.com/mymortgage (Freddie Mac). Because only the plaintiff has ready access to the mortgage and the online tools used to determine whether the mortgages are federally backed, if the plaintiff certifies that the CARES Act does not apply, the plaintiff must attach a copy of the first page of any unsatisfied mortgages on the property at issue, as well as copies of the results of the searches in these two databases.

Similar provisions of ¶ 22 provide, for actions for residential foreclosure filed between March 27, 2020, and December 31, 2020, that the plaintiff must certify compliance with applicable provisions of the CARES Act that require the lender to grant up to 360 days of forbearance on request of the borrower and of federal regulations that require the lender to advise the borrower of this right. Accordingly, forbearance on a foreclosure proceeding commenced on December 31, 2020, could extend until December 31, 2121. Paragraph 22(c) requires the plaintiff's certification to be in substantially the form as that attached as Appendix B. The form requires that, subject to perjury or other sanctions, the lender either state that the CARES Act does not apply because the subject mortgage does not secure a federally backed loan, or that if it does, the lender has advised the

borrower of the opportunity to request forbearance and that the borrower has either not responded to or declined the offer.

Both ¶ 21 and ¶ 22 have a similar justification. In both eviction and foreclosure proceedings, the court must be informed as to whether the CARES Act applies. The information necessary to make that determination is not readily accessible to the individual tenant or homeowner. Plaintiff landlords and lenders have both the need for this information in their operations and the capacity to acquire and present it with relatively little effort. The Judiciary will make both Appendix A and Appendix B available as freestanding forms.

The July 23 amendment also clarifies that victims of crimes and victim advocates are among the individuals allowed to enter courthouses for the purpose of attending hearings in the relevant cases. The Court intends that the term "victim" be understood to include persons who have sustained physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of a crime and include the family members of a minor, a person who has been found to be incompetent, or a homicide victim. The Court anticipates that victim advocates will inform docket clerks of victims who may attend scheduled hearings to facilitate the screening process.

The July 23 amendment also modifies the MCLE requirements for continuing legal education for the 2019-2021 reporting cycle to account for the ongoing limitations on in-person gatherings as a result of the COVID pandemic.

6. That this order is effective immediately and extends until September 1, 2020, unless extended further by the Court.

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

Dated in Chambers at Montpelier, Vermont, this 23rd day of July, 2020.

Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice