STATE OF VERMONT
VERMONT SUPREME COURT
MARCH TERM, 2021

Order Promulgating Amendments to Rules 80.1(f) and 80.5(e) of the Vermont Rules of Civil Procedure

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

1. That Rule 80.1(f) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 80.1. FORECLOSURE OF MORTGAGES AND JUDGMENT LIENS

(f) **Accounting; Attorney's Fees.** If default has been entered as provided in subdivision (c) and the parties have not agreed upon the sum due and included it in a form of judgment, the clerk, upon request of the plaintiff accompanied by an affidavit as to the amount due and upon 7 days' notice to all parties who have appeared, shall proceed to take an accounting and find the amount of principal, interest to date, and costs due. Such accounting shall be made upon forms furnished by the state. If defendant is an infant or incompetent person, a plaintiff entitled to judgment by default shall proceed as provided in Rule 55~~(b)(2)~~ (c)(1). If the entry is not by default, an accounting shall be taken at such time and in such manner as the court may order. Reasonable attorney's fees claimed by the plaintiff under the mortgage or other instrument evidencing indebtedness in an amount not exceeding two percent of the total of principal, interest, and costs due, or in a greater amount expressly agreed upon in the mortgage or other instrument, shall be allowed and included in the amount found due to the accounting without hearing, unless defendant objects, or plaintiff claims a higher fee in the demand for judgment. Upon such objection or claim, attorney's fees shall be set by the court after notice and hearing.

Reporter's Notes—2021 Amendment

Rule 80.1(f) is amended to update a cross-reference to the provision of the Civil Rules setting forth the appropriate procedure to be followed in proceedings by default against a minor or incompetent defendant.

By virtue of an amendment of V.R.C.P. 55 promulgated November 5, 2019, effective January 6, 2020, the relevant provisions of former V.R.C.P. 55(b) are now incorporated in V.R.C.P. 55(c). The existing cross-reference in former V.R.C.P. 80.1(f) to V.R.C.P. 55(b)(2) referred to the language of that rule that judgment by default was to be entered without notice or hearing if defendant "is not an infant or incompetent person." For greater clarity, the present amendment refers to amended V.R.C.P. 55(c)(1), which carries forward former V.R.C.P. 55(b)(1) in revised form, setting forth specific requirements regarding representation for minor or incompetent parties, with the added

requirement of an affidavit as to the movant's knowledge of the age and competency of the party.

2. That Rule 80.5(e) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

RULE 80.5. CRIMINAL DIVISION PROCEDURES FOR CIVIL LICENSE SUSPENSIONS AND PENALTIES FOR DWI

(e) Preliminary Hearing; Waiver; Discovery Limited. In every case under this rule, except as set forth below, a preliminary hearing shall be held within 21 days of the alleged offense.

At the preliminary hearing the State and the defendant shall each make available for inspection all nonprivileged information and written statements in their possession and control concerning the evidentiary test or tests, relation back, or other matters to be contested at the hearing on the merits, including without limitation the police report, expert witnesses' reports, processing forms, affidavit, breath test results, police notes and the names and addresses of witnesses, except that evidence the defendant does not intend to use at the hearing need not be disclosed by the defendant. A copy of a videotape made of the alleged offense and subsequent processing shall be available for purchase by the defendant directly from the law enforcement agency responsible for initiating the action upon written request and advance payment of a ~~$15.00~~ $45.00 fee, except that no fee shall be charged to a defendant whom the court has determined to be indigent. The fees collected for videotapes sold under this rule shall be allocated in the manner prescribed by Rule 16 of the Vermont Rules of Criminal Procedure. Discoverable evidence not known at the time of the preliminary hearing shall be disclosed to the party immediately when it becomes known. Failure to provide discovery in accordance with this paragraph may be subject to appropriate sanctions in the discretion of the court, which may include preclusion of any witness or evidence not timely disclosed.

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Reporter's Notes—2021 Amendment

Rule 80.5(e) is amended to reflect the fact that 23 V.S.A. § 1203(k), as amended by 2007, No. 153 (Adj. Sess.), § 2, now provides that in DUI cases the fee for video reproduction is $45.00.

3. That these amendments be prescribed and promulgated, effective on May 12, 2021. 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 8th day of March, 2021.

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