

Paralegal Focus

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Paralegal Focus is the quarterly newsletter of the Vermont Paralegal Organization.

Vermont Paralegal Organization is a Member of the National Federation of Paralegal Associations (NFPA)®.

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President's Message

By Diane L. Brown

Successful 2010 VPO Annual Meeting and Conference on May 11, 2010

It's finally summer! As we welcome this wonderful weather that lifts our spirits, a tremendous amount of teamwork and enthusiasm is taking place within the VPO board and committees. There are many projects that we are discussing and working on, so stay tuned for more to come in VPO communications and newsletters.

I would like to extend my gratitude to all of those members, board officers, and committee chairpersons who contributed to the success of our recent VPO Annual Meeting and Conference held at the Doubletree Hotel in South Burlington on Tuesday, May 11, 2010, and in continuing to support the VPO. We are and continue to be committed to providing our members with the highest level of educational opportunities and presenters.

A special thank you goes to Carie Tarte, CLE chairperson, and the CLE committee members and volunteers, Corinne Deering, RP®, Louise Reese, and Laurie Noyes, for the wonderful job they did in organizing this special event and making it such a success. You will find additional information in this newsletter giving a summary of this special event.

On behalf of the VPO, I would like to thank our sponsors, presenters and law firms who supported this event and made this event possible.

As president of the VPO, I am very proud of the VPO board and committees for their fantastic dedication and work that they have put forth for this organization. Our team continues to work hard toward providing our members with the best connection to the paralegal profession and legal community via the VPO.

Thank you for your continuing support of the VPO. Please do not hesitate to contact the VPO board or committee chairs if you have any questions, concerns or comments.

Editor's Message

By Louise Reese

With this second issue in 2010 of *Paralegal Focus* being my last, I wanted to thank my editing team, Elaine Moran and Laura Gorsky, for their hard work and dedication. I also want to thank Jeff Moreau for his design and formatting skills. Our continued partnership with Jeff will keep the newsletter an eye-catching publication.

For those members who were unable to make it to the annual meeting, we are providing brief summaries of the presentations in this issue, as well as a summary of the legislative session by Hal Miller, Esq. Corinne Deering, RP®, has also written an article on the new basic proficiency exam being developed by NFPA®.

Even though I will no longer be the person recruiting new writers for *Paralegal Focus*, I still encourage members to submit articles, experience pieces, or items for the Did You Know column. Sometimes it is easier to learn from our peers, and networking is a key part of membership with the Vermont Paralegal Organization.



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Membership News

By Laurie Soutiere Noyes, Membership Chairperson

The first quarter of 2010 has flown by, and I am happy to report that the VPO membership has grown this first quarter. Despite our numbers having been down at the close of last year, we gained six new members in the first three months of 2010! We are happy to welcome Michelle Farrar, Lenette MacDonald, Lisa Macy, Jessica Martin, Gillian Osborne McKnight, and Leah Olave.

It was a pleasure seeing and meeting many new faces at the annual meeting on May 11, 2010. After communicating with many of you by e-mail over the past few months, it was nice to finally put some faces to your names! I hope you all enjoyed the meeting, and felt it was a day well spent with your colleagues in the paralegal profession.

As I said during our “State of the Organization” address at the annual meeting, we are looking for new and expanded benefits to offer to our members. I am willing to investigate and explore any viable opportunities that our members would like to share or suggest. Please remember to send me your ideas throughout the year. Also, we are continuing our efforts to reach out to the southern part of the state, and we welcome any insights you may have, or ideas for doing so. As always, I welcome the opportunity to hear from members, so please feel free to contact me with your thoughts and suggestions.

Thank you for continuing to be a part of this organization.

Law & Order Champlain 2010

By Louise C. Reese

On Saturday, April 17, 2010, I attended a mock trial put together with the cooperation of students in Champlain College’s Paralegal Studies, Criminal Justice, and Computer and Digital Forensics programs. This was the fourth year of the mock trial collaboration, and I wish I had known about it sooner.

It starts with a pre-planned crime scene. The Criminal Justice students secure and process the crime scene and interview witnesses. As is often the case nowadays, digital devices will be collected from the scene, or during the investigation, and need to be processed by the digital forensics team. The investigative reports are then brought to the paralegal students who assist the prosecution or defense with preparations for trial, including the drafting of motions and conducting legal research necessary for moving to suppress certain evidence. (The suppression hearing was held on a prior date.)

Susan Hardin, Esq., former paralegal student from Champlain, was initially set to prosecute the case, but she was unable to appear for the mock trial due to an upcoming Vermont trial and other obligations. Chittenden County State’s Attorney T.J. Donovan, Susan’s boss, graciously agreed to take the prosecution lead. Lauri Fisher, Esq., also a formal paralegal student from Champlain, acted as defense counsel.

I saw Susan in action at the earlier suppression hearing, and I was quite impressed. Some paralegal students were assigned to assist with the arguments against the defense’s motions to suppress, and if Susan’s arguments were any indication of the research conducted by the students, there was reason to be very proud. Lauri Fisher and her team behind the scenes were also impressive in their arguments for suppression of certain evidence.

The mock trial also allowed for the audience to be present for the jury's deliberations after all the evidence was entered on the record. Elaine Moran acted as the foreperson of the jury. Elaine was skilled at getting the rest of the mock jury to express their opinion and concerns about the evidence that was presented at trial. In the end, the jury presented a verdict of not guilty. Many of the jury members stated that they did not feel that the State met its burden beyond a reasonable doubt.

In a real trial, both the State and the defense would have had more time to present evidence and prepare witnesses, but this mock trial was certainly an opportunity for these students to experience the hard work that goes into preparing a case for trial, and then presenting it.

Well done!



James Fry Wins Lyman Professorship Award at Champlain College

Champlain College has awarded the 2010-11 Edward Phelps Lyman Professorship to Professor James S. Fry, Esq. of Essex Junction, Vermont, coordinator of Champlain College's ParaLegal Studies Program.

The Edward Phelps Lyman Professorship was established in 1984 and is presented by the Champlain College Board of Trustees to a senior faculty member who has shown dedication to students and Champlain College through a record of service and excellence in teaching and advising, and through work on faculty and College committees. The recipient is someone who has demonstrated a commitment to the College to educate people for careers in business and community services through work with students in academics and activities, and who is an active citizen of the community at large. The Edward Phelps Lyman Professorship includes a \$5,000 award to the recipient.

Jim Fry has managed the Champlain College Paralegal Program single-handedly for many years. He is part of the team that creates "Law and Order Champlain" crafting a realistic, experiential learning experience for students with the local legal community. He has also served on the Curriculum Committee for two decades and is currently its chair. He served as Associate Dean of the Business Division during a critical transition earlier this year.

He is also a member of the United States Supreme Court Bar. The qualifications are three years in practice, good standing with one's state Supreme Court Bar, and sponsorship from two attorneys who are already members of the U.S. Supreme Court Bar. Jim Fry now has privileges to listen to oral arguments at the Supreme Court and use the Court library.

In making the presentation, Champlain College President David F. Finney said, "A colleague summed it up best in her nominating letter – "It has been my experience that he exhibits everything you could ever want to see in an employee. He loves his students, he loves Champlain, and through his actions he inspires others to do the same."

Congratulations, Jim!

2010 VPO Scholarship Winner

By Carie Tarte, Scholarship Chair

Each year, the VPO awards a \$500 scholarship to a paralegal/legal studies student to promote excellence in the paralegal profession. The scholarship is administered through Vermont Student Assistance Corporation (VSAC). In order to be eligible, you must at least attend an accredited paralegal/legal studies program at least part-time.

This year, five applicants applied for the VPO Scholarship. I am pleased to announce that the VPO Scholarship Committee has selected Leah Olave as this year's VPO Scholarship winner. Leah works part-time while attending Champlain College's Paralegal Studies program. Leah hopes to graduate this fall with a bachelor's degree. Congratulations, Leah, and best of luck in your endeavors!



The PACE® Posting

By Corinne Deering, RP®, PACE® Ambassador

In late 2009, the NFPA® delegates voted to approve the development and implementation of a basic proficiency exam. NFPA® is developing an entry-level exam for newly graduating paralegals to test their skills, knowledge and ability. This exam is being developed with the assistance of the nationally recognized not-for-profit firm, Professional Examination Service, as well as with experienced paralegals and paralegal educators. PES has been involved in developing credentialing exams for over 50 years. PES is well respected for its scientific development of exams with integrity and validity relating to test questions, including PACE®.

The basic proficiency exam which will be known as the Paralegal Core Competency Exam ("PCC Exam") is expected to debut in early 2011. It will test the knowledge, skills and ability of individuals who are working as paralegals or entering the profession. The format and length of the exam will be based on results gathered from a scientifically prepared task analysis. It will take into account coursework in paralegal programs as well as actual skills considered essential to basic competency in the profession. The exam will include sections on law office technology and ethics. The exam is intended to distinguish those individuals taking it from any other entry-level paralegals.

The eligibility criteria for the exam are such that graduating paralegals without work experience in law settings can take the exam immediately. Other categories of eligibility, however, require some continuing legal education (CLE). NFPA® felt it was important that all paralegals have some training in ethics so all candidates - other than those paralegals who have paralegal certificates - must have a minimum of one (1) hour of ethics training during the year before they apply for the exam. Also, because paralegals who have never had formal paralegal training - regardless of their other educational achievements - might not have core paralegal skills training, NFPA® determined that they must have some additional formal CLE training, particularly in ethics. Paralegals with five (5) years of experience (and no college degree) may take the exam if they have twelve (12) hours of CLE (including one (1) hour of ethics) during the year prior to submission of the application.

The eligibility requirements are as follows:

EDUCATION	EXPERIENCE (full time, substantive paralegal experience)	CONTINUING LEGAL EDUCATION , taken in the year prior to filing the application
Bachelor's degree (any subject) + paralegal certificate	None	None
Bachelor's degree in paralegal studies	None	None
Bachelor's degree in any subject but no paralegal certificate	6 months	1 hour of ethics
Paralegal certificate (no 4-year degree)	6 months	1 hour of ethics
Associate's degree in paralegal studies	None	None
Associate's degree (in any subject) but no paralegal certificate	1 year	6 hours of CLE with at least 1 hour in ethics
Paralegal certificate (from a program that meets or exceeds the requirements set forth in NFPA®'s Short-Term Paralegal Program Position Statement [but no Bachelor's or Associate's degree])	1 year	6 hours of CLE with at least 1 hour in ethics
High school diploma or GED certificate	5 years	12 hours of CLE with at least 1 hour of ethics, taken within two years before the exam application

NFPA® is working on preparing a brochure about the PCC Exam. Once this brochure becomes available, the VPO will obtain a supply of brochures. If you would like information about the PCC Exam, please feel free to contact me, the VPO PACE® Ambassador, and I will make sure that you receive a brochure once they become available.

This exam is a great opportunity for those of you who may not qualify for PACE® to get a leg up on your colleagues and to prove to prospective employers that you have the necessary skills, knowledge and abilities to take on the ever-expanding role of a paralegal.

Region V Meeting Report

By Carie Tarte, NFPA® Primary
Sharon Lucia, NPFA® Secondary

Over the weekend of April 10-11, 2010, member associations comprising Region V of the National Federation of Paralegal Associations (NFPA®) met to discuss and prepare for the Annual Convention, which will take place October 7-10, 2010 in Cherry Hill, N.J. Sharon Lucia, Kristin Mattes, Diane Brown, and Carie Tarte attended the Region V meeting on behalf of the VPO.



Led by Region V Director Cheryl Corning, the associations discussed the NFPA® winter board meeting, and the challenges with the NFPA® website. Cheryl advised that NFPA®'s management company was creating a new website using software that will make the site more user friendly and current. Cheryl will be obtaining more information for the member associations on the status of the improved website.

The associations also briefly discussed the new NFPA® basic competency exam, which was approved at the 2009 Convention in Portland, Ore. The PCC Exam (Paralegal Core Competency Exam) will be released soon, so that it will be available to paralegals alongside the NALA (National Association of Legal Assistants) basic competency exam.

NFPA® member benefits were discussed. As a NFPA® member, VPO members can obtain discounts off Orlando vacations, car rentals, on-line CLE, and Dell computers. For a complete listing of member benefits and access codes, see the VPO website at www.vtparalegal.org, and then click on the link for National Affiliation, or the NFPA® website at www.paralegals.org.

Although Region V did not wish to formally propose agenda topics for the 2010 Convention, we had informative discussions about issues that face other member associations. For example, the Central Connecticut Paralegal Association advised that a former governor and disbarred attorney was recently released from jail, where he served time for felony embezzlement charges; he is now practicing as a paralegal in a family-owned law firm. The Central Connecticut Paralegal Association asked what, if anything, it could do about a former felon practicing as a paralegal. Like Vermont, Connecticut has no state regulation or licensure for paralegals. Because this disbarred attorney and former governor had not applied for membership to any Connecticut paralegal organizations, it was the group's general consensus that the former lawyer/ governor-turned-paralegal did not fall under the auspices of any paralegal organization bylaws or statutory requirements and was therefore free to market himself as a paralegal.

The topic of this former Connecticut governor precipitated a discussion about paralegal regulation. The Empire State Alliance of Paralegal Associations has been working on a policy statement for paralegal regulation in the State of New York. This draft statement began with a survey to members. It provided members with a brief explanation of the various regulatory alternatives for paralegals and asked members' opinions about each type of regulation.

VPO President Diane Brown led the discussion regarding bylaws and amendments. The VPO board is currently working to revise our bylaws and other Region V organizations were interested in VPO bylaws on membership classes, board quorums, and board-position nominations.

Kristin Mattes led a discussion regarding pro bono work and what other organizations offer for pro bono activities. Kristin described some of the difficulties she encounters coordinating pro bono events and activities, the most significant of which is the lack of liability coverage for the work VPO members would be performing. Liability for VPO volunteer members would fall upon the attorney or firm co-sponsoring the events with the VPO, and these attorneys and firms are hesitant to take on liability for paralegals with whose work they are unfamiliar. Some of the programs other Region V organizations suggested include "Wills for Heroes," a program where paralegals prepare intake forms with veterans, running specific software programs to generate form wills to be reviewed by attorneys. The Lawyers for Children Network was another option for pro bono opportunities.

The Region V meeting was informative and supportive for VPO members in attendance. For a copy of the minutes of the Region V meeting, see the VPO website under National Affiliation\Region V.

Continuing Legal Education

Changes to the Federal Rules

By Louise C. Reese

For those of you who missed the VPO's Annual Meeting and Conference, below are brief summaries of the CLE sessions. If you would like copies of the presentation slides or handouts from these sessions, please contact Louise Reese at lreese@dinse.com.

The primary basis for amending the federal rules was to clear up confusion or inconsistencies in date computations for filing various pleadings. You can review the changes by accessing the updated rules on the federal court's website, www.vtd.uscourts.gov.

There are some key points to remember with the rule changes. The rule changes apply to *pending* cases (unless they are unreasonable or would create injustice) as well as cases filed after the amendment date of Dec. 1, 2009. Note that the Local Rules were amended effective Dec. 1, 2009, and these rules may require additional steps in some circumstances. Amendments to the federal rules have essentially changed the filing deadlines to multiples of 7 (i.e. 14 days, 21 days, etc.). The three extra days for mailing still applies. Note that the three days for mailing applies even if the pleading is electronically filed.

Although the state rules have not yet followed suit with federal time-computation changes, you can expect that Vermont will eventually adopt exact or similar rule changes for state cases.

Probate Process

By Louise C. Reese

VPO member Lisa Laramée followed an outline from the initial client interview to the closing of an estate. Lisa explained the process to follow in opening an estate, and the information and documents to be filed with the appropriate probate court. I was surprised to learn that all disinterested/disinherited parties must consent to a will. It may take a while to locate everyone, so start early! There was discussion on dealing with creditor claims. Creditors can only touch a probate asset. To avoid this, you can set up an automatic transfer of assets upon death, or put a family member's (or other) name on your checking account or other financial accounts.

Lisa ended her presentation with a discussion on closing the estate. She advised that you should always get receipts for any disbursements by the estate. In addition, always check the abandoned property list to make sure all your client's assets have been identified. Lisa's presentation was very helpful to those practicing in estate planning/probate law, or who come across similar issues when dealing with corporate or real estate clients, but it was also helpful if you are named as an executor/executrix in a family member's will.

Family Law and Form 813

By Carie Tarte

VPO member Leslie Mooney provided an informative afternoon session at the Annual Meeting and Conference regarding the initial steps in filing for divorce and the Form 813 Financial Affidavit. Taking a practical step-by-step approach, Leslie highlighted her "Top 10" areas on the 813 where mistakes are commonly made, and how to avoid them. Leslie also gave practical advice with respect to obtaining truly accurate information from the client, who is likely to want to "ballpark" or "guesstimate" answers on this very important form.

Leslie also took a few moments at the end of our discussion to talk about Act No. 69 relating to military parents' rights. This legislation was approved in March, 2010 and affords protection to divorcing Vermont military parents who are deployed overseas for military service.

Until now, divorced or separated military parents could lose custody of their children because they were deployed overseas by military order. Frequently, divorced military personnel would transfer temporary custody to the state-side ex-spouse before deploying; after returning from duty, however, military parents found that many courts refused to restore the shared custody, citing the military parents "abandonment" or absence in their childrens' lives.

This new Act provides Vermont parents on military deployment the ability to temporarily delegate a family member, a cohabitant, or other person with a "close and substantial relationship to a minor child," all of the parental rights of the deployed parent. At the same time, the temporary delegation protects the deployed parent's parental rights. The act also protects the deployed parent from a non-deployed, non-custodial parent, or other person, from moving the court for scheduling of final orders or hearings on custody or parentage during the time when the deployed parent is overseas and unable to attend hearings or provide responsive pleadings.

For details, see: <http://www.leg.state.vt.us/DOCS/2010/ACTS/ACT069.PDF>

Real Estate Update

By Karen Gramer

Andy Mikell, State Manager and Title Counsel for Vermont Attorneys Title Corporation, presented a seminar on the current developments in real estate law, packing an enormous amount of information and changes to real estate law into the morning session. His presentation included discussion on tax credits, settlement agents' responsibilities regarding the new HUD-1 Settlement Statement, pre-1999 and post-1999 small- and large-condominium projects, planned communities, inspections from VT Department of Public Safety, by sale and strict foreclosures, after-acquired title issues, execution of documents, and title insurance preparation. We even had time for a short quiz regarding marketability-of-title issues. It was a very informative seminar.

Ethics

By Louise C. Reese

Jim Knapp, Esq., who presents to attorneys at VBA seminars, came to the session with examples of cases that have come before the Professional Responsibility Board as a result of an action, or failure to act, by an attorney. The presentation slides are available upon request. Jim posed several "what if" situations to the audience, and had everyone close their eyes and raise their hands "anonymously" with the answer. It is a difficult situation when you have your attorney asking you to perform a task that makes you feel uncomfortable for ethical reasons. Jim said that we could contact him with any concerns, or contact Sheila Ware, Esq., of the law office of Darby Stearns Thorndike Kolter & Ware, LLP in Waterbury. Ms. Ware is chairperson of the Professional Responsibility Section for the VBA.

2010 Legislative Update

By Harland Miller, Esq.

Enacted Laws

Act 92 – Technical Corrections to the Trust Laws: This act made technical corrections to the Vermont Trust Code (Title 14A, Vermont Statutes Annotated), which was enacted in 2009. One particular provision clarified a possible unintentional repeal of the Trustee's Certificate originally set forth in 27 V.S.A. Section 352. The Trustee's Certificate relating to the sale of real property is now found in 14A V.S.A. Section 1013, and mirrors the prior provision set forth in Title 27. The Vermont Trust Code now makes it clear that Section 1013 applies to all trusts.

Act 96 – Licensing and Regulation of Loan Servicers: Due to the sub-prime mortgage crisis, many states have begun to regulate Loan Servicers. Vermont is no exception, and this act is a comprehensive bill aimed at regulating loan servicers of residential mortgages by the Department of Banking, Insurance, Securities, and Healthcare Administration (BISHCA).

Act 107 – State Recognition of Native American Indian Tribes of Vermont: This act increased the scope of state recognition of Native American Tribes, however, the legislature retained the limitation that state "recognition of a Native American Indian tribe shall not be construed to create, extend, or form the basis of any right or claim to land or real estate in Vermont or right to conduct any gambling activities prohibited by law, but confers only those rights specifically described in this chapter."

Bills Passed by the Legislature, but not yet signed by the Governor

The following bills have been passed by the Legislature and forwarded to the Governor for his signature. At the time of the preparation of this summary, the Governor had not announced the signing of these bills.

H. 498 – Private Roads: This bill proposes to require that, in the absence of a written maintenance agreement for a private road, the maintenance costs shall be divided equally among the owners of property located adjacent to the road and the owners of any easements recorded in the municipal land records of the town in which the road is located, granting a right to cross the road in order to access their property.

H. 542 – Transfer of Mobile Homes: This bill proposes to clarify the rights and obligations regarding the transfer of ownership of a mobile home, and to establish a definition and requirements for mobile home rent-to-own transactions.

H. 590 – Mediation in Foreclosure: This bill creates a mediation program in foreclosures of residential mortgages. This bill has a sunset provision; it will be repealed automatically on the same day as the expiration of the federal Home Affordability Modification Program (“HAMP”).

NOTE: Additional provisions were written into the bill to address some uncontroversial title curative provisions and clarifications (See Sections 6-11 of the bill). Included in these provisions are:

Section 6 - clarifies that a Power of Attorney that is validly executed in another state shall be valid in Vermont;

Section 7 - clarifies or expands the 15-year curative statute in 27 V.S.A. Section 348 to include a defect involving the lack of a required witness;

Sections 8 and 9 - Confirms that the proper way to renew a Judgment is to file a new and independent action within eight years. This will affect judgment lien holders wanting to continue to have an enforceable lien against real property created under 12 V.S.A. Section 2901 et. seq., by requiring them to file a copy of the new complaint in the land records within the eight-year period;

Section 10 - This creates a 15-year statute of limitations for municipal curb cut violations;

Section 11- This section addresses the same issue that ACT 92 resolved regarding trustee’s certificates. It was included in this bill merely as a safeguard in the event the technical corrections to the trust law were not passed.

H. 689 – Uniform Common Interest Ownership Act: This bill proposes to implement model updates to the Uniform Common Interest Ownership Act (UCIOA). While this bill sailed through legislature without much debate, there are some substantial changes that affect homeowners’ associations and how they operate. Fortunately, the effective date of the bill, if signed by the governor, is not until January 1, 2012.

H. 783 – Miscellaneous Tax Provision: This bill incorporates many changes to Vermont tax laws. Of particular interest to the real estate professionals are Sections 16-20 dealing with changes to the Vermont Property Transfer Tax Return. These changes will modify how Vermont Property Transfer Tax Returns will be processed by the towns and the State Department of Taxes.

Bills VETOED by the Governor

H. 485 – Current Use: This bill proposed changes to the taxation of property enrolled in the Current Use Value program and was vetoed by Governor Douglas.

**Standard Headings for Court Documents filed in the Superior Court effective July 1, 2010
Civil, Criminal, Environmental and Family Divisions**

Civil Division; Standard heading

STATE OF VERMONT

SUPERIOR COURT
_____ Unit

CIVIL DIVISION
Docket No. _____

John Smith
Plaintiff
v.
Jane Jones
Defendant

Civil Division; Small Claims and Other Court Forms

STATE OF VERMONT

SUPERIOR COURT
_____ Unit

CIVIL DIVISION
Docket No. _____

Plaintiff

Defendant

Name John Smith	v.	Name Jane Jones
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Family Division; Standard heading

STATE OF VERMONT

SUPERIOR COURT
_____ Unit

FAMILY DIVISION
Docket No. _____

John Smith
Plaintiff
v.
Jane Jones
Defendant

Family Division - Domestic and RFA

STATE OF VERMONT

SUPERIOR COURT
_____ Unit

FAMILY DIVISION
Docket No. _____

Plaintiff

Defendant

Name	DOB	v.	Name	DOB
	/ /			/ /

Family Division; Juvenile and MH

STATE OF VERMONT

SUPERIOR COURT
_____ Unit

FAMILY DIVISION
Docket No. _____

In Re:

Criminal Division; Standard heading

STATE OF VERMONT

SUPERIOR COURT
_____ Unit

CRIMINAL DIVISION
Docket No. _____

STATE of VERMONT
v.
Jane Jones
Defendant

Criminal Division; Criminal Forms

STATE OF VERMONT

SUPERIOR COURT
_____ Unit

CRIMINAL DIVISION
Docket No. _____

STATE of VERMONT	v.	Defendant's Name	DOB / /
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Environmental Division

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. _____

Town of Middlesex
Plaintiff
v.
EBT, Inc
Defendant



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