

**STATE OF VERMONT
VERMONT SUPREME COURT
AUGUST TERM, 2010**

**Order
Promulgating Vermont Rules for Electronic Filing as Emergency Rules
and
Promulgating Emergency Amendments to the Vermont Rules of Civil Procedure
and the Vermont Rules for Dissemination of Electronic Case Records**

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

1. That the Vermont Rules for Electronic Filing be adopted as emergency rules to read as follows:

Vermont Rules for Electronic Filing

RULE 1. APPLICABILITY; EFFECTIVE DATES; TITLE

(a) These rules apply to all civil actions and proceedings filed in the Superior Court, Civil Division, Rutland and Windsor county units, after the dates indicated, except small claims actions, small claims appeals, and stalking and sexual assault actions:

(1) Electronic filing of cases filed between October 18 and December 6, 2010, in accordance with these rules is permitted.

(2) Electronic filing of cases filed on and after December 6, 2010, in accordance with these rules is required.

(b) These rules may be known and cited as the Vermont Rules for Electronic Filing.

RULE 2. WHO MUST FILE ELECTRONICALLY; EXCEPTIONS

(a) Except as provided in (b), (c), and (d), and other provisions of these rules, all parties, and others required or permitted to file, in all civil actions and proceedings, including appeals from the probate courts and any governmental agency, entered in the Superior Court, Civil Division, on or after the filing dates provided by Rule 1(a), must electronically file all documents required or permitted by the applicable rules of procedure to be filed in court. All documents generated by the court, and by masters, receivers, guardians ad litem, and neutrals required to file a report, under the applicable rules of procedure in all actions and proceedings entered in the Superior Court, Civil Division, on or after the required filing dates provided by Rule 1(a) will be filed electronically, or scanned by court staff.

(b) A document may be filed by nonelectronic means when

(1) the filer is self-represented, except that if the filer has elected to file all required or permitted documents and information by electronic means, the filer must thereafter file all documents electronically except as provided in (2)-(5) or if required to file nonelectronically under (c);

(2) nonelectronic filing of a particular document or information is permitted by the court to protect confidentiality or for other good cause;

(3) a filer in a particular case is excused from electronic filing in that case by the court when exceptional circumstances make electronic filing unfeasible;

(4) nonelectronic filing is expressly permitted by these rules or an applicable rule of procedure; or

(5) a document cannot reasonably be scanned and filed electronically because of its size, shape, or condition.

(c) A document must be filed by nonelectronic means when

(1) nonelectronic filing is expressly required by these rules or an applicable rule of procedure; or

(2) the court orders a filer to file by nonelectronic means upon a finding that the filer has abused the system by repeated filing of irrelevant, abusive, or duplicative documents or information.

(d) A document may be filed directly with the court by electronic means other than electronic filing through the court's internet-based e-filing portal system when circumstances beyond the filer's control prevent the timely filing of the document through the court's system.

RULE 3. REGISTERED FILERS

(a) An attorney, a represented party, or any other person who is permitted or required under Rule 2 to file documents electronically, or a self-represented party who elects or is ordered under that rule, to file electronically, must register by obtaining a user name and password through the electronic filing system website in accordance with (b) or (c). Registration constitutes consent to e-mail service of all documents or information filed in accordance with these rules.

(b) An attorney in good standing in the State of Vermont may register on the electronic filing system website by submitting his or her attorney license number and verifying that the information submitted on his or her most recent attorney licensing statement under A.O. No. 41 and in any reported changes, is correct, or updating that information. An attorney registered under this subdivision may submit one or two e-mail addresses in addition to the address provided on the licensing statement. These addresses,

which shall be listed on the Judiciary website, must be listed on all filings by that attorney and are the addresses to which all service, notice, or other communication submitted must be sent. The attorney must report any change in the information submitted under A.O. No. 41 and subsequent reports, and in any additional address, within 24 hours of the change by amendment to the electronic filing system registration.

(c) An attorney in good standing in another jurisdiction who is admitted pro hac vice under applicable rules of procedure or administrative orders, a represented or self-represented party, and any other person permitted to file electronically may register on the electronic filing system website by submitting all information required by the Court Administrator on the registration screens displayed on the website, including a currently maintained e-mail account. An attorney registered under this subdivision will submit up to three e-mail addresses. These addresses, which shall be listed on the Judiciary website, must be listed on all filings by that attorney and are the addresses to which all service, notice, or other communication submitted must be sent. The attorney must report any change in any information or address submitted within 24 hours of the change by amendment to the electronic filing system registration.

(d) A registered filer may, in any action in which the filer has appeared in accordance with the applicable rules of procedure and has submitted his or her user name and password,

(1) file documents electronically as provided in Rule 4 and access or download any such documents remotely;

(2) access or download documents that have been filed by any other party or the court as provided in Rule 10.

(e) An attorney who is a registered filer may permit an associated attorney or legal assistant to file documents under the registered attorney's user name and password, giving the filer's own name and e-mail address. The registered attorney is responsible for all such filings.

(f) Justices, judges, and other authorized court personnel or officers, including masters, receivers, guardians ad litem, and neutrals required to file a report, may file court-generated documents and access or download documents that have been filed in any action.

RULE 4. PROCEDURES FOR ELECTRONIC FILING

(a) A registered filer may initiate a new action or proceeding, or file documents in an action or proceeding that is in the electronic filing system, when required or permitted under Rule 2, by logging in on the electronic filing system website with a user name and password obtained as provided in Rule 3.

(b) Each filing will be accomplished by submitting an "electronic coversheet"—that is, completing the *New Case or File Subsequent Document(s) into an Existing Case* pages on the electronic filing system website—to the appropriate court division and unit;

attaching to the filing documents required or permitted to be filed that have been prepared and formatted as provided in Rule 6; and by paying the fees as provided in Rule 8.

(c) An electronic filing may be submitted on any day, including holidays and weekends, and at any time. A filing is considered submitted on a date if it is submitted prior to midnight on that date. Failure of the filer's system will not excuse a failure to comply with a filing deadline unless filing pursuant to Rule 2(d) was ineffective and, under the applicable rules of procedure, the court exercises its discretion to extend the deadline. A deadline shall be extended for unavailability of the electronic filing system, or any of its subsystems, due to system maintenance or failure.

(d) The electronic filing system will automatically acknowledge receipt of any filing, but will automatically reject any filing that does not comply with the requirements of Rule 6(a). A filer may resubmit a rejected filing at any time after addressing the reasons for rejection, but the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the filing is resubmitted.

(e) A filing that has not been rejected will be reviewed by court staff for compliance with Rules 6(b), 7, and 8 and Rule 3(c)(3) of the Rules Governing Dissemination of Electronic Case Records. Court staff will then electronically notify the filer either that the filing has been accepted or that it cannot be accepted until specified defects under those rules have been corrected. A filer may submit a corrected filing within a time specified by court staff in the notification. Court staff will accept a corrected filing if all requirements of those rules have been met. When an original or corrected filing has been accepted, or when a court-generated document is filed, the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the original filing was submitted. Court staff will provide a docket number for a new filing that has been accepted in the acceptance notification. The assigned docket number must appear on all subsequent filings pertaining to the case.

(f) The filer, or court staff in the case of a court-generated document, must serve notice of filing and a copy of an electronically filed document as provided in Rule 11 on all parties or persons upon whom service is required by the applicable rules of procedure.

RULE 5. NONELECTRONIC DOCUMENTS

(a) If nonelectronic filing of a document is permitted or required by these rules, the court staff will scan the document in PDF format and include it in the electronic file. If the document pertains to the merits of the case, court staff will return it to the filer. If a document that is required to be filed electronically is filed nonelectronically, it will not be accepted and will not be scanned. The filer may resubmit the document electronically pursuant to these rules, and the date and time of filing for all purposes under the applicable rules of procedure will be the date and time that the original filing was submitted.

(b) The clerk is not required to maintain nonelectronic files for actions or proceedings commenced after the dates on which electronic filing is permitted under Rule 1, except for items that cannot be filed or scanned in electronic format.

(c) A party who files a nonelectronic document must serve notice of the filing and a copy of the document on all parties and the court in any manner appropriate under the applicable rules of procedure, except for documents filed ex parte.

(d) A paper filing may be made at any time permitted by the applicable rules of procedure. A filing by electronic facsimile transmission (fax) is treated by the electronic filing system as a nonelectronic document and may be made on any day, including holidays and weekends, and at any time. A fax filing is considered made on a specific date if it is made prior to midnight on that date.

(e) After review of the filing for compliance with Rules 6(c), 7, and 8 and Rule 3(c)(3) of the Rules Governing Dissemination of Electronic Case Records, court staff will notify the filer either that the filing has been accepted or that it cannot be accepted until specified defects under those rules have been corrected. A filer may submit a corrected filing within a time specified by court staff in the notification. Court staff will accept a corrected filing if all requirements of those rules have been met. When an original or corrected filing has been accepted, or when a court-generated document is filed, the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the original filing was submitted. Court staff will provide a docket number for a new filing that has been accepted. The assigned docket number must appear on all subsequent filings pertaining to the case.

RULE 6. FORMAT OF DOCUMENTS

(a) An electronically filed document will be automatically rejected by the electronic filing system without acknowledgement of receipt if it

(1) is not created or saved in, or converted to, PDF or MS Word format;

(2) is larger than 10 MB, unless, with leave of court, it is filed in segments no larger than 10 MB; or

(3) contains a virus detected by the electronic filing system.

(b) Court staff will not accept an electronically filed document that has not been rejected by the electronic filing system pursuant to (a) until

(1) it has been formatted as required by the applicable rules of procedure and is clearly legible in the electronic format in which it filed; and

(2) any password protection or other security device has been removed.

(c) All documents filed nonelectronically must

(1) be clearly legible, with all text visible and dark enough to be readable on a scanned image;

- (2) be formatted as required by the applicable rules of procedure;
- (3) be printed on white paper and on only one side of the paper;
- (4) not be secured by staples;
- (5) be free of bar codes on any page; and
- (6) use exhibit separator pages instead of exhibit tabs.

RULE 7. SIGNATURES

(a) Form and Effect of Signature.

(1) The electronic filing of a pleading, motion, or other procedural document by a registered filer constitutes the filer's signature on the document and for all other purposes under the applicable rules of procedure, including the imposition of sanctions under V.R.C.P. 11, V.R.Cr.P. 49(d), and V.R.A.P. 25(d). An electronically filed procedural document must include a signature block containing the filer's typed-in name preceded by "/s/," or an electronic facsimile of the filer's signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), and the filer's name, address, telephone number, and e-mail address.

(2) A procedural document filed by nonelectronic means, when permitted under Rule 2(b) or otherwise required by these rules, must be signed as provided in the applicable rules of procedure.

(3) If a stipulation or other signed document relevant to the merits of any issue in an action or proceeding is to be filed electronically under these rules, the original, signed as provided in the applicable rules of procedure or other provisions of law, must be scanned and filed as a PDF file by the filer. If such a document is to be filed by nonelectronic means when permitted under Rule 2(b), it must be an original or a legible copy, unless otherwise provided in the applicable rules of procedure or other provisions of law.

(b) Multiple Signatures.

(1) A pleading, motion or other procedural document filed jointly by a registered filer and other parties or counsel aligned in interest with the filer must contain the signature of the filer and the other parties or counsel in the form provided in (a)(1) or (2). If such a document is filed electronically, the filer's signature constitutes a representation that all the other signers consented to the filing of the document.

(2) Any other document that contains the signatures of persons other than the filer must be filed and signed as provided in (a)(3).

(3) The filer of any document containing the signatures of other persons must retain a paper or electronic copy of the document available for inspection by the signers or the court until the longer of two years or final disposition of the action, including the disposition of all appeals or the running of the time for appeal.

(c) **Documents under Oath.** If a notarized, acknowledged, or verified document or a document signed under oath is to be filed electronically under these rules, the original, signed and attested as provided in the applicable rules of procedure or other provisions of law, must be scanned and filed as a PDF file by the filer. The filer must retain the original of the document available for inspection by the signers or the court until the longer of two years from the date of filing or final disposition of the action, including the disposition of all appeals or the running of the time for appeal.

(d) **Signatures of Court Personnel.** Justices, judges, and other court personnel authorized to sign on behalf of a justice or judge or in their own capacity may electronically sign any court-generated document that requires a signature with an electronic facsimile signature or scanned copy, or another form of electronic signature as defined in 9 V.S.A. § 271(9).

RULE 8. PAYMENT OF FEES AND COSTS

(a) No electronically or nonelectronically filed document will be accepted under Rule 4(d) or 5(f) until the fees and costs attributable to the filing are paid. No advance deposit on account of future fees will be accepted.

(b) Fees and costs may be paid electronically by approved credit card or electronic funds transfer, or directly by payment over the counter at the office of the clerk.

(c) A party who wishes to proceed in forma pauperis must comply with the provisions of the applicable rules of procedure.

RULE 9. REDACTION

Rule 3 of the Rules Governing Dissemination of Electronic Case Records applies to all electronic documents filed in accordance with these rules.

RULE 10. ACCESS TO ELECTRONIC CASES FILES

(a) Registered filers may have remote access to all documents that they have filed electronically. A registered filer may have access through a terminal provided by court staff in a court location to the full electronic file of any case in which he or she has appeared in accordance with the applicable rules of procedure and has submitted his or her user name and password.

(b) Self-represented parties who are not registered filers, and others excused from filing electronically in a particular case under Rule 2, may have access to the electronic

file of a case in which they have appeared or are represented through a terminal provided by court staff in a court location to the full electronic file of any cases in which they have appeared in accordance with the applicable rules of procedure.

(c) Members of the general public may have access to electronic case files only by use of a public access terminal, at least one of which will be placed and maintained in each court location. Public access is subject to the Rules for Public Access to Court Records and the Rules Governing Dissemination of Electronic Case Records as adopted or amended by the Supreme Court.

RULE 11. SERVICE

(a) Service upon a party of the original notice of an action or proceeding (including a notice of appeal to the Superior Court, Civil Division, from a probate court under V.R.C.P. 72 or a governmental agency under V.R.C.P. 74), other original process, or a writ of execution or possession, or service upon a nonparty of a subpoena or other original or final process, and any documents accompanying any such notice or process must be made by nonelectronic means. Any required return of service must be filed electronically in accordance with these rules unless otherwise provided in Rule 2(b) or by the applicable rules of procedure.

(b) Notice (other than original notice), documents, and exhibits required or permitted by applicable rules of procedure to be served on an attorney or party must be served by e-mail attachment on a registered filer unless otherwise agreed in writing by the parties, or by nonelectronic means on any other attorney, party, or person unless that attorney, party, or person agrees in writing to service by electronic means.

(c) Any original notice, process, or writ required to be issued to an attorney or served on a party or nonparty by the clerk in an action or proceeding in the Superior Court, Civil Division, by applicable rules of procedure, may be issued or served by non-electronic means.

(d) In an appeal to the Superior Court, Civil Division, from a probate court or a governmental agency, the register of probate, or clerk or other officer of the agency, must transmit the record on appeal to the clerk of the Civil Division by nonelectronic means as provided in V.R.C.P. 72 or 74. The court staff of the Civil Division will scan and electronically file the record as provided in Rule 5(a). The certificate of decision of the Civil Division, required to be certified to a probate court or governmental agency, and the record on appeal, required to be returned by the clerk of the Civil Division, must be transmitted in accordance with V.R.C.P. 72 or 74 by nonelectronic means.

RULE 12. DEFINITIONS

(a) **Document.** A “document” is a related and paginated grouping of information items that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. It includes the electronic coversheet required by Rule 4(b) for each filing.

(b) **Electronic Case File.** An “electronic case file” is an assemblage of the items pertaining to a single case or matter under a single docket number electronically submitted to the Judiciary’s electronic filing system and stored in its temporary data store, by a registered user via the electronic filing system website, sent by interface from another agency, or electronically filed by the court via the electronic filing system website and any paper or fax document that was scanned by the court and electronically stored into the data store.

(c) **Electronic Filing.** “Electronic filing” is the process of transmitting a document from a registered filer’s computer, using the Court’s Internet-based electronic filing system , to file the document in the Court’s case file.

(d) **Electronic Means.** “Electronic means” is any method of direct electronic transmission of a document from the sender’s computer or electronic filing system to the recipient’s computer or electronic filing system.

(e) **Nonelectronic Means.** “Nonelectronic means” is any method of transmitting a document for filing or service by any means (including electronic facsimile transmission [fax]) other than by direct electronic transmission from the sender’s computer or electronic filing system to the recipient’s computer or electronic filing system.

(f) **Registered Filer.** A “registered filer” is an attorney, a represented party, or any other person who is permitted or required under Rule 2 to file documents electronically, or a self-represented party who elects or is ordered under that rule, to file electronically and has registered through the electronic filing system website as provided in Rule 3. The term includes any other person authorized to file documents electronically under Rule 3.

Reporter’s Notes

The Vermont Rules for Electronic Filing are adopted as emergency rules to provide a framework for the initiation of the Judiciary’s eCabinet electronic filing system in the Superior Court Civil Division for the Rutland and Windsor county units on October 18, 2010. See Rule 1. Conforming emergency amendments to affected provisions of the Vermont Rules of Civil Procedure and Rules for Dissemination of Electronic Case records are being adopted simultaneously.

Use of eCabinet will be permissive for most Rutland and Windsor civil dockets in all cases filed between October 18 and December 6, 2010. Use of the system will be mandatory, with certain exceptions provided in Rule 2, in all cases on those dockets filed on or after December 6, 2010. It is anticipated that use of the system will be permissive in the remaining county units of the Civil Division in all cases on those dockets filed on or after

December 6, 2010, and mandatory in those units in all cases on those dockets filed on or after February 7, 2011.

Because implementation of eCabinet is a work in progress, it is highly probable that these emergency rules will be amended periodically to reflect experience gained in the early application of the system. Accordingly, the Court's Special Advisory Committee on Rules Governing an Electronic Case File and Electronic Filing, and its Advisory Committees on Rules of Civil Procedure and Rules Governing Public Access to Court Records, are directed by the initial order promulgating these rules and related amendments "to report to the Court not later than November 22, 2010, and on a continuing basis thereafter, concerning any changes to these rules and amendments made necessary by experience in practice under them." In Spring 2012, when all divisions of the Superior Court have been included in eCabinet and full electronic case management capability has been developed, a more sophisticated filing system will be combined with case management functions in VCase, the ultimate version of the system. See J. Dooley, T. Durkin and T. Corsones, "E-filing Is Coming," 36 *Vt. Bar Jour.*, No. 2 (Summer, 2010). Final electronic filing rules will be adopted at that time.

The Vermont Rules for Electronic Filing establish specific procedures for electronic filing that will, in many respects, be generally familiar to Vermont lawyers who practice in the U.S. District Court for Vermont and its Bankruptcy Court, where electronic filing has been in use for a number of years. The rules are intended to work in concert with the Vermont Rules of Civil Procedure and other Vermont procedural rules, which are frequently incorporated by reference. Every effort has been made to amend those procedural rules to avoid obvious conflicts or inconsistencies. See simultaneous amendments to specific provisions of the Civil Rules.

In summary, the Rules for Electronic Filing cover the following matters:

Rule 1. Proceedings to which the rules apply; effective dates.

Rule 2. Who must file electronically. Exceptions for self-represented litigants and others.

Rule 3. Registration for those required or permitted to file electronically.

Rule 4. Procedures for filing electronically and for acceptance by court staff of electronic filings.

Rule 5. Procedures for filing and scanning documents that may or must be filed nonelectronically and for acceptance of such documents.

Rule 6. Format requirements for electronically and non-electronically filed documents.

Rule 7. Signatures and other formalities for electronically filed documents.

Rule 8. Payment of fees and costs for electronic filings.

Rule 9. Incorporation of Rule 3 of the Rules for Dissemination of Electronic Case Records to cover redaction and other issues concerning nonpublic information. See simultaneous amendments to that rule.

Rule 10. Methods of access to electronically filed documents for registered filers, self-represented parties and other nonregistered filers, and the general public.

Rule 11. Provisions for service by electronic and nonelectronic means.

Rule 12. Definitions of key terms.

2. That the following provisions of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 4. PROCESS

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(b) **Same: Form.** The summons shall be signed by the plaintiff's attorney or, if the plaintiff has no attorney, by any Superior Judge or a judge or the clerk of the court to which it is returnable. It shall contain the name and e-mail address of the court and the names of the parties, be directed to the defendant, state the name and postal and e-mail addresses of the plaintiff's attorney, and the time and manner within which these rules require the defendant to ~~appear and defend~~ respond to the complaint, and shall notify defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint. A summons shall comply with applicable format provisions of the Vermont Rules for Electronic Filing.

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(l) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

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(3) *Method.* The notice and request given under this subdivision

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to any other person authorized under subdivision (d) of this rule to receive service of process on behalf of a defendant who is not an individual, provided that notice may not be given hereunder to a public officer who is designated by statute as an agent to receive service of process;

(B) shall be dispatched through first class mail or other reliable electronic or nonelectronic means;

(C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) shall inform the defendant, by means of a form conforming substantially to Forms 1B and 1C as contained in the Appendix of Forms to these rules, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any state or territory of the United States; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as an electronic or prepaid nonelectronic means of compliance in writing.

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RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

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(b) **Same: How Made.** Whenever under Rule 5(a) or 77(d) service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney or party's last known address or, if no address is known, by leaving it with the clerk of the court.

(1) *Delivery.* Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(2) *Mailing.* Mailing of a copy within this rule means: sending by ordinary first-class mail; sending by third-party commercial carrier; and, ~~if the party being served consents in writing~~ required or permitted by the Vermont Rules for Electronic Filing, transmission by electronic means. Service by mail or by commercial carrier is complete upon mailing or delivery to the carrier. Service by electronic means is complete upon transmission, provided that such service is not effective if the party making service learns that the attempted service did not reach the party to be served.

(3) *Leaving with the Clerk.* Leaving a copy with the clerk of the court within this rule means delivering or mailing the copy to the clerk by any means permitted or required for the filing of papers with the clerk under subdivision (e) of this rule.

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(e) **Filing With the Court Defined.** The filing of ~~papers~~ documents with the court as required by these rules shall be made by filing them with the clerk of the court, except that a judge may permit ~~them~~ papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Filing ~~with the clerk~~ may be accomplished by delivery; by sending the papers by ordinary first-class mail or by third-party commercial carrier addressed to the clerk; ~~and, if required or permitted by the Vermont Rules for Electronic Filing, transmission by electronic means;~~ provided that ~~Filing by mail, or commercial carrier, or electronic means~~ shall not be timely unless the ~~papers are~~ material filed is received within the time fixed for filing. ~~On request of a party, for good cause shown, the judge may authorize electronic filing with the clerk in a particular case.~~ Filing with a judge may be accomplished by any method permitted by the judge. The clerk shall not refuse to accept for filing any ~~paper~~ document presented for that purpose solely because it is not presented in proper form as required by these rules.

(f) **Form of Papers and Documents.** All original papers shall be eight and one-half by eleven inches in size, indorsed with the name and docket number of the case, the court and county where pending, the name of the paper, and the name and address of the person or attorney filing it and shall comply with applicable format provisions of the Vermont Rules for Electronic Filing.

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RULE 6. TIME

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a State or federal legal holiday, or, when the act to be done is the filing of ~~some paper a~~ document in court, a day on which weather or other conditions have made the office of the clerk inaccessible or the court's electronic filing system is unavailable, in which event the period runs until the end of the next day which is not one of the aforementioned days. Intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation, when the period of time prescribed or allowed, not including any calendar days added in accordance with subdivision (e) of this rule, is less than 11 days.

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(e) **Additional Time After Service Under Rule 5(b)(2) or (3).** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other ~~paper~~ document upon the party and the notice or ~~paper~~ document is served upon the party under Rule 5(b)(2) or (3), three calendar days shall be added to the prescribed period after that period has been computed pursuant to subdivision (a) of this rule unless the notice or other ~~paper~~ document is served by the court or unless a document ~~paper~~ served other than by electronic means is received by the party on the date of service.

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RULE 10. FORM OF PLEADINGS

(d) **Other Requirements of Form.** All pleadings shall comply with applicable format provisions of the Vermont Rules for Electronic Filing.

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

(a) **Signature.** Every pleading, written motion, and other ~~paper~~ document that requires a signature shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each ~~paper~~ document shall state the signer's ~~mailing~~ e-mail and postal address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned ~~paper~~ document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) **Representations to Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other ~~paper~~ document, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

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RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

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(g) **Signing of Discovery Requests, Responses, and Objections.** Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose mailing e-mail and postal address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's mailing e-mail and postal address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

RULE 40. CALENDAR; ASSIGNMENT; CONTINUANCES; DISQUALIFICATION

(a) Hearing Calendar; Assignments; Trial List.

(1) Subject to the direction of the court, the clerk shall maintain a hearing calendar, copies of which shall be ~~printed or typewritten and posted on the court's website~~ and distributed ~~among~~ electronically to the attorneys having actions listed thereon 20 days before the commencement of a term. The clerk shall routinely list upon the hearing calendar all actions in which the pleadings are complete or the time for filing the last required pleading has passed. Upon request of a party, the Presiding Judge may at any time advance or specially assign an action for hearing. All actions not advanced or specially assigned will be heard in the sequence in which listed unless previously continued by agreement of the parties or order of court.

(2) During a term, the clerk or the Presiding Judge shall periodically issue and distribute electronically to the attorneys having actions listed thereon a trial list containing a listing of assignments of cases to be ready for trial at a specific date and time. A trial list shall be issued not later than the Tuesday of the week preceding the week in which the first case listed is assigned for trial.

(b) **Progress Calendar.** Twenty days before the commencement of a term, the clerk shall prepare and distribute ~~among~~ electronically to the attorneys having cases thereon a progress calendar, listing all actions ripe for dismissal under Rule 41(b)(1).

RULE 45. SUBPOENA

(a) **Form; Issuance.**

(1) Every subpoena shall

(A) state the name of the court from which it is issued; and

(B) state the title of the action, the name of the court in which it is pending, and its civil action number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule; and

(E) comply with applicable format provisions of the Vermont Rules for Electronic Filing.

RULE 77. SUPERIOR COURTS AND CLERKS

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(c) **Clerk's Office and Orders by Clerk.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays and shall be open for electronic filing at all times provided in the Vermont Rules for Electronic Filing. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults, and for other proceedings which do not require allowance or order of the court, if accepted for filing pursuant to the Vermont Rules for Electronic Filing, are grantable of course by the clerk; but ~~his~~ the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) **Notice by the Clerk.**

(1) *Orders or Judgments.* Immediately upon the entry of an order or judgment the clerk shall give notice of the entry upon every party who is not in default for failure to appear, and shall make a note in the docket of the mailing.

Any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of ~~papers~~ documents. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4 of the Rules of Appellate Procedure.

(2) *Method of Giving Notice.* The clerk shall give notice under paragraph (1), and shall give any other notice that these rules require the clerk to give, by a the appropriate method that the Supreme Court has provided by administrative order or directive. ~~That notice shall be sufficient for all purposes for which notice by the clerk is required under these rules provided in Rule 5.~~

RULE 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

(a) **Electronic Case Files; Civil Docket.**

(1) *Electronic Case Files.* For cases that have been filed under the Vermont Rules for Electronic Filing, the clerk shall maintain all files and records as provided in those rules.

(2) *Civil Docket.* The clerk shall keep the civil docket

RULE 79.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

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(g) **Same: Notification of Party.** When an attorney has been granted leave to withdraw the attorney's appearance, the clerk shall notify the party forthwith, electronically if the party is a registered filer under the Vermont Rules for Electronic Filing, otherwise by mail, of such withdrawal. ...

Reporter's Notes—2010 Amendments

Rules 4(b), (l)(3); 5(b), (e), (f); 6(a), (e); 10(d); 11(a), (b); 26(g); 40(a), (b); 45(a)(1)(G); 77(c), (d); 79(a)(1), (2); 79.1(g) of the Vermont Rules of Civil Procedure rules are amended or added to conform to the Vermont Rules for Electronic Filing as adopted by simultaneous emergency amendment. *See* Reporter's Notes to those rules.

3. That Rule 3 of the Vermont Rules for Dissemination of Electronic Case Records be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 3. ACCESS TO ELECTRONIC CASE RECORDS

(a) **Public Access.** The public shall have access to electronic case records in individual cases from VTADS2, VCAS, or a similar system on a case by case basis the electronic case files created by ECabinet, subject to the limitations specified in (b) and (e) of this section rule, and generally subject to the Rules for Public Access to Court Records. The Court Administrator ~~may~~ will provide such access in all cases from terminals at judicial branch facilities or online court locations and will provide such access to civil cases from VTADS2 or VCAS through Vermont Cases Online from any remote location over the Internet. If the Court Administrator provides access on-line, such access shall be phased in beginning with civil cases, then criminal cases and finally family cases.

(b) ~~The public shall not have access to the following data elements in an electronic case record with regard to parties or their family members: social security numbers; street addresses; telephone numbers; and any personal identification numbers, including motor vehicle operator's license numbers and financial account numbers. In providing access pursuant to subsection (a), the Court Administrator shall ensure that the above information is not provided.~~ **Nonpublic Documents.** The filer of a document that is not publicly accessible under Rule 6 of the Rules for Public Access to Court Records must identify the document as nonpublic at the time of filing. After acceptance of the filing, court staff will place that document, or any other document that they determine to be non-public, in the nonpublic section of the electronic file of the case.

(c) ~~Except for notices, decisions and orders of the court, the public shall not have electronic access to case records filed electronically or to scanned images of the case records.~~ **Public Documents.**

(1) Initial Responsibility of the Filer. It is the responsibility of the filer of a document that is otherwise publicly accessible under Rule 6 of the Rules for Public Access to Court Records to omit or redact, or partially omit or redact, if the information is material or required by law, the following personal identifiers from all electronically or nonelectronically filed documents and exhibits, unless otherwise provided in the applicable rules of procedure or ordered by the court:

(A) Social Security and Tax Payer Identification numbers; and

(B) Personal identification numbers, such as motor vehicle operators' license numbers, passport numbers, military serial numbers, and medical or financial account or credit or debit card numbers or personal identification numbers (PIN), codes, or passwords, except the type of account or card and institution and last four digits if material.

(2) Reference List of Omitted Identifiers. A filer who is required to include personal identifiers listed in (1) in a document or exhibit, or believes that such an identifier is material, may omit or redact those identifiers from the document or exhibit and may file under seal a copy of the document or exhibit that contains the omitted or redacted identifiers or a reference list containing the complete identifiers. The list may be corrected or supplemented by the filer. References in

the case to an omitted or redacted identifier will be construed to be references to the corresponding complete identifier.

(3) Responsibility of Court Staff When Document is Filed. When court staff review a document as provided in Rules 4(e) or 5(f) of the Vermont Rules for Electronic Filing, court staff will identify any personal identifiers listed in (1) not omitted or redacted by the filer and will notify the filer that the filing cannot be accepted until specified identifiers have been omitted or redacted. The filer may submit a document corrected or supplemented in accordance with (2) within a time specified by court staff in the notification. When a document as originally filed, or as corrected or supplemented, is accepted, court staff will place that document in the nonpublic electronic file of the case. court staff will not review exhibits to determine whether personal identifiers have been redacted.

(d) Court Generated Documents.

(1) Court staff must identify any court-generated document that is not publicly accessible under Rule 6 of the Rules for Public Access to Court Records and must place that document in the nonpublic section of the electronic file of the case.

(2) Court staff must omit or redact from any court-generated document that is otherwise publicly accessible under Rule 6 of the Rules for Public Access to Court Records all personal identifiers required to be omitted or redacted by Rule 3(c)(1) before placing that document in the publicly accessible file of the case.

(e) Motion by a Party. A party or nonparty whose personal identifiers have been improperly included in a filed document or exhibit, or who asserts that a nonpublic document involving that person's interests has been placed in a publicly accessible file, may move under applicable procedural rules to redact the improperly included personal identifiers or to remove the document from the file, and for a temporary order sealing the filing pending disposition of the motion. After hearing, the court may seal the filing and order that a redacted version be placed in the publicly accessible file or that the document be placed in the nonpublic section of the electronic file of the case.

(f) Access to Documents.

(1) The public may have access in accordance with (a) only to electronically filed documents in the publicly accessible case files of individual cases.

(2) Registered filers may have remote access to any reference list that they have filed in accordance with (c) or to the complete text of any documents that they have filed electronically. Registered filers may have access through a terminal in a court location to the nonpublic section of the electronic file of any case in which they have appeared in accordance with the applicable rules of

procedure and have submitted a user name and password, unless otherwise ordered by the court.

(3) Any justice, judge, or other authorized court staff member, official, or officer, or any official of any other public entity as authorized by interagency agreement with the Supreme Court, may have remote access to the nonpublic electronic file of any case.

Reporter's Notes—2010 Amendment

Rule 3 is amended to conform to the Vermont Rules for Electronic Filing as adopted by simultaneous emergency amendment. See Reporter's Notes to those rules.

4. That these rules, as adopted or amended, are prescribed and promulgated to become effective on October 1, 2010. The Reporter's Notes are advisory.

5. That the Court finds that these emergency rules and amendments must be promulgated without resort to the prior notice and comment procedures set forth in Administrative Order No. 11, to permit the initial use of the Judiciary's e-Cabinet electronic filing system to begin with permissive use in most dockets in the Superior Court, Civil Division, Rutland and Windsor county units, on October 18, 2010, and required use in those dockets and units on December 6, 2010.

6. The Court Administrator is directed to send the rules out for comment with a comment deadline of September 30, 2010.

7. That the Court's Special Advisory Committee on Rules Governing an Electronic Case File and Electronic Filing, and its Advisory Committees on Rules of Civil Procedure and Rules Governing Public Access to Court Records, are directed to consider, and report to the Court pursuant to Administrative Order No. 11 by October 15, 2010, on any comments that may be received on these emergency rules and amendments; and, further, to report to the Court not later than November 22, 2010, and on a continuing basis thereafter, concerning any changes to these rules and amendments made necessary by experience in practice under them.

8. 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 17th day of August, 2010.

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