

**SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR**

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TO: Members of the Vermont Bar

FROM: Teri Corsones, Esq., State Court Administrator

RE: Promulgated and Proposed Rules, Position Announcement, Odyssey File and Serve and Public Portal Information, Filing of Exhibits & Other Miscellaneous Info

DATE: September 14, 2022

For your information, please find:

- [*Emergency Order Promulgating Amendments to Rules 6\(19\) and 9 of the Vermont Rules of Supreme Court for Disciplinary Control of Judges*](#)
- [*Emergency Order Promulgating Amendments to Rules 17\(b\) and 20\(e\)\(3\) of the Rules of Admission to the Bar of the Vermont Supreme Court*](#)
- [*Promulgation Order Amending V.R.S.C.P. 6 and V.R.C.P.80.6\(n\)*](#)
- [*Order Promulgating Addition of Rules 9.2 and 9.3 to the Vermont Rules of Civil Procedure*](#)
- [*Promulgation Order Amending Rules 1.2, 1.6, 1.15A, 3.1, 4.4, 5.3, 5.5, 8.3, and 8.4 of the Vermont Rules of Professional Conduct*](#)
- [*Promulgation Order Amending Rule 9\(b\) and \(g\)\(1\) of the Vermont Rules for Family Proceedings*](#)
- [*Order Promulgating the Addition of Rule 1.1 to the Vermont Rules for Family Proceedings*](#)
- [*Proposed Order Amending Vermont Rules for Public Access to Court Records 6\(b\)\(9\) and 11\(c\)*](#)
- *Vermont Judiciary Seeks Vermont Licensed Attorneys to Serve as Hearing Panel Counsel for the Professional Responsibility Program on a Contract Basis*
- *Odyssey File and Serve and Public Portal Information*
- *Filing of Exhibits*
- *Miscellaneous*

I. PROMULGATED RULE AMENDMENTS

- a. [*Emergency Order Promulgating Amendments to Rules 6\(19\) and 9 of the Vermont Rules of Supreme Court for Disciplinary Control of Judges*](#)

This Emergency Order was promulgated on **September 13, 2022, effective October 1, 2022.**

Rule 6(19)(a) is amended to allow a complaint to be filed with the Chair of the Board by email. The complaint must be submitted as an attachment to the email and must be sent to the email for the Chair that is associated with the Board. Following the COVID-19 pandemic, the Board was authorized to conduct its business by email under Administrative Order 49, ¶ 15(c). This was an efficient and helpful means of communication and therefore has been incorporated into the permanent rules.

Rule 9 is amended to incorporate provisions related email filing and remote participation that were first implemented in response to the COVID-19 pandemic under Administrative Order 49, ¶ 15(c) and (d). Rule 9(1) is amended to provide that a judge's answer may be filed by the same means as provided under 6(19)(a), which is simultaneously amended to include email. Rule 9(5) and (6) are amended to allow the Board to preside remotely or to allow or require remote participation pursuant to V.R.C.P. 43.1.

Comments on these emergency amendments should be sent by **November 14, 2022**, to Barbara Blackman, Chair, Judicial Conduct Board at JCB@rsclaw.com .

b. [*Emergency Order Promulgating Amendments to Rules 17\(b\) and 20\(e\)\(3\) of the Rules of Admission to the Bar of the Vermont Supreme Court*](#)

This Emergency Order was promulgated on **September 13, 2022, effective October 1, 2022**.

Rule 17(b) is amended to allow a hearing panel to preside remotely or to allow or require remote participation by others pursuant to Vermont Rule of Civil Procedure 43.1. Following the COVID-19 pandemic, remote hearings were authorized and encouraged under Administrative Order 49, ¶ 15(d). This practice was an effective method for participation and therefore remote participation is incorporated into the rules.

Rule 20(e)(3) is added to incorporate an interim measure taken during the COVID-19 pandemic to permit the oath of admission to be administered remotely in real time. Administrative Order 49, ¶ 15(e) allowed the oath to be administered remotely by video in real time. This procedure has been an efficient way to administer the oath without requiring Applicants to travel to the courthouse.

Comments on these emergency amendments should be sent by **November 14, 2022**, to Andrew Strauss, Licensing Counsel of the Office of Attorney Licensing, at the following address:

Andrew Strauss, Licensing Counsel
Andrew.Strauss@vermont.gov

c. [*Promulgation Order Amending V.R.S.C.P. 6 and V.R.C.P.80.6\(n\)*](#)

This Order was promulgated on **September 13, 2022, effective October 1, 2022**.

Small Claims Rule 6 is amended to incorporate provisions regarding remote hearings for small claims actions and for judicial bureau proceedings. See V.R.C.P. 80.6(d)(4) (making V.R.S.C.P. 6 applicable to judicial bureau proceedings). In response to health concerns related to the COVID-19 pandemic, the Supreme Court declared an emergency in March 2020 and issued Administrative Order 49 making temporary changes to court rules and operations. Under ¶ 5(a), A.O. 49 authorized remote participation

by video or audio in the civil division. Under ¶ 5(c), A.O. 49 authorized the hearing officer in judicial proceedings to preside remotely and ordered other persons to participate by remote audio or video.

Remote hearings were very effective in the judicial bureau and the current amendments allow remote proceedings to continue. Existing 6(a) is divided into four paragraphs. New 6(a)(2)(A) provides that in a nonjury hearing, the court may preside remotely and require other persons to participate remotely by either audio or video. Participants can request an in-person hearing and the court can grant the motion based on its consideration of the relevant factors in V.R.C.P. 43.1. For trial by jury, Rule 6(a)(2)(B) incorporates the procedures in V.R.C.P. 43.1.

Rule 80.6 is amended in several places to correct statutory references and update terminology.

Rule 80.6(a), (i), and (m) are amended to remove reference to “district court” and replace it with “Criminal Division of the Superior Court” to reflect the statutory change made by 2009, No. 154 (Adj. Sess.), §§ 236, 238, codified at 4 V.S.A. § 1107(a). Rule 80.6(c)(4) is amended to correct a statutory reference by substituting 24 V.S.A. § 1977(a) for 24 V.S.A. § 1979(c). Rule 80.6(i)(1) is amended to substitute the word “transmit” for “mail” in reference for how the judicial bureau clerk should send the notice of appeal to the Criminal Division to reflect the change to electronic case records. Rule 80.6(k) is deleted and reserved. The rule referred to municipal fine contempt proceedings filed by a municipality pursuant to 24 V.S.A. § 1981(d), which was repealed in 2012. 2011, No. 83 (Adj. Sess.), § 1. Rule 80.6(m) is amended in accord with a statutory change substituting “Chief Superior Judge” for “Administrative Judge.” Rule 80.6(n) is amended to add V.R.C.P. 43.1 to the list of civil rules that do not apply in judicial bureau proceedings. Remote hearings are covered by the provisions of Rule 6 of the Vermont Rules of Small Claims Procedure.

d. [Order Promulgating Addition of Rules 9.2 and 9.3 to the Vermont Rules of Civil Procedure](#)

This Order was promulgated on **September 13, 2022, effective October 1, 2022.**

New Rules 9.2 and 9.3 provide special procedures in residential eviction proceedings and certain home foreclosures or replevin actions. The rules stem from requirements in Administrative Order No. 49 ¶¶ 21 and 22 related to eviction and foreclosure proceedings during the COVID-19 pandemic. The two rules contain provisions related to the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and federal appropriations for Vermont Emergency Rental Assistance (VERAP) and Vermont Homeowner Assistance Program (VHAP) funds.

Rule 9.2 applies to all actions for eviction of a tenant from residential housing based solely or in part on nonpayment of rent. Rule 9.2(b) requires plaintiffs to declare compliance with the notice requirement of the CARES Act. Rule 9.2(c) pertains to VERAP, which will stop accepting new applications after September 30, 2022. Under the rule, when either party presents the court with evidence that the tenant has filed a VERAP application, the court may take appropriate action.

Rule 9.3 requires plaintiffs in covered foreclosure and replevin actions to serve homeowners with notice of the availability of VHAP funds. Under 9.3(c), if homeowner has applied for funds and so requests, there is an automatic stay.

Pursuant to the promulgation order, the Advisory Committee is to review the operation of these rules and to advise the Court when appropriate, but not later than July 1, 2023, whether the rules should be terminated in whole or in part, extended, revised, or made permanent.

- e. [Promulgation Order Amending Rules 1.2, 1.6, 1.15A, 3.1, 4.4, 5.3, 5.5, 8.3, and 8.4 of the Vermont Rules of Professional Conduct](#)

This Order was promulgated on September 13, 2022, effective November 14, 2022.

Under amended Rule 1.2(c), a lawyer that has not entered a limited appearance but provides assistance in drafting a document must advise the client to comply with any rules of the tribunal regarding participation by a lawyer in support of a self-represented litigant. A new comment clarifies that, while the client controls the objectives of a representation, a lawyer does not violate any professional duty to the client by agreeing, for instance, to extensions of time or by affording professional courtesy to opposing counsel, parties, and witnesses while pursuing a client's objectives. An additional amendment to a comment clarifies that a lawyer may counsel a client regarding the validity, scope, and meaning of Title 7, chapters 31 thru 39, regarding cannabis regulation, so long as the lawyer abides by the existing requirement of advising the client regarding the potential consequences of the client's conduct under related federal law and policy.

New paragraph 1.6(c)(3) clarifies that a lawyer does not violate Rule 1.6 by disclosing information relating to the representation of a client by making a confidential inquiry of bar counsel on matters related to that representation. Comment [11] is amended to conform to proposed new paragraph (c). An amendment to 1.6(c)(5) is added to track the ABA Model Rule and to allow lawyers to conduct limited conflict checks prior to and in the process of changing employment. New comments 16 and 17 address paragraph (c)(5).

Paragraph 1.6(d) reflects that the modern practice of law includes possession of information related to the representation of client in many forms, including information that is stored electronically or digitally, and therefore clarifies that V.R.Pr.C. 1.6 applies to the electronic transmission and storage of information relating to a representation, and makes explicit that the duty under Rule 1.6 is broader than avoiding affirmative disclosures of information relating to the representation of a client.

New V.R.Pr.C. 1.15A(b), regarding use of pooled interest-bearing trust accounts, provides additional protection to clients and third persons for whom lawyers hold funds in trust. New paragraphs (c) and (d) clarify that it is not solely a lawyer or law firm's pooled interest-bearing trust accounts, more commonly referred to as "IOLTA accounts" or "client trust accounts," that are subject to compliance reviews and audits. New comments [1] to [3] are added to explain the limited appropriate uses of client trust accounts.

The amendment to Rule 3.1 makes clear that a lawyer who is representing a client in a matter that could result in the client being placed on an order of hospitalization does not violate the rule by holding the State to its proof. The change conforms to the ABA Model Rule.

The amendment to Rule 4.4(b), regarding inadvertent receipt of data, replaces “document” with “information” and moves what was stated in comment [2] into the body of the rule, thereby clarifying a lawyer’s duties. Comment [4] is added to clarify that Rule 4.4(b) is limited to a lawyer’s ethical obligation. The rules of procedure might impose additional obligations or duties related to the receipt of documents or electronically stored information that were inadvertently produced.

The new comments [3] and [4] to V.R.Pr.C. 5.3 regarding nonlawyer assistants are taken from the ABA Model Rules of Professional Conduct. The comments address the fact that it has become increasingly common for lawyers to contract for services with persons and entities who are not employed by the lawyer or the lawyer’s firm, including vendors who store information related to the representation of a lawyer’s client. Lawyers must be mindful of the duty to ensure that nonlawyer assistants act in a way that comports with a lawyer’s professional obligations and responsibilities.

The addition of comment [22] to Rule 5.5, which concerns the unauthorized practice of law, addresses practice by lawyers working remotely. The comment indicates that lawyers who are not admitted in Vermont may practice remotely in other jurisdictions while physically present in Vermont if they comply with a list of restrictions, including not holding themselves out as being admitted in Vermont. The amendment is consistent with an ABA opinion on lawyers working remotely and the decisions of several other jurisdictions.

The amendment to comment [4] of Rule 8.3, regarding the reporting of misconduct, clarifies that inquiries of bar counsel are confidential and bar counsel is exempt from the reporting requirement of Rule 8.3 and must keep confidential all information related to inquiries and requests for guidance.

The amendment to Rule 8.4, which defines professional misconduct, conforms the rule with the ABA Model Rule and harmonizes Rule 8.4(b)’s definition of “serious crime” with the definition of “serious crime” that appears in Administrative Order 9, Rule 21(c).

f. [Promulgation Order Amending Rule 9\(b\) and \(g\)\(1\) of the Vermont Rules for Family Proceedings](#)

This Order was promulgated on September 13, 2022, effective November 14, 2022.

The amendments to Rule 9(b) and (g)(1) add email addresses if available to the contact information that a litigant is required to file with the court.

g. [Order Promulgating the Addition of Rule 1.1 to the Vermont Rules for Family Proceedings](#)

This Order was promulgated on September 13, 2022, effective November 14, 2022.

Rule 1.1 implements the provisions of Chapter 52A of Title 33, Youthful Offenders, 2017, No. 72 (Adj. Sess.). Section 7 of Act 72 directs the Vermont Supreme Court to consider the adoption of appropriate rules. For the most part, the provisions of Rule 1.1 track the procedural provisions outlined in statute. The Supreme Court’s Advisory Committee on Family Rules concluded that the consolidation of these provisions into a rule would enhance consistency of practice in youthful offender proceedings.

II. PROPOSED RULE AMENDMENTS

(NOTE: THE FOLLOWING AMENDMENTS HAVE BEEN PROPOSED AND HAVE NOT BEEN APPROVED BY THE SUPREME COURT.)

[Proposed Order Amending Vermont Rules for Public Access to Court Records 6\(b\)\(9\) and 11\(c\)](#)

The proposed amendment to Rule 6(b)(9)(A) clarifies the existing provision that exempts the complaint and affidavit from public access until defendant has an opportunity for a hearing. The revised rule provides that temporary orders granting relief are publicly accessible. The amended rule clarifies the public access status of the complaint, affidavit, and resulting order when relief is denied. Where temporary relief is denied and plaintiff does not pursue the case, the complaint, affidavit, and order denying relief remain nonpublic. Where temporary relief is denied and plaintiff does pursue the case, the order denying relief is not publicly accessible until the defendant has the opportunity for a hearing pursuant to statute.

The proposed amendments to Rule 6(b)(9)(B) and (C) implement the restrictions of public access created by V.R.F.P. 9(b) and (g)(1). The purpose of the family proceeding rules is to protect location and access information of the abuse-prevention proceeding plaintiff, and in a limited circumstance the defendant, from being accessible to the other party, the other party's lawyer, or the public.

The proposed amendment to Rule 11(c) reflects the fact that the Research and Information Services Division of the Court Administrator's office has been reorganized and renamed as the Technology Services Center.

Comments on these proposed amendments should be sent by **November 14, 2022**, to Hon. Timothy B. Tomasi, Chair of the Advisory Committee on the Rules for Public Access to Court Records, at the following address:

Honorable Timothy B. Tomasi, Chair
Timothy.Tomasi@vermont.gov

III. POSITION ANNOUNCEMENT

Vermont Judiciary Seeks Vermont Licensed Attorneys to Serve as Hearing Panel Counsel for the Professional Responsibility Program on a Contract Basis

Hearing Panel Counsel provides legal advice and support to the Professional Responsibility Program's hearing panels. The hearing panels are the Program's equivalent of the "trial courts" and preside over formal attorney disciplinary and disability proceedings. The State Court Administrator seeks proposals from Vermont-licensed attorneys to serve by special appointment to specific matters on a part-time schedule. For further information, please review this announcement:

[Hearing Panel Counsel Advertisement](#)

IV. ODYSSEY FILE & SERVE AND PUBLIC PORTAL INFORMATION

All Superior Courts, including the Environmental Division, the Judicial Bureau, and the Supreme Court are using Odyssey and accepting electronic filings through Odyssey File & Serve. Please use the following links to access Odyssey electronic filing and portal systems and for more information.

Reminders for OFS Users:

1) PDFs must be “flattened” prior to efile through Odyssey File & Serve

With the increased use in electronic signature tools, it is important for OFS filers to remember that all PDFs must be flattened prior to filing in OFS. In order to eFile a form-fillable PDF or a PDF that has been electronically signed, you must first save them as a flat file. Otherwise, the filing will fail and you will need to refile.

Follow the steps below to "flatten" a completed PDF:

1. Open the completed PDF.
 2. Right click on document and select Print. NOTE: if document opens in Adobe, Select File and select Print.
 3. Select the PDF printer. (The Adobe PDF printer is installed automatically with Adobe Acrobat. Numerous free PDF printer drivers are available for download from the Internet.)
 4. Select OK.
 5. Specify location to save the printed, "flattened" version of the form.
 6. Select Save
- 2) Attorneys must select the party they represent as the “person responsible for fees” in the Fee section of the filing process. Additionally, when the attorney represents more than one party, attorneys should continue to select the same party as the “person responsible for fees”; otherwise, the attorney will incur an additional efile use fee.

Odyssey File & Serve. Odyssey File & Serve (OFS) is the platform through which you electronically file with the courts. To access OFS, please visit <https://vermont.tylerhost.net/ofswb>

You can access user guides through the “User Guides” link in the “Self Help” window. You can also access docket-specific user guides and a new Frequently Asked Questions on the judiciary’s website at www.vermontjudiciary.org/efiling

For technical support regarding Odyssey File & Serve, please contact Tyler Technologies at 800-297-5377 or efiling.support@tylertech.com

If you have procedural questions about OFS, please email the judiciary at JUD.EFileSupport@vermont.gov

Odyssey Public Portal. The Odyssey Public Portal allows you to view your case files. To access the portal, please visit <https://publicportal.courts.vt.gov/Portal/> Before you can view your case files, you must first register in the portal and then request elevated access. The Public Portal User Guide contains instructions on how to register and request elevated access. You can read the user guide on our website at <https://www.vermontjudiciary.org/about-vermont-judiciary/public-portal>

For technical support regarding the Public Portal, please contact the Vermont Judiciary's HelpDesk at Jud.helpdesk@vermont.gov When emailing, please write "**Public Portal**" in the subject line.

V. FILING OF EXHIBITS FOR EVIDENTIARY HEARING

Per the 2020 Vermont Rules for Electronic Filing, all electronically filed documents (including exhibit lists and exhibits) must be submitted in PDF format. It is recommended that the exhibit list be filed in Odyssey File & Serve (OFS) as a "Lead Document" and that any PDF exhibits be filed as attachments to that exhibit list.

Multimedia files that cannot be converted to PDF format should be submitted by nonelectronic means on a DVD or USB flash drive (aka thumb drive) and can be mailed or delivered to the court. It is recommended that filers indicate this on the exhibit list being filed in OFS. Please note that while the courts are equipped to view common multimedia formats (such as .mp3, .mp4, .mpeg, .mov, .wmv files), the filer will have to provide compatible player software if an exhibit is in a proprietary multimedia format.

Finally, please remember that regardless of how an exhibit is filed, it is the filer's responsibility during a hearing to present the exhibits. During remote hearings, this means the filer must either assure that all witnesses have been provided with the marked exhibits in advance and have them available to view; or be able to share his or her screen to allow all participants to view the exhibit. If the exhibit is a video or audio file, the litigant must be prepared to play it during the hearing.

VI. MISCELLANEOUS

a. Court Forms

Court forms are constantly being updated. Please refer to the judiciary website for the most up-to-date forms, <https://www.vermontjudiciary.org/court-forms>

Please use the link below to report any form question, concern or issue <http://www.vermontjudiciary.org/website-feedback-form> or you can access our Website Feedback program at the bottom of each web page.

b. Obligation under A.O. 41

Attorneys are reminded that an "attorney must report to the State Court Administrator within thirty days any change of the office mailing or electronic mail address" and that "[n]otice sent to a reported address is sufficient even if not received by the attorney because of failure to report the proper address or failure of delivery not caused by the court." A.O. 41, § 4(c). To update changes in your contact information, please access your attorney account with the [Attorney Portal](#)

To ensure you continue to receive these emails, please add JUD.AttyLicensing@vermont.gov and JUD.CAOMemotoBar@vermont.gov to your Safe Senders list.

c. *eCabinet Registration*

Administrative Order No. 44 requires attorneys in active status to register up to three email addresses in **eCabinet** for purposes of receiving notices of hearing and other documents. *You may include staff email addresses in the three email addresses that you specify.*

If you have already registered in **eCabinet**, the email address(es) you provided as part of that process will be used.

If you have not already registered in **eCabinet**, please go to <https://efiling.eservices.crt.state.vt.us/> click **Register Now**, and follow the simple prompts. This website only works with Internet Explorer. Attorneys will need their attorney license numbers to register. Helpful information about the Attorney Email Registration process is also available on the *Electronic Filing* page of the judiciary website at <https://www.vermontjudiciary.org/about-vermont-judiciary/electronic-access/electronic-filing> Please contact jud.helpdesk@vermont.gov or call the Helpdesk at 802-828-4357 if you have difficulty accessing eCabinet or with any questions in the meantime.

You are also reminded that you are required to update the email address(es) and other contact information you have registered as soon as there are any changes, including changes to staff email addresses you may have included with your registration. To revise the information, please go to <https://efiling.eservices.crt.state.vt.us/> log into **eCabinet**, click “**Account**,” choose “**My Profile**,” and make the necessary changes to your contact information.

Updating information in the [Attorney Portal](#) or in **eCabinet** does not automatically notify the other. It is your responsibility to update both. If you are a member of the Vermont Bar Association, you will also need to separately notify the VBA.

To ensure you continue to receive these emails, please add JUD.AttyLicensing@vermont.gov and JUD.CAOMemotoBar@vermont.gov to your Safe Senders list.