

SUPREME COURT OF VERMONT  
OFFICE OF THE COURT ADMINISTRATOR

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TO: Members of the Vermont Bar

FROM: Patricia Gabel, Esq., State Court Administrator

RE: Promulgated, Proposed Rules and Miscellaneous Information

DATE: December 11, 2019

For your information, please find the following information:

- [Order Promulgating the 2020 Vermont Rules for Electronic Filing](#)
- [Order Promulgating Amendments to Rules 3, 5, 5.1, 6, 9, 10, 11, 12, 13, 28, 30, and 45.1 of the Vermont Rules of Appellate Procedure](#)
- [Order Promulgating Amendments to Rules 5 and 79 of the Vermont Rules of Civil Procedure and Rules 5 and 79 of the Vermont Rules of Probate Procedure](#)
- [Order Promulgating Amendments to Vermont Rules for Environmental Court Proceedings 3, 4, and 5, Vermont Rules of Civil Procedure 4, 10, 44.2, 45, 77, and 79.1, Vermont Rule of Probate Procedure 4 and 79.1, and Vermont Rule for Family Proceedings 15](#)
- [Proposed Order Amending Rule 807 of the Vermont Rules of Evidence](#)
- Updated Court Forms
- Obligations Under A.O. 41
- eCabinet Registration

## I. PROMULGATED RULE AMENDMENTS

### a. [Order Promulgating the 2020 Vermont Rules for Electronic Filing](#)

This Order was **promulgated on December 10, 2019; effective March 2, 2020.**

The 2020 Vermont Rules for Electronic Filing are designed to conform to the upcoming new Judiciary case management system (CMS). The CMS will have electronic filing and electronic casefiles and will be rolled out over time in the superior courts and the judicial bureau. Additions to these rules will be made when the new CMS is rolled out for the Supreme Court and other judiciary entities. The existing 2010 Vermont Rules for Electronic Filing, which were designed for eCabinet, will remain in effect and applicable to dockets where they are currently in use. Once the new CMS is rolled out in all the locations and dockets where eCabinet has been employed, the 2010 rules will be repealed.

Extensive instructions will supplement the rules and will often appear on screens for electronic filing and the viewing of electronic case files. The user must follow these instructions for electronic filing, service after commencement, and viewing of files. In addition to the eFiling system, the public and parties will be able to view electronic case files, either by remote access and/or on terminals at court houses, through a public portal. To view nonpublic documents a separate registration for that portal and approval of elevated status will be required.

The adoption of these rules is coordinated with the adoption of extensive amendments to the Vermont Rules for Public Access to Court Records to enable, with necessary restrictions, the public and filers to view electronic case files when a filing is accepted. Those rules contain specific directions for filers to comply with requirements making certain records and information inaccessible to the public. Filers should consult the public access rules, as well as these rules, to be sure a filing complies.

- b. [Order Promulgating Amendments to Rules 3, 5, 5.1, 6, 9, 10, 11, 12, 13, 28, 30, and 45.1 of the Vermont Rules of Appellate Procedure](#)

This Order was **promulgated on December 10, 2019; effective March 2, 2020.**

The amendments to the appellate rules update language in anticipation of the new case management system, which will be rolled out in phases throughout the state concurrent with electronic filing and electronic case files. The rollout will initially be in divisions of the superior court, and the Supreme Court will be at the end of the rollout period. The amendments to the appellate rules are made to accommodate appeals from cases that were filed under the new case management system and have electronic case files. When the case management system is implemented in the Supreme Court, the appellate rules will be amended further. The rules are amended in several places to use “transmit” instead of “mail” to allow electronic or other types of transmission of documents. The term “docket entries” is replaced with the more general term “record of actions.” Various rules have been amended to clarify when references are to the 2010 Vermont Rules for Electronic Filing.

Rules 28 and 30 are amended to specify how to refer to the record in cases filed under the 2020 Vermont Rules for Electronic Filing and to clarify that no printed case is required when there is an electronic case file under either the 2010 or 2020 Vermont Rules for Electronic Filing. In cases with no electronic case file, a printed case must still be filed.

- c. [Order Promulgating Amendments to Rules 5 and 79 of the Vermont Rules of Civil Procedure and Rules 5 and 79 of the Vermont Rules of Probate Procedure](#)

This Order was **promulgated on December 10, 2019; effective March 2, 2020.**

The amendments to V.R.C.P. 5 and V.R.P.P. 5 are made to conform the rules to the 2020 Vermont Rules for Electronic Filing. The amendments explain the certificate of service requirements when documents are filed under the new efile rules. The amendments clarify when references are to the 2010 Vermont Rules of Electronic Filing.

The amendment removes V.R.C.P. 79(a)(1) and V.R.P.P. 79(c) because the custodian of records is as specified in V.R.P.A.C.R. 3(c), effective July 1, 2019.

- d. [Order Promulgating Amendments to Vermont Rules for Environmental Court Proceedings 3, 4, and 5, Vermont Rules of Civil Procedure 4, 10, 44.2, 45, 77, and 79.1, Vermont Rule of Probate Procedure 4 and 79.1, and Vermont Rule for Family Proceedings 15](#)

This Order was **promulgated on December 10, 2019; effective March 2, 2020.**

The amendments to various rules are designed to conform the rules to the adoption of the new case management system and the 2020 Vermont Rules for Electronic Filing. The new case management will be rolled out across the state in phases. Until the new case management system and electronic filing are fully implemented, different divisions of the superior court will be operating under different electronic filing rules. The Environmental Division currently has

electronic filing under the 2010 Vermont Rules for Electronic Filing and so references are amended to specify that those rules are applicable. After the Court Administrator directs that electronic filing under the 2020 Vermont Rules for Electronic Filing will begin in the Environmental Division, the 2010 Vermont Rules for Electronic Filing will no longer apply, and the Rules for Environmental Court Proceedings will require revision. The amendments clarify when cross references in the environmental, civil, probate, and family rules are to the 2010 Vermont Rules for Electronic Filing.

## II. PROPOSED RULE AMENDMENTS

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

### [Proposed Order Amending Rule 807 of the Vermont Rules of Evidence](#)

This proposed amendment responds to the Vermont Supreme Court’s decision in State v. Bergquist, 2019 VT 17, \_\_ Vt. \_\_, 211 A.3d 946, by correcting Rule 807’s constitutional deficiencies described therein. The proposed amendments to subdivisions (c) and (f) ensure the Rule comports with the minimum constitutional standard set in Maryland v. Craig, 497 U.S. 836 (1990), as interpreted in Bergquist.

In criminal cases, the rule balances an important public policy interest—protecting certain witnesses in defined, vulnerable categories, from the trauma of testifying—against the defendant’s constitutional right to confront accusers. To comport with the Sixth Amendment, as interpreted in Craig, the proposed amendment requires the court to make its findings at least by preponderance of the evidence, without precluding argument for the application of a stricter standard of evidence. To make the showing of necessity for these proceedings, the proposal requires the State to show that the witness would be traumatized not by the courtroom or other aspects of providing testimony, but by the presence of the defendant (or by defendant’s image when subdivision (e) applies). The State must also show that the witness would suffer a level of emotional trauma that is more than mere nervousness, excitement, or some reluctance to testify.

The proposed amendment to subdivision (a) corrects an unintended effect of an amendment made in 2015. The purpose of that amendment was to make the rule consistent with the Legislature’s efforts to eliminate offensive language from the Vermont Statutes, however, the term “psychiatric disability” provided by 1 V.S.A. § 147 encompasses a wider arc of impairments than the original term used by the Rule, which was “mental illness,” as still defined in 18 V.S.A. § 7101(14). Thus, the language is amended to again refer to “mental illness.”

Comments on these proposed amendments should be sent by **February 10, 2020**, to Elizabeth Miller, Esq., Chair of the Advisory Committee on Rules of Evidence, at the following address:

Elizabeth Miller, Esq.  
Dunkiel Saunders  
91 College Street  
Burlington, VT 05401  
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### III. 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); see A.O. 44, § 1.

Please email those changes to [JUD.AttyLicensing@vermont.gov](mailto:JUD.AttyLicensing@vermont.gov). Your cooperation is very much appreciated.

To ensure you continue to receive these emails, please add [JUD.AttyLicensing@vermont.gov](mailto:JUD.AttyLicensing@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. eCabinet registration is required whether you practice in court or not.*

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. 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](mailto:jud.helpdesk@vermont.gov) or call the Helpdesk at 802-828-4357 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.

Notification to [JUD.AttyLicensing@vermont.gov](mailto:JUD.AttyLicensing@vermont.gov) or in **eCabinet** of a change to your contact information does not automatically notify the other. It is your responsibility to notify both. If you are a member of the Vermont Bar Association, you will also need to separately notify the VBA.