

SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR

PATRICIA GABEL, ESQ.
State Court Administrator
patricia.gabel@vermont.gov



www.vermontjudiciary.org

Mailing Address
Office of the Court Administrator
109 State Street
Montpelier, VT 05609-0701

Telephone (802) 828-3278
FAX: 802 828-3457

TO: Members of the Vermont Bar

FROM: Patricia Gabel, Esq., State Court Administrator

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

DATE: December 13, 2021

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

For your information, please find:

- [*Order Promulgating Amendments to Rules 3.1, 4, 56, and 84 of the Vermont Rules of Civil Procedure, and Abrogating the Appendix of Forms to those Rules*](#)
- [*Order Promulgating Amendments to Rules 43\(e\) and 54\(d\)\(2\)\(C\) of the Vermont Rules of Civil Procedure*](#)
- [*Promulgation Order Adding Rule 11\(e\) to the Vermont Rules of Civil Procedure*](#)
- [*Order Promulgating Amendments to Rule 16.3\(b\)\(3\) of the Vermont Rules of Civil Procedure*](#)
- [*Proposed Order Amending V.R.C.P. 55 and 62*](#)
- [*Proposed Order Amending V.R.C.P. 68*](#)
- [*Proposed Order Amending V.R.S.C.P. 7 and 8*](#)
- [*Proposed Order Amending V.R.C.P. 5, 6\(a\)\(4\), 29, and 79.1*](#)
- *Odyssey File and Serve and Public Portal Information*
- *Filing of Exhibits*
- *Updated Court Forms*
- *Obligations Under A.O. 41*
- *eCabinet Registration*

I. PROMULGATED RULE AMENDMENTS

- a. [*Order Promulgating Amendments to Rules 3.1, 4, 56, and 84 of the Vermont Rules of Civil Procedure, and Abrogating the Appendix of Forms to those Rules*](#)

This Order was promulgated on **December 13, 2021, effective February 14, 2022.**

Rule 3.1(b)(2) is amended to substitute “the applicant’s” for “household” to achieve internal consistency of usage throughout Rule 3.1 and to provide clear and consistent guidance to the

Court Administrator in developing forms to implement the rule. The party seeking waiver of fees and payment of costs is denoted “the applicant” everywhere else in the rule. The retention of “household” to describe income to be counted in paragraph (b)(2) when the rule was generally amended in 2020 was inconsistent with the general purpose of the 2020 amendments and created a confusing ambiguity in the application of the rule.

Rule 56 is amended to delineate the timing and the content of motions for summary judgment, oppositions to summary judgment motions, and motions in reply to opposition. Amended Rule 56(b) is amended to provide in one place the filing times for the three principal procedural steps for which amended Rule 56 provides. Amended Rule 56(c) requires that responses to the movant’s statement of undisputed facts are to be provided in numbered paragraphs corresponding to those of the movant’s statement, and that statements of additional facts—disputed or undisputed—be submitted in a separate statement, with numbered paragraphs. These provisions respond to prior concerns that nonmoving parties were causing confusion by incorporating additional material in their oppositions to the movant’s statement.

Rules 4 and 84 are amended concurrently with the abrogation of the Appendix of Forms. Rule 84 and the Appendix of Forms were originally adopted with the Vermont Rules of Civil Procedure in 1971 on the model of the 1938 Federal Rules of Civil Procedure. Federal Rule 84 and the federal Appendix of Forms were abrogated in 2015. For at least five years, the Vermont Court Administrator’s office has been publishing new and amended forms on the Judiciary website in a “Forms Library,” which now contains a great number and wide variety of detailed forms. The present amendment of Rule 84 establishes the Judiciary website as the primary source of forms and reflects the reality that approval is now the Court Administrator’s responsibility. The amended rule continues to indicate that the forms are sufficient under the rules and provide the standards of simplicity and brevity.

b. [Order Promulgating Amendments to Rules 43\(e\) and 54\(d\)\(2\)\(C\) of the Vermont Rules of Civil Procedure](#)

This Order was promulgated on **December 13, 2021, effective February 14, 2022.**

Rules 43(e) and 54(d)(2)(C) are amended to replace the references to V.R.C.P. 78, which was abrogated by order of June 7, effective August 9, 2021, with a reference to V.R.C.P. 7(b), added by that order and embodying the provisions of V.R.C.P. 78(b)(2) in revised form.

c. [Promulgation Order Adding Rule 11\(e\) to the Vermont Rules of Civil Procedure](#)

This Order was promulgated on **December 13, 2021, effective February 14, 2022.**

Rule 11(e) is added at the suggestion of the Supreme Court to make permanent an emergency provision permitting use in a civil action of remote means to obtain attestations of parties. The Rule applies whenever these rules otherwise require the filing of a statement made under oath, an affidavit, or a notarized document. It is a narrower version of 28 U.S.C. § 1746, which applies to statutory requirements as well.

d. [Order Promulgating Amendments to Rule 16.3\(b\)\(3\) of the Vermont Rules of Civil Procedure](#)

This Order was promulgated on **December 13, 2021, effective February 14, 2022.**

Rule 16.3(b)(3) is amended, pursuant to the Supreme Court’s directive under Administrative Order 49, ¶ 13, that the Civil Rules Advisory Committee “consider whether a permanent change to the rules relating to participation in remote mediation is advisable.”

Prior to these amendments, Rule 16.3(b)(3) required parties and counsel to attend a mediation unless they “stipulate otherwise or the court, for good cause, excuses participation or authorizes telephone participation. The present amendments retain the basic structure of Rule 16.3(b) that in-person attendance is the default position, with an option for remote mediation if the parties so stipulate or the court, in its discretion, so orders or excuses a party.

II. PROPOSED RULE AMENDMENTS

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

a. *[Proposed Order Amending V.R.C.P. 55 and 62](#)*

The proposed amendment to Rule 55 resolves for civil actions the problem that there is no requirement that the party who has obtained a default judgment serve a copy of that judgment on the party against whom the judgment was entered. The problem had been addressed in a 2020 series of amendments to the Vermont Rules of Small Claims Procedure. Proposed Rule 55(d) is added to make specific the responsibility of a party who has obtained a default judgment to serve a copy of the judgment on the defaulting party and file proof of such service.

Comments on these proposed amendments should be sent by **February 14, 2022**, to Allan Keyes, Esq., Chair of the Advisory Committee on the Rules of Civil Procedure, at the following address:

Allan Keyes, Esq., Chair
Advisory Committee on the Rules of Civil Procedure
ark@rsclaw.com

b. *[Proposed Order Amending V.R.C.P. 68](#)*

The proposed amendment to Rule 68 allows plaintiffs to make offers of judgment. The change was initially adopted as an emergency amendment to make the practice more widely available at a time when in-person civil jury trials were largely on hold pursuant to Administrative Order No. 49, ¶ 24. The present amendment makes the change permanent.

Comments on these proposed amendments should be sent by **February 14, 2022**, to Allan Keyes, Esq., Chair of the Advisory Committee on the Rules of Civil Procedure, at the following address:

Allan Keyes, Esq., Chair
Advisory Committee on the Rules of Civil Procedure
ark@rsclaw.com

c. [Proposed Order Amending V.R.S.C.P. 7 and 8](#)

The proposed amendment to V.R.S.C.P. 7 addresses issues that have been plaguing the small claims docket. The proposed amendment requires personal service of judgments before financial disclosure hearings can be held and extends the time period between new financial disclosure hearings. The proposed amendments also include some simple language changes to make the rules clearer. Simultaneously adopted amendments of V.R.S.C.P. 8 modernize and simplify the contempt process for failure to appear at a disclosure hearing.

Comments on these proposed amendments should be sent by **February 14, 2022**, to Allan Keyes, Esq., Chair of the Advisory Committee on the Rules of Civil Procedure, at the following address:

Allan Keyes, Esq., Chair
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ark@rsclaw.com

d. [Proposed Order Amending V.R.C.P. 5, 6\(a\)\(4\), 29, and 79.1](#)

Rule 5 is amended at the request of the Supreme Court to make permanent certain provisions of Administrative Order 49 that permit filing and serving documents by email in certain circumstances.

Proposed Rule 5(a) is carried forward and sets forth the service requirement for all documents subsequent to the summons and complaint or for which the rules may provide another mode of service.

Proposed new Rule 5(b)(1) defines the five methods of service—using the efilings system, email, delivery, mailing, and leaving with the clerk.

Proposed new Rule 5(b)(2) sets forth five required or permitted methods of service. Subparagraph (2)(A) makes clear that service between electronic filers must be made through the electronic filing system, or by another method agreed between the parties, as provided in Rule 11(d) of the 2020 Vermont Rules for Electronic Filing.

Proposed new Rule 5(b)(2)(B) delineates the methods of service for nonelectronic filers, which includes self-represented parties or other participants that have not elected or are not required to electronically file. Those individuals may serve or be served by delivery, mailing, or commercial carrier. Email service may be made in three circumstances. First, email service can be used if a self-represented party files a notice of appearance and provides both an email address and consent to be served at the email in accordance with simultaneously amended Rule 79.1(d). Second, the parties may agree to service by email in a signed writing filed with the court. Last, if a non-filer does not have a valid physical or postal address, service can be made by email even if consent was not provided in the notice of appearance. The rule formerly allowed for service by leaving with the clerk where no address was known. Leaving with the clerk is now authorized by Rule 5(b)(2)(B)(iii) if no valid physical, postal, or email address is known.

Proposed new Rule 5(b)(2)(C) addressed efilers who have not properly created a service contact on the public list as required by Rule 4(b) of the 2020 Vermont Rules for Electronic Filing. In that

instance, other filers cannot serve by using the electronic filing system. The rule allows service by delivery or mailing, or by email if agreed by the parties in a writing filed with the court.

Proposed new Rule 5(b)(2)(D) pertains to service of discovery documents that are not filed with the court. Under this provision efilers must serve discovery documents by using the electronic filing system. Service by or on non-efilers may be made by mailing or delivery. In either case, the parties can agree on a different method of service. Because service of discovery documents is less formalized, the agreement is not required to be signed or filed with the court, in contrast to agreements for alternate service of documents filed with the court.

The standards for email filing are in new Rule 5(e)(4) and Rule 5(e)(5) specifies the filing date for documents depending on how they are filed.

Rule 5(e)(6) carries forward former Rule 5(e)(4), with a sentence making clear that, if it is available, an inmate may file and serve by email as provided for other litigants.

Rule 5(e)(7) carries forward former Rule 5(e)(5) with the elimination of a reference to the 2010 Vermont Rules for Electronic Filing, which are obsolete.

Rule 5(f) (form of papers and documents) is carried forward with minor amendments and broken into two paragraphs to address nonelectronically and electronically filed documents separately.

Rules 5(g) (separation of nonpublic data), and (h) (certificate of service) are carried forward without change.

New Rule 5(h) incorporates several definitions pertaining to filing and service from the 2020 Vermont Rules for Electronic Filing.

The proposed amendment to Rule 6(a)(4) is made in conjunction with Rule 5(e)(5)(B) to specify that the last day for filing by email ends at midnight in the court's time zone.

The proposed amendment to Rule 29 conforms to concurrent changes in Rule 5 regarding service of discovery materials. Under new Rule 5(b)(2)(D), discovery between electronic filers must be made by using the electronic filing system unless the parties consent to service by another method such as through email or file sharing. Discovery on or by nonelectronic filers is made by mailing or delivery. Again, email or another method can be used if the parties agree.

The proposed amendment to Rule 79.1 clarifies what is required from a self-represented party. The title of the rule is amended to indicate that it contains provisions related to self-represented parties. The headings of subdivisions (b), (c), and (d) are amended for clarity. Subdivision (b) is amended to make the contact information on a notice of appearance the same as for Rule 11(a).

Rule 79.1(d) requires self-represented parties to file and sign a Notice of Appearance for self-represented party. The form contains contact information to facilitate both service by other parties and notice by the court. Under the proposed rule, self-represented parties can consent to receive service by email. This conforms to a contemporaneous amendment to Rule 5(b)(2)(B)(ii).

Rule 79.1(i), which required attorneys to provide an eCabinet registration number, is deleted as obsolete.

Comments on these proposed amendments should be sent by **February 14, 2022**, to Allan Keyes, Esq., Chair of the Advisory Committee on the Rules of Civil Procedure, at the following address:

Allan Keyes, Esq., Chair
Advisory Committee on the Rules of Civil Procedure
ark@rsclaw.com

III. ODYSSEY FILE & SERVE AND PUBLIC PORTAL INFORMATION

As of April 1, 2021, there is a new efilings use fee structure for users of Odyssey File & Serve (OFS). The new per case fee is \$14 per filer or firm, payable upon a party's first filing after April 1, 2021. This replaces the previous \$5.25 fee per envelope model. The Judiciary encourages all practitioners and others interested to learn more at www.vermontjudiciary.org/efiling

Currently, all trial courts, 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.

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 efilings use fee.

Odyssey File & Serve. Odyssey File & Serve (OFS) is the platform through which you will 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 <https://www.vermontjudiciary.org/about-vermont-judiciary/electronic-access/electronic-filing> 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.

Efiling Training Opportunities

Watch a pre-recorded efilings training webinar from the Vermont Judiciary. The judiciary's NG-CMS project team recorded a demonstration of how to use Odyssey File & Serve that you can view here: https://www.youtube.com/watch?v=ke2ouMDK4VQ&feature=emb_title

Practice setting up your firm and submitting filings. For hands on practice, you can create your firm, register users, and begin filing practice cases in the Vermont “**Stage**” environment. Be sure that the web address includes the word “stage” (<https://vermont-stage.tylerhost.net/ofswab>). The Stage environment is available any time. Please note that submissions will only be reviewed periodically, so you may not get a timely response on whether your practice submissions have been accepted. The Stage environment is available now only for familiarity and direct hands-on experience and is not a substitute for registering on the actual efilings site when you are ready.

V. FILING OF EXHIBITS

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 CD, 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 works best with 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 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.