

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

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TO: Members of the Vermont Bar

FROM: Scott Griffith, Interim State Court Administrator

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

DATE: April 18, 2022

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For your information, please find:

- [Promulgation Order Amending V.R.C.P. 50\(b\)](#)
- [Promulgation Order Amending V.R.C.P. 68](#)
- [Promulgation Order Amending V.R.S.C.P. 7 and 8](#)
- [Promulgation Order Amending Rules 2\(a\)\(2\) and \(3\), 6\(a\) and \(c\)\(2\)\(3\), 6.1\(a\) and \(c\)\(1\), and 8\(h\) of the Vermont Rules for Family Proceedings](#)
- [Promulgation Order Amending Rule 18\(d\)\(2\) of the Vermont Rules for Family Proceedings](#)
- [Promulgation Order Adding V.R.Cr.P. 11\(a\)\(4\)](#)
- [Promulgation Order Amending A.O. 14](#)
- [Proposed Order Amending V.R.A.P. 33.1 and 34](#)
- [Proposed Order Amending A.O. 41 § 4 and Adding § 18](#)
- [Proposed Order Amending A.O. 9, Rules 7, 8, 20 and 26](#)
- *Odyssey File and Serve and Public Portal Information*
- *Filing of Exhibits*
- *Miscellaneous*

I. PROMULGATED RULE AMENDMENTS

a. [Promulgation Order Amending V.R.C.P. 50\(b\)](#)

This Order was promulgated on **April 18, 2022, effective June 20, 2022.**

V.R.C.P. 50(b) is amended in response to the Vermont Supreme Court's request in Blondin v. Milton Town School District, 2021 VT 2, ¶ 26 n. 10, __ Vt. __, 251 A.3d 959, that the Civil Rules Committee consider whether that rule "should be amended to be consistent with the federal rule and potentially to

allow consideration of pure questions of law on appeal absent renewal following judgment.” The amendment to V.R.C.P. 50(b) limits the requirement to renew a motion for judgment as a matter of law when it is a sufficiency-of-the-evidence claim.

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

This Order was promulgated on **April 18, 2022, effective June 20, 2022.**

Rule 68 is amended to allow plaintiffs to make offers of judgment where the rule previously only allowed such offers by defendants. The change was initially adopted as part of Administrative Order 49 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.

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

This Order was promulgated on **April 18, 2022, effective June 20, 2022.**

V.R.S.C.P. 7 is amended to address issues that have been plaguing the small claims docket. The amendments require personal service of judgments before financial disclosure hearings can be held and extend the time period between new financial disclosure hearings. The 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 financial-disclosure hearing. The amendments clarify the basis for a contempt finding and narrow the remedies available for contempt. They also simplify the process for creditors seeking a contempt order.

d. [Promulgation Order Amending Rules 2\(a\)\(2\) and \(3\), 6\(a\) and \(c\)\(2\)\(3\), 6.1\(a\) and \(c\)\(1\), and 8\(h\) of the Vermont Rules for Family Proceedings](#)

This Order was promulgated on **April 18, 2022, effective June 20, 2022.**

Rule 2(a)(2) is amended to eliminate the reference to V.R.C.P. 78(a), (Motion Days) which was abrogated by order of June 7, effective August 9, 2021. Rule 2(a)(3) is amended to replace the reference to V.R.C.P. 78(b) with a reference to V.R.C.P. 7(b)(4) (Memorandum in Opposition), added by that order and embodying the provisions of former V.R.C.P. 78(b)(1) in revised form.

Provisions of Rules 6 and 6.1 are deleted because the probate rules now contain provisions on the appointment of guardians and attorneys in probate proceedings. See V.R.P.P. 80.9 (Representation by Guardians ad Litem of Minors) and V.R.P.P. 80.10 (Representation by Attorneys and Guardians ad Litem of Adults in Specified Proceedings). In addition, the reference to the title of 18 V.S.A. Chapter 206 is amended to be consistent with legislation enacted in 2014. 2013, No. 96 (Adj. Sess.), § 114.

Rule 6.1(c)(1) is amended to replace the reference to V.R.C.P. 78(b) (Disposition of Written Motions With or Without Hearing), which was abrogated by order of June 7, effective August 9, 2021, with a reference to V.R.C.P. 7(b)(6) (Evidentiary Hearings) added by that order and embodying its relevant provisions in revised form.

Rule 8(h) is amended to eliminate the reference to V.R.C.P. 78 (Motion Day), which was abrogated by order of June 7, effective August 9, 2021. All relevant provisions of the former V.R.C.P. 78 are now incorporated in V.R.C.P. 7.

e. [Promulgation Order Amending Rule 18\(d\)\(2\) of the Vermont Rules for Family Proceedings](#)

This Order was promulgated on **April 18, 2022, effective June 20, 2022.**

The amendment to Rule 18(d)(2) clarifies that mediation can take place either in person or using remote technology.

A.O. 49 was initially issued March 16, 2020, in response to the state of emergency resulting from the pandemic. Paragraph 13 of A.O. 49 authorized remote participation in mediation by video or telephone without a stipulation or court order. Further, in anticipation that at some point A.O. 49 would no longer be necessary, the Supreme Court requested that the Advisory Committee on Rules for Family Proceedings consider whether there should be a permanent change to Rule 18 related to remote participation. After considering responses from attorneys who practice family law to a Vermont Bar Association survey and responses from family mediators, the Committee concluded that both in person and remote participation in mediation should be permissible in family proceedings subject to V.R.F.P. 18 at the discretion of the mediator or by order of the court.

f. [Promulgation Order Adding V.R.Cr.P. 11\(a\)\(4\)](#)

This Order was promulgated on **April 18, 2022, effective June 20, 2022.**

The addition of Rule 11(a)(4) provides an additional procedure whereby a defendant may preserve a post-conviction relief (PCR) challenge to a predicate conviction while pleading guilty or no contest to an enhanced offense, where the State has not consented to preservation of the challenge under the terms of Rule 11(a)(3). The amendment provides that, with the approval of the court, a defendant may preserve a PCR challenge to a predicate conviction when entering a plea of guilty or nolo contendere even in cases where there is no plea agreement, or consent to the preservation otherwise given by the State, by stating on the record at the change-of-plea hearing an intent to challenge one or more of the convictions through a PCR petition, specifically identifying the convictions to be challenged, and stating the basis for the challenges.

g. [Promulgation Order Amending A.O. 14](#)

This Order, **promulgated on April 18, 2022, effective immediately**, replaces Justice Robinson with Justice Waples as the Justice responsible for entertaining motions for Area III.

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.A.P. 33.1 and 34](#)

The proposed amendments to Rule 33.1 and 34 update provisions regarding remote oral argument. Because of the health concerns posed by the COVID-19 pandemic, the Vermont Supreme Court began

holding remote oral arguments in April 2020. The arguments were conducted using Webex with Justices, attorneys, and self-represented parties appearing by video or audio. Public access to the remote oral arguments was provided by a live stream. The Court conducted a survey of members of the bar on attorneys' experiences with remote oral argument. Many respondents reported that remote argument was an efficient use of time and was a good balance between service and cost to the client. Other respondents preferred argument in the courtroom and missed the formality of in-person argument. The majority of respondents indicated they would choose in-person for full-Court arguments and remote for hearings before a three-Justice panel.

Rule 33.1(b)(2) is added to default to remote oral argument before a three-Justice panel. An in-person oral argument is available under (b)(3) if the parties file a stipulation or a party files a motion and demonstrates good cause. Under new proposed Rule 34(c), the default is that oral arguments before the full Court are scheduled for in-person participation. A remote oral argument is available under (d) if the parties file a stipulation or a party files a motion and demonstrates good cause. In either case, the stipulation or motion must be filed by the deadline set for requesting oral argument. This advance notice is necessary so that the case can be properly calendared for in-person or remote hearing. An in-person hearing is not available when one party is incarcerated and self-represented.

Former 34(c)-(j) are redesignated (e)-(l).

Comments on these proposed amendments should be sent by **June 20, 2022**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
emily.wetherell@vermont.gov

b. [Proposed Order Amending A.O. 41 § 4 and Adding § 18](#)

The proposed amendments to Administrative Order 41 include provisions regarding coverage of malpractice insurance. A joint committee made of members from the Professional Responsibility Board and the Vermont Bar Association met several times, studied the approaches of several jurisdictions, and heard from a variety of individuals, including attorneys involved in attorney discipline and malpractice cases, and representatives of title and malpractice insurers. The committee proposed that the A.O. 41 be amended to require that the annual licensing statement include a section requiring lawyers to disclose their insurance status. New § 4(a)(8) implements that requirement. New § 18 provides details of the required disclosure, exempting government attorneys, in-house counsel, and attorneys not on active status. Section 18(d) provides that the information regarding insurance coverage is publicly available, but delays public availability until after a full license renewal period has passed. For example, if the rule takes effect in 2022 after the July 1 renewal date, then the information will not be publicly available until after July 1, 2024, so that it will not appear that some attorneys are uninsured when, in fact, they have not yet had an opportunity yet to report their insurance coverage.

Comments on this proposed amendment should be sent by **June 20, 2022**, to Michael Kennedy, Bar Counsel, Professional Responsibility Program, at the following address:

Michael Kennedy, Bar Counsel
Michael.Kennedy@vermont.gov

c. [Proposed Order Amending A.O. 9, Rules 7, 8, 20 and 26](#)

The proposed amendment to Rule 7(B) rescinds the limitation on the number of terms that an Assistance Panel member may serve. Given the nondisciplinary format and goals of the Bar Assistance Program, the value of experienced members, and the relatively small pool of potential members, there is no reason to limit terms.

The proposed amendment to Rule 7(C) rescinds the requirement that at least one member of an Assistance Panel be a current member of the Board. With only seven volunteer members, this requirement puts an unreasonable expectation on Board members' time. Board members remain eligible to volunteer to serve as members of assistance panels.

The proposed amendments to Rule 8(A) and (B) clarify the scope of the confidentiality of all information, communications, and records received and generated by the Bar Assistance Program. Nearly all information disclosed to or by the Bar Assistance Program or otherwise maintained within the Bar Assistance Program is confidential.

Proposed new paragraph (C) is added to clarify that all information, communications, and records related to matters considered by Assistance Panels are confidential.

Proposed new paragraph (D) is added to clarify the situations in which otherwise confidential information, communications, or records must be disclosed. Paragraph (D) loosely tracks Vermont Rule of Professional Conduct 1.6(b) and is intended to clarify that Bar Counsel and the Bar Assistance Program must disclose information in the specified situations, as would a lawyer in a lawyer-client relationship.

Old paragraph (C) is relabeled a paragraph (E) and is amended for clarity and to strengthen the confidentiality of information, communications, and records.

Old paragraph (D) is relabeled as paragraph (F) and is amended to clarify the situations in which otherwise confidential information, communications, or records may be disclosed. Paragraph (F) loosely tracks V.R.Pr.C. 1.6(c) and is intended to permit Bar Counsel or the Bar Assistance Program to disclose information in situations in which a lawyer would be permitted to do so in a lawyer-client relationship.

Old paragraph (E) is relabeled as paragraph (G) and is amended to reflect that, on occasion, the Professional Responsibility Program might contract with an attorney to serve when Bar Counsel has a conflict of interest or is otherwise unable to serve.

Old paragraph (F) is relabeled as paragraph (H) and is amended make clear that the confidentiality provisions of Rules 5, 6, and 7 encompass all who might work or volunteer in or for the Bar Assistance Program.

The proposed amendment to Rule 20 reflects the 2021 amendments that created the role of Screening Counsel.

The proposed amendment to Rule 26(D) conforms with paragraph B and to clarify that lawyers who are suspended for 6 months or longer must petition for reinstatement to the active practice of law. By contrast, lawyers who are suspended for less than 6 months may resume practicing upon the expiration of the suspension.

Comments on these proposed amendments should be sent by **June 20, 2022** to Michael Kennedy, Bar Counsel, Professional Responsibility Program, at the following address:

Michael Kennedy, Bar Counsel
Michael.Kennedy@vermont.gov

III. 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 efileing 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 efileing 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/ofswweb>

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.

IV. 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.

V. 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.