

**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 & Proposed Rules, Odyssey File and Serve and Public Portal Information, Expansion of the Vermont Digital Evidence Portal to Bennington, Rutland and Windham Criminal Courts, Filing of Exhibits & Other Miscellaneous Info

DATE: October 10, 2023

For your information, please find:

- *Vermont Digital Evidence Portal*
- *Promulgation Order Amending A.O. 9, Rule 14.A*
- *Promulgation Order Amending A.O. No.11*
- *Promulgation Order Amending A.O. No. 50*
- *Promulgation Order Amending V.R.P.A.C.R. 2, 5(i), 6(a)(b)(c), 7(a) and 9(a)(b)*
- *Promulgation Order Amending V.R.A.P. 28(e) and 30*
- *Promulgation Order Amending V.R.C.P. 64*
- *Promulgation Order Amending V.R.Cr.P. 47(b) and (c) and 45(d)*
- *Proposed Order Amending the Vermont Rules of Evidence*
- *Proposed Order Amending V.R.C.P. 4(c), (d), (e), and (f), 55, 62(b), and 80.1(f)*
- *Proposed Order Abrogating V.R.C.P. 9.3*
- *Proposed Order Amending V.R.C.P. 11(a)*
- *Proposed Order Amending V.R.A.P. 3(e) and 27(a)(3)*

To ensure that you continue to receive emails from the judiciary, please add JUD.AttyLicensing@vermont.gov, JUD.CAOMemotoBar@vermont.gov and JUD.AutomatedCourtEmail@vermont.gov to your Safe Senders list. Thank you.

I. VERMONT DIGITAL EVIDENCE PORTAL

Starting October 16, 2023, any digital multimedia exhibits filed in the Bennington, Rutland and Windham Criminal courts must be filed via the Vermont Digital Evidence Portal (VDEP). VDEP is a new online platform that will allow attorneys and case parties to electronically submit and share digital multimedia (audio & video) files for use as exhibits in trials and other evidentiary hearings. This platform is already being used in the Addison and Windsor Criminal courts. Please visit [Vermont Digital Evidence Portal | Vermont Judiciary](#) for more information about how to use VDEP

including a user guide and video of our training for attorneys and litigants. Any technical questions can be directed to jud.helpdesk@vermont.gov.

II. PROMULGATED RULE AMENDMENTS

a. *Promulgation Order Amending A.O. 9, Rule 14.A.*

<https://www.vermontjudiciary.org/PROMULGATED-AO9-Rule14A--STAMPED>

This Order was promulgated on **October 10, 2023; effective January 1, 2024.**

The amendment clarifies that if a disciplinary or disability matter is assigned to a hearing panel before the expiration of a member's term, a member whose term expires during the matter may serve to the conclusion of the matter.

b. *Promulgation Order Amending Administrative Order No. 11*

<https://www.vermontjudiciary.org/PROMULGATED-AO11--STAMPED>

This Order was promulgated on **October 10, 2023; effective January 1, 2024.**

The amendments to A.O. 11 § 1 update the list of rules committees to which the order explicitly applies to add the Advisory Committee on Rules for Electronic Filing, which was made permanent in September 2022. The list of rules in § 1 is also updated to add the Vermont Rules for Environmental Court Proceedings, Vermont Rules for Electronic Filing, Rules of Small Claims Procedure, and Rules for Mandatory Continuing Legal Education.

The amendment to § 5 updates the language regarding publishing a notice of rule-making by the Court Administrator. In addition to publication in a newspaper, the Court Administrator may provide public notice through the Judiciary website, social media, and on-line forums.

The amendment to § 7(b) replaces “tape recording” with “transcript or audio recording” to modernize the language given current technology.

New § 9 is added to provide guidance regarding the effective date for rules. Section 9 provides that ordinarily rules will be adopted with an effective date at least 60 days from the date of promulgation and with an effective date of either July 1 or January 1. The regularized effective date was prompted by a suggestion to the Advisory Committee on the Rules of Civil Procedure by a member of the bar regarding the difficulty of following rule changes and the varied effective dates. The civil rules committee, with agreement from the criminal, probate, family, evidence, public access, and electronic filing committees, requested that the Court adopt regularized effective dates. Normalizing the effective date for amendments to rules will allow more predictability for both the bench and the bar.

Former § 9 is renumbered § 10 and continues to provide that some or all requirements of the administrative order may be dispensed with when the public interest requires. This section applies to the provisions of proposed new § 9. There may be situations where a rule needs to become effective before the 60-day period passes and outside of the regularized effective dates of July 1 or January 1.

c. *Promulgation Order Amending Administrative Order No. 50*

<https://www.vermontjudiciary.org/PROMULGATED-AO50amendmentsAnBn--STAMPED>

This Order was promulgated on **October 10, 2023; effective immediately.**

Administrative Order 50, which authorizes a pilot project for service by the Office of Child Support in certain cases, is amended to expand the project to Addison and Bennington counties.

d. *Promulgation Order Amending V.R.P.A.C.R. 2, 5(i), 6(a)(b)(c), 7(a) and 9(a)(b)*

<https://www.vermontjudiciary.org/PROMULGATED-VRPACR2567and9--STAMPED>

This Order was promulgated on **October 10, 2023; effective January 1, 2024.**

The amendments are the result of a comprehensive review of the exceptions to public access in V.R.P.A.C.R. 6(b) and related provisions of the rules. Some of the changes to the exceptions include: clarifying the items that are not publicly accessible related to a search warrant in 6(b)(2); removing 6(b)(3) regarding furlough reports; deleting 6(b)(12) regarding juvenile proceedings as duplicative of 33 V.S.A. § 5117(c); consolidating three existing exceptions regarding medical and mental-health information into one exception and using language from HIPAA; combining three financial-information exceptions into one; clarifying the discovery exception in 6(b)(16); and adding a provision to exempt proposed prefiled exhibits from public access.

Other amendments include updating definitions to use the term “record” instead of “document” and to replace “nonpublic” with “not publicly accessible” in Rule 7.

New Rule 5(i) clarifies that parties, their lawyers, and guardians ad litem do not have a specific right to access to certain records that are exempt from public access.

e. *Promulgation Order Amending V.R.A.P. 28(e) and 30*

[https://www.vermontjudiciary.org/PROMULGATED-VRAP28\(e\)and30--STAMPED](https://www.vermontjudiciary.org/PROMULGATED-VRAP28(e)and30--STAMPED)

This Order was promulgated on **October 10, 2023; effective January 1, 2024.**

The amendments to Rule 30 make a printed case a requirement for most appeals even where there is an appeal volume. Traditionally, the appellate rules required the appellant to submit a printed case to the Supreme Court so that the Court had ready access to the relevant materials from the trial court. In 2021, with the implementation of an electronic case management system at the Supreme Court, all cases records became electronic, and Rule 30 was amended at that time to make the printed case optional for cases that contain an appeal volume. The name printed case was retained even though no paper is filed.

The Court’s experience from working with the appeal volume for two years is that it can be inefficient and difficult to find relevant information, particularly when there are numerous documents. The amendments address this concern by making a printed case required under Rule 30(a)(1) for most appeals. The appellant must compile a printed case with an index of its contents. Rule 30(d)(2)(A) is amended to require the index to the printed case to contain the page in the appeal volume where the document is located in addition to the page in the printed case. Under revised 28(e)(1), if there is an appeal volume and no printed case or a document is not in the printed case,

the parties must cite to the location of the document in the appeal volume. Under existing (e)(2), if there is a printed case, the briefs must reference the location of the document in the printed case.

The existing limited exceptions to the printed case requirement are retained for appeals from small claims, the Human Services Board, and Employment Security Board. In addition, under Rule 30(a)(1)(B), the printed case may be waived on the Court's initiative or pursuant to a motion.

f. Promulgation Order Amending V.R.C.P. 64

<https://www.vermontjudiciary.org/PROMULGATED-VRCP64--STAMPED>

This Order was promulgated on **October 10, 2023; effective January 1, 2024.**

The amendment to Rule 64(b)(1) deletes an obsolete reference to a District Judge. The amendments to Rule 64(b)(2), (3) and (i) delete an obsolete requirement of a finding “that the amount of the valuation is within the jurisdiction of the superior court.” The superior court has no monetary jurisdictional limit.

g. Promulgation Order Amending V.R.Cr.P. 47(b) and (c) and 45(d)

[https://www.vermontjudiciary.org/PROMULGATED-VRCP47\(b\)\(c\)45\(d\)--STAMPED](https://www.vermontjudiciary.org/PROMULGATED-VRCP47(b)(c)45(d)--STAMPED)

This Order was promulgated on **October 10, 2023; effective January 1, 2024.**

The amendments to Rule 47(b)(1) clarify the motion and motion response provisions of the criminal rules. The amendments permit the filing of replies and surreplies and set out the manner and timing of filing. The addition of paragraph 47(b)(2) incorporates the provisions of former V.R.Cr.P. 45(d), which is deleted, to address the manner and timing of filing of affidavits accompanying memoranda on motions. The amendment to subdivision 47(c) provides that the court may state essential findings in writing, as an alternative to statement on the record, when factual issues are involved in determining a motion.

III. PROPOSED RULE AMENDMENTS

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

a. Proposed Order Amending the Vermont Rules of Evidence

<https://www.vermontjudiciary.org/PROPOSED-VRE-VariousAmendmentsToRemoveGenderedPronounsAssumptions--FORCOMMENT>

The proposed amendments remove gendered pronouns and make some small stylistic changes.

Comments on these proposed amendments should be sent by **December 11, 2023**, to the Hon. Dickson Corbett, Esq., Chair of the Advisory Committee on Rules of Evidence, at the following address:

Hon. Dickson Corbett
Dickson.Corbett@vermont.gov

b. *Proposed Order Amending V.R.C.P. 4(c), (d), (e), and (f), 55, 62(b), and 80.1(f)*
[https://www.vermontjudiciary.org/PROPOSED-VRCP4\(c\)\(d\)\(e\)\(f\)_55_62_80.1\(f\)--FORCOMMENT](https://www.vermontjudiciary.org/PROPOSED-VRCP4(c)(d)(e)(f)_55_62_80.1(f)--FORCOMMENT)

The proposed amendments to Rule 4 update its provisions to current practice and terminology. The proposed amendments to the caption and text of Rules 4(d) and 4(e) delete the references to “personal” service. Proposed Rule 4(d)(2) is amended to aggregate into a single subdivision the methods of service on the State of Vermont or any agency or officer thereof. Former Rule 4(f)(2), relating to mail service on an officer of the state as a statutory process agent, is moved to Rule 4(d)(2). The existing provision of Rule 4(d)(2), for service in false claims actions, is reworded for clarity with no change of meaning intended. The proposed amendment recaptions Rule 4(f) to “Service by Mail Outside the State.” The text is reorganized to clarify each step in the mail service process and, in some cases, to modify the requirements of the existing rule. The proposed amendment to Rule 4(f)(1) clarifies what was implicit in the original rule, that it applies only to service by mail outside the state. Proposed Rule 4(f)(2) changes the requirement to use “registered or certified mail, with restricted delivery and return receipt requested” to any mail delivery method that “requires a signature by the addressee or by the agent of the addressee for receipt of mail.” The proposed amendment to Rule 4(f)(3) clarifies when service by first-class mail under Rule 4(f) is permitted and how it is completed.

Proposed Rule 55(d) is added to require service of a default judgment against a party who has not appeared in the case. The purpose of this service requirement is to give the defaulted party effective and timely notice of the judgment. Proposed new Rule 55(d)(1) requires service under Rule 4(d) or (e). Mail service is allowed only if such Rule 4 service cannot be made with due diligence. Proposed Rule 55(d)(3) allows service by publication on motion, findings, and order that none of the other methods of service can be made with due diligence. New proposed Rule 55(c)(8) is added to allow the court to include in a default judgment the projected cost of service required by Rule 55(d).

The proposed amendment to Rule 62(b) states that execution against a party who has not appeared is stayed until the party to whom judgment was awarded serves the default judgment pursuant to new proposed Rule 55(d), which now specifies the method of service. The purpose of the rule—to give the defendant an opportunity to move to set aside a default judgment—remains the same.

The proposed amendment to Rule 80.1(f) allows the court to include in a default judgment the projected cost of service required by Rule 55(d). The cost of initial service of the summons and complaint is presumptively a reliable measure of the projected future cost of service of the default judgment.

Comments on these proposed amendments should be sent by **December 11, 2023**, 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 Abrogating V.R.C.P. 9.3*

<https://www.vermontjudiciary.org/PROPOSED-VRCP9.3--FORCOMMENT>

The proposed amendment abrogates Covid-era Civil Rule 9.3 (foreclosure and replevin) on a date to be determined. The agency is now processing the last of the applications and the Rule will be obsolete in or about February 2024 when the agency ceases disbursing funds.

Comments on this proposed amendment should be sent by **December 11, 2023**, 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

d. *Proposed Order Amending V.R.C.P. 11(a)*

[https://www.vermontjudiciary.org/PROPOSED-VRCP11\(a\)--FORCOMMENT](https://www.vermontjudiciary.org/PROPOSED-VRCP11(a)--FORCOMMENT)

The proposed amendment Rule 11(a) requires every pleading, written motion and other document that requires a signature to include the signer's telephone number. The primary purpose of this change is to assist self-represented litigants who wish to contact an opposing attorney by phone.

Comments on this proposed amendment should be sent by **December 11, 2023**, 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

e. *Proposed Order Amending V.R.A.P. 3(e) and 27(a)(3)*

[https://www.vermontjudiciary.org/PROPOSED-VRAP3\(e\)27\(a\)\(3\)--FORCOMMENT](https://www.vermontjudiciary.org/PROPOSED-VRAP3(e)27(a)(3)--FORCOMMENT)

The proposed amendment to V.R.A.P. 3(e) makes the appellee's docketing statement optional. In many appeals, the appellee's docketing statement is cumulative and not necessary for the Court or parties. Although the filing is no longer mandatory, as a matter of practice an appellee should consider whether filing one is useful in a particular case.

The proposed amendment to V.R.A.P. 27(b)(3) allows a reply in support of a motion. This is consistent with the federal appellate rule, as is the time allowed for the reply—7 days after service of the response unless otherwise ordered. The time to reply is kept short to avoid delay in resolution of motions but can be extended under V.R.A.P. 26(b). This proposed amendment does not affect V.R.A.P. 27(b)(1), which allows the Court to act on a motion for a procedural order without notice to, or response from, other parties.

Comments on these proposed amendments should be sent by **December 11, 2023**, 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

IV. ODYSSEY FILE & SERVE AND PUBLIC PORTAL INFORMATION

Odyssey File and Serve has recently provided information for court users who are not receiving email notifications and who question whether their email addresses have mistakenly been placed on a “Suppression List.” Here’s a link to information in that regard [Why was my email placed on the Suppression List? – eFile \(zendesk.com\)](#). Here’s another link for court users who wish to have their email addresses “Safelisted” to ensure proper delivery <https://odysseyfileandserve.zendesk.com/hc/en-us/articles/360046887411> .

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 efilng 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 efilng 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.tylertech.cloud/OfsWeb/Home>

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. The Vermont Judiciary's website provides detailed instructions on how to submit exhibits for use at trials and other kinds of evidentiary hearings. <https://www.vermontjudiciary.org/FilersGuidetoExhibitsforHearings>

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](#)

c. Receipt of Court Notices and Orders (eCabinet)

The Vermont courts send all court-issued documents (hearing notices, orders, etc.) to attorneys by email using the email addresses registered in a system called eCabinet. Attorneys may register up to three email addresses in the system and are responsible for keeping the information updated. The email address(es) registered in eCabinet are not used for service of documents filed by opposing parties, which is done through service contacts in Odyssey File & Serve.

To create an eCabinet account or update an existing account, attorneys must contact the Judiciary helpdesk through one of the methods listed below. Please include your attorney bar license number in your communication.

- Email JUD.Helpdesk@vermont.gov
- Telephone the Judiciary helpdesk at 802-828-4357

- Use the online form [eCabinet Registration/Update \(cognitofirms.com\)](http://cognitofirms.com)

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.