

**STATE OF VERMONT
VERMONT SUPREME COURT
AUGUST TERM, 2022**

Order Promulgating Amendments to Rules 5, 6(a)(4), and 79.1 of the Vermont Rules of Probate Procedure

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 5 of the Vermont Rules of Probate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER ~~PAPERS~~ DOCUMENTS

(a) **Service: when required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders, every ~~paper~~ document relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, inventory and similar ~~paper~~ document shall be served upon each of the parties who have appeared. No service need be made on parties who have not appeared, except that:

- (1) Service shall be made pursuant to this rule on the person, specified in Rule 5.1;
- (2) Service shall be made on an executor or administrator pursuant to this rule in a proceeding involving a decedent's estate;
- (3) Service shall be made on a trustee pursuant to this rule in a proceeding involving a trust;
- (4) Service shall be made on a guardian and, unless otherwise ordered by the court, on a ward pursuant to this rule in a proceeding involving a guardian or proposed guardian of the person or estate;
- (5) Service shall be made on a person who is representing the interests of another pursuant to Rule 18; and
- (6) Service shall be made on the Veterans Administration pursuant to this rule when required by law.

(b) **Same: how made.** Unless a statute or rule requires service by the court, a party must at or before the time of filing a document serve a copy on the other parties in accordance with this rule. ~~Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the party or attorney or by mailing it to the last known address of the party or attorney or, if no address is known, by leaving it with the register.~~

(1) Methods of Service of Documents Defined. Within this rule, the following definitions apply.

(A) Using the Electronic Filing System. Using the electronic filing system means using the Judiciary's electronic filing system to transmit documents by choosing File and Serve or Serve and selecting the party's contact from the Public List to serve other registered users with public service contacts as required or permitted by the 2020 Vermont Rules for Electronic Filing. Service is complete upon transmission by the electronic filing system to the other party

unless the sender learns that it did not reach the person to be served.

~~(4 B) Delivery. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.~~

~~(2 C) Mailing. Mailing of a copy within this rule means: sending by ordinary first-class mail; or sending by third-party commercial carrier. Service by mail or by commercial carrier is complete upon mailing or delivery to the carrier.~~

~~(3) Leaving With the Register. Leaving a copy with the register within this rule means delivering or mailing the copy to the register by any means permitted or required for the filing of papers with the register under subdivision (f).~~

~~(4) Service by Electronic Means.~~

~~(A) For units and divisions in which the Court Administrator has not directed that electronic filing be implemented under 2020 Vermont Rule for Electronic Filing 1(d), service may be accomplished by electronic means.~~

~~(D) Email. Email means sending an attachment to the email address or addresses of the person to be served with the case title and number in the subject line. Service by electronic means email is complete upon sending transmission, provided that such service is not effective if the party making service learns that it did not reach the person to be served.~~

~~(B) For units and divisions in which the Court Administrator has directed that electronic filing be implemented under 2020 Vermont Rule for Electronic Filing 1(d), if the 2020 Vermont Rules of Electronic Filing require a method of service for the document being filed, the filer must use that method of service and not the methods of service specified in this subdivision.~~

~~(E) Leaving with the Register. Leaving a copy with the Register means filing the document with the Register using a method allowed by subdivision (e) of this rule along with a statement that the filer is prevented by rule or court order from contacting the party or knowing the party's contact information.~~

~~(2) Service requirements. The methods of service to be used are as follows:~~

~~(A) Electronic Filers. Service of electronic filings between electronic files with service contacts must be made by using the electronic filing system in accordance with 2020 V.R.E.F. 11(d)(1), or by another method agreed on as provided in 2020 V.R.E.F. 11(d)(2).~~

~~(B) Non-electronic filers. (Self-represented party or other participant who is not required and has not elected to electronically file in the case).~~

~~(i) Service by or on non-efilers may be made by delivery or mailing.~~

~~(ii) Service by or on non-efilers may be made by email if (a) a non-filer has filed a notice of appearance that provides an email address and consent to receive service by email at that address, (b) the parties agreed to service by email in a signed writing filed with the court, or (c) no valid physical or postal address is known and there is no consent to service by email, but the non-filer has provided an email address on a court filing;~~

~~(iii) If the filer is prevented by rule or court order from contacting the other party or receiving the other party's contact information, the filer may serve by leaving with the register.~~

~~(C) Service of nonelectronic filings between efilers and service on efilers without service~~

contacts may be made by delivery, by mailing, or by email or other method agreed to by the parties in a signed writing filed with the court.

(D) Service of Discovery Documents.

(i) An efiler must serve discovery requests or responses on an efiler using the service function of the electronic filing system unless the parties agree on an alternative method of service.

(ii) Service by or on non-efilers may be made by mailing, by delivery, or by email or other method if the parties agree.

(c) **Same: numerous parties.** In any proceeding in which there are unusually large numbers of parties with similar interests, the court, upon motion or of its own initiative, may order that service of the pleadings of those parties and replies thereto need not be made as between those parties and that the filing of any such pleading and service thereof upon the petitioner constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) **Filing.** All papers documents after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, except that all requests for discovery under V.R.C.P. 26-34 and 36 and answers and responses thereto shall not be filed unless on order of the court or for use in the proceeding. If a paper is not to be filed, the party serving it shall file instead a certificate that each deposition has been completed and sealed pursuant to V.R.C.P. 30(f) or that each request, interrogatory, answer or response has been served in accordance with this rule.

(e) Filing with the court defined.

(1) In General. The filing of documents with the court as required by these rules shall be made by filing them with the register except that a judge may agree to accept a document for filing and must then note the filing date on the document and promptly send it to the register.

(2) Filing by Electronic Filers. Any attorney, self-represented party, or other participant in the proceeding who is required or has elected to electronically file must use the court's electronic filing system to file documents pursuant to the 2020 Vermont Rules for Electronic Filing and subject to the exceptions set forth in those rules.

(3) Filing by Non-Electronic Filers. Self-represented parties and other participants in the proceeding, who are not required and have not elected to electronically file, and attorneys who are permitted to use a method other than electronic filing may file with the court by delivery, mailing, commercial carrier, or email addressed to the register.

(4) Standards for Email Filing. Any document filed by email must conform to the following:

(A) The filing must be sent to the email account for the court where the filing is made.

(B) The filing must be sent as an attachment in PDF format or other readily accessible document type.

(C) The subject line must identify the case number and the court where the filing is made.

(D) A signature block containing the filer's typed-in name preceded by "/s/," or an electronic facsimile of the filer's signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), will serve as a party's signature on pleadings, motions, and other documents that must be filed with a signature.

(5) Filing Date.

(A) The date of filing by mailing, delivery, or commercial carrier is the date received at the register's office if received before the office is scheduled to close.

(B) The date of email filing is the date submitted if submitted prior to midnight on that date, unless the party making the filing learns that the attempted filing did not reach the court. An email filing may be submitted on any day, including holidays and weekends, and at any time.

(C) The date of filing by delivery to a judge is the date received as noted by the judge.

(D) The date and time of electronic filing is the date and time of initial submission if the filing is accepted initially or after timely correction under V.R.E.F. 5(c) and (d). An electronic filing may be submitted on any day, including holidays and weekends, and at any time.

(6) Filing by Inmate. A document filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement accompanying the document stating the date the document was deposited in the institution's internal mailing system. The notarized statement establishes a presumption that the document was deposited in the institution's internal mailing system on the date shown in the statement. The presumption may be rebutted by documentary or other evidence. Nothing in this rule precludes other evidence of timely filing such as a postmark or an official date stamp showing the filing date of the document. An inmate may file and serve documents by email, as set forth in subdivisions (b) and (e) of this rule.

(7) Denial for Lack of Form Prohibited. Unless otherwise provided in the 2020 Vermont Rules for Electronic Filing, the clerk shall not refuse to accept for filing any document presented for that purpose solely because it is not presented in proper form as required by these rules.

(e f) Certificate of service. Except as provided in any applicable provisions of the 2020 Vermont Rules for Electronic Filing, every document filed with the court after the original petition, and required by this rule to be served upon a party, must be accompanied by a certificate of service. The certificate may be incorporated into the final page of the document being served, or may be on a separate form. It need not be in any special format so long as it contains all the required information. Multiple documents may be filed with one certificate of service. The certificate must meet the following requirements:

(1) *Signing.* The certificate must be signed by the party's lawyer or an authorized employee of the lawyer, or by a self-represented party, subject to the obligations of Rule 11.

(2) *Contents-* The certificate must:

(A) certify that the document has been served upon every other party to the case;

(B) state the manner of service (mail, personal delivery, or other service authorized by this rule);

(C) state the name and address of each person or entity served; and

(D) state the date of the mailing or other means of delivery.

(3) *Noncompliance.* If a document that requires a certificate of service is filed without one, the judge may issue an order:

(A) suspending the running of the time for response by the other party or parties until the filing of a proper certificate of service,

(B) declining to act on the filing until a proper certificate is filed, or

(C) ordering that the filing will be deemed withdrawn if no certificate is filed by a date certain.

(f) Filing with the court defined.

~~(1) *In general.* The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the register or the judge. Filing may be accomplished by delivery; by sending the papers by ordinary first-class mail or by third-party commercial carrier addressed to the register; and, if required or permitted by the 2020 Vermont Rules for Electronic Filing, transmission by electronic means. Filing by mail or commercial carrier shall not be timely unless the material filed is received within the time fixed for filing. Filing with a judge may be accomplished by any method permitted by the judge. The time of filing for an electronic filing is as specified in the 2020 Vermont Rules for Electronic Filing. The register shall not refuse to accept for filing any document presented for that purpose solely because it is not presented in proper form as required by these rules.~~

~~(2) *Document filed by an inmate.* A document filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement accompanying the document stating the date the document was deposited in the institution's internal mailing system. The notarized statement establishes a presumption that the document was deposited in the institution's internal mailing system on the date shown in the statement. The presumption may be rebutted by documentary or other evidence. Nothing in this rule precludes other evidence of timely filing such as a postmark or an official date stamp showing the filing date of the document.~~

(g) Form of papers documents. Unless otherwise specified in the 2020 Vermont Rules for Electronic Filing, all original papers paper documents shall be eight and one-half by eleven inches in size, endorsed with the name and docket number of the proceeding, the court and probate district where pending, the name of the paper, and the name and address of the person or attorney filing it.

(h) Separation of Nonpublic Data. The filer must separate nonpublic data as required by Vermont Rule for Public Access to Court Records 7.

(i) Definitions. For purposes of filing and service, the following terms have the same meaning as provided in Rule 2 of the 2020 Vermont Rules for Electronic Filing:

(1) Document means a related and paginated grouping of information items that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(2) Electronic Filer or “efiler” means an attorney, who is required to electronically file, and any other person who is permitted or required to file electronically in a case.

(3) Electronic Filing or “efiling” means the process of transmitting a document from an electronic filer, using the Judiciary’s electronic filing system, to the Judiciary’s electronic case file.

(4) Electronic Filing System or “efiling system” means the Judiciary's Internet-accessible efiling and service system.

(5) Nonelectronic Filing means any method of filing a paper document with the court.

(6) Service Contact means a person for whom an email address and other identifying information has been entered into the efiling system as a designated recipient of service on case filings from other parties through the efiling system.

(7) Public Contact. A Public Contact is a Service Contact listed on the Public List for

purposes of electronic service that other electronic filers must use for service.

Reporter’s Notes—2022 Amendment

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. See A.O. 49, ¶ 6.

Rule 5(a) is amended as part of a comprehensive change to replace “paper” with “document” throughout the rule. This change is made in the title and in Rule 5(a), (d), and (g). Under Rule 5(i), the broad definition of document is incorporated from the 2020 Vermont Rules for Electronic Filing. Note that Rule (g) intentionally refers to “paper documents” because it relates to documents filed on paper and not documents in general.

The initial sentence of Rule 5(b), requiring service on the attorney of a represented party unless otherwise ordered is replaced by a general direction that, unless provided otherwise by statute or rule, a copy of a document filed under Rule 5 must be served on other parties. Former Rule 5(b)(1)-(4), defining traditional service methods are revised and replaced by new Rule 5(b)(1) and (2), based on newly amended V.R.C.P. 5(b)(1) and (2), defining currently permitted service methods and specifying the requirements of their use. See Reporter’s Notes to those amendments.

Rules 5(c) is carried forward without change. Rule 5(d) is amended to replace “paper” with “document” and to provide guidance on service of discovery materials.

Rule 5(e) carries forward former Rule 5(f), revised for consistency with newly amended V.R.C.P. 5(e). See Reporter’s Notes to that amendment.

Rule 5(f) (Certificate of Service) carries forward former Rule 5(e).

Rule 5(g) (renamed Form of Documents) is carried forward with minor amendments.

Rule 5(h) (Separation of Nonpublic Data) remains the same.

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

2. That Rule 6(a)(4) of the Vermont Rules of Probate Procedure be amended to read as follows (new matter underlined):

RULE 6. TIME

(a) **Computing Time.** The following rules apply in computing any time period specified in these rules, in any court order, or in any applicable statute that does not specify a method of computing time.

(4) “*Last Day*” *Defined.* Unless a different time is set by a statute or court order, the last day ends:

- (A) for email and electronic filing, at midnight in the court’s time zone; and
- (B) for filing by other means, when the clerk’s office is scheduled to close.

Reporter’s Note—2022 Amendment

Rule 6(a)(4) is amended 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.

3. That Rule 79.1 of the Vermont Rules of Probate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 79.1 APPEARANCE AND WITHDRAWAL OF ATTORNEYS AND SELF-REPRESENTED PARTIES

(a) **Appearance: In General.** Upon the filing of a proceeding, or the entry of a general appearance pursuant to subdivision (b) or of a limited appearance pursuant to subdivision (h), the name of the attorney of the plaintiff or appellant shall be entered on the docket. If any party changes an attorney pending the suit, the name of the new attorney shall be substituted on the docket for that of the former attorney. Until notice of the change of an attorney, all notice given to or by the attorney first appointed shall be considered in all respects as notice to or from the client, except in cases in which by law the notice is required to be given to the party personally. Nothing in these rules shall be construed to prevent any party in a suit from appearing for himself or herself, in which case the party so appearing shall be subject to the same rules that are or may be provided for attorneys in like cases, so far as the same are applicable.

(b) **Appearance of an Attorney Same: Form; Service.** Except as provided in a limited appearance under subdivision (h), an attorney's ~~or pro se~~ party's signature to a pleading shall constitute an appearance. Otherwise an attorney ~~or pro se~~ party who wishes to participate in any action must file notice in writing with the register. An appearance, whether by pleading or formal written appearance, shall be signed by the individual in the individual's name and shall state the individual's postal and email address. For attorneys, the address shall be their office address.

(c) **Appearance by Self-Represented Parties Appearing Pro Se.** When a party who is not an attorney is self-represented, the party must complete and sign a notice of appearance form for self-represented parties, providing a telephone number, street address, and mailing address if different. The party must provide an email address if the party has one and indicate if the party consents to receive service by email at that address. Even if a self-represented party has not consented or agreed

to service by email, if the self-represented party has no valid physical or postal address, the self-represented party may be served by email at any email address that the party has provided in a court filing. When a party is self-represented, the party is governed by Rule 11 as if the party were an attorney. When a party appears pro se, the party shall be governed by Rule 11 as if the party were an attorney.

(d) **Attorneys Not Admitted to Practice Law in Vermont.** Any member in good standing of the bar of any other state or of the District of Columbia who has filed a pro hac vice licensing statement form with the Court Administrator and who has paid the required fee, in accordance with Administrative Order No. 41, § 16, may, in the discretion of the court on motion by a member of the bar of this state who is actively associated with that attorney in a particular action, be admitted to practice in that action. The motion shall designate which attorney will serve as lead counsel. The court may at any time for good cause revoke such admission. An attorney so admitted to practice in a particular action shall at all times be associated in such action with a member of the bar of this state, upon whom all process, notices and other ~~papers~~ documents shall be served and who shall sign all ~~papers~~ documents filed with the court and whose attendance may be required by the court.

(e) **Withdrawal: In General.** When an attorney has entered an appearance, the attorney shall remain as counsel until the attorney has been granted leave to withdraw by the court. Such leave shall be granted as a matter of course after a judgment becomes final. Leave to withdraw after a case has been set for trial will be granted only for good cause shown and on such terms as the court may order. No motion to withdraw shall be considered by the court until the party has been given notice of the motion and the date and time of hearing thereon by the clerk. The only exceptions to this shall be (1) when the attorney includes in the motion an affidavit that after diligent search the attorney cannot determine the present address of the party, and (2) when other counsel has entered an appearance for the party.

(f) **Same: Notification of Party.** When an attorney has been granted leave to withdraw an appearance, the register shall notify the party forthwith, by mail, of such withdrawal, and inform said party of the consequences of not appearing pro se or by an attorney that unless the party enters a notice of appearance to be self-represented or appears by attorney within thirty days after receipt of such notification, the action may be dismissed.

(g) **Sanctions Against Attorneys.** If an attorney fails to file an inventory, accounting or other paper as required by law, without fault of the party represented by the attorney and after a direction to file by the court, or if an attorney signs a paper in violation of Rule 11, the court may, on its own motion or on motion of a party to the proceeding and a proper showing by that party, impose an appropriate sanction which may include an order to pay to other parties the amount of reasonable expenses or losses incurred because of the filing or failure to file, including a reasonable attorney's fee. A copy of the sanction order shall be sent to the party represented by the attorney.

(h) **Limited Appearance.**

(1) An attorney acting pursuant to an agreement with a client for limited representation that complies with the Vermont Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes on behalf of a client who is ~~pro se~~ self-represented and who has entered, or will enter, an initial appearance in accordance with subdivision (a):

- (A) Filing a petition or other pleading;
- (B) Conducting one or more specific discovery procedures;
- (C) Acting as counsel for a particular hearing or court event.
- (D) Taking and perfecting an appeal.
- (E) With leave of court, for a specific issue or a specific portion of a hearing.

(2) An attorney who wishes to enter a limited appearance shall do so by filing with the register and serving pursuant to Rule 5 a written notice of limited appearance as soon as practicable prior to commencement of the appearance. The purpose and scope of the appearance shall be specifically described in the notice, which shall represent that the client is ~~pro se~~ self-represented and has entered, or will forthwith enter, an initial appearance. The attorney's name and a brief statement of the purpose of the limited appearance shall be entered upon the docket. The notice and all actions taken pursuant to it shall be subject to the obligations of Rule 11.

(3) An attorney who has entered a limited appearance shall be granted leave to withdraw as a matter of course when the purpose for which the appearance was entered has been accomplished. An attorney who seeks to withdraw before that purpose has been accomplished may do so only on motion and notice, for good cause and on terms, as provided in subdivision (e).

(4) Every ~~paper~~ document required by Rule 5 to be served upon a party's attorney that is to be served after entry of a limited appearance shall be served upon the party and upon the attorney entering that appearance unless the attorney has been granted leave to withdraw pursuant to paragraph (3) of this subdivision.

~~(i) **Attorney License Number; eCabinet Registration Number.** Any document that constitutes a first appearance of an attorney shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the 2010 Vermont Rules for Electronic Filing.~~

Reporter's Notes—2022 Amendment

Rule 79.1 is amended to clarify 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) and (c) 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(c) requires self-represented parties to file and sign a Notice of Appearance for self-represented party, which is available on the judiciary website <https://www.vermontjudiciary.org/sites/default/files/documents/100-00265.pdf> The form contains contact information to facilitate both service by other parties and notice by the court. The form also allows self-represented parties to consent to receive service by email. Even where a self-represented party does not consent to email service, the party may be served using an email provided on a pleading if there is no known physical or postal address. This conforms to a contemporaneous amendment to Rule 5(b)(2)(B)(ii).

Rule 79.1(d) and (h)(4) are amended to replace the word “paper” with “document.” Rule 5(i)(1) incorporates the broad definition of “document” from the 2020 Vermont Rules for Electronic Filing for purposes of filing and service.

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

4. That these amendments be prescribed and promulgated, effective on September 6, 2022. The Reporter’s Notes are advisory.

5. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 9th day of August, 2022.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice