

**STATE OF VERMONT
VERMONT SUPREME COURT
DECEMBER TERM, 2021**

Emergency Order Amending Rule 5(d) of the Vermont Rules for Electronic Filing

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

1. That Rule 5(d) of the Vermont Rules for Electronic Filing be amended to read as follows (new matter underlined):

RULE 5. PROCEDURE FOR ELECTRONIC FILING

(d) Court Staff Processing in the Superior Court.

(1) *Court Staff Review.* Court staff will review all electronic filings for compliance with these rules and Rule 7(a)(1) of the Rules for Public Access to Court Records, in the manner prescribed by Rule 7(a)(3) and (4).

(A) Except as designated in (B), court staff review will occur prior to entry into the electronic case management system.

(B) Initial civil complaints made in commencement of an action pursuant to Vermont Rule of Civil Procedure 3 will be reviewed after entry into the electronic case management system, subject to the corrective and remedial actions of Rule 7(a)(3) and (4) of the Rules for Public Access to Court Records. Electronic filers remain obligated under Rule 5(b) to comply with filing requirements. Complaints initiating the following civil actions will continue to be reviewed prior to entry:

(i) Actions for Orders Against Stalking or Sexual Assault (12 V.S.A. Ch. 178),

(ii) Small Claims Actions (12 V.S.A. Ch. 187), and

(iii) Any civil action that is within the original jurisdiction of the Supreme Court, or within the jurisdiction of criminal division, family division, environmental division, probate division, or the judicial bureau.

Reporter’s Note—2021 Emergency Amendment

Under the prior language of Rule 5, all electronic filings were reviewed prior to entry into the Judiciary’s electronic case management system in accordance with the rule’s requirements and Rule 7 of the Vermont Rules for Public Access to Court Records. Rule 5(d) is amended following entry of the decision and order of the U.S. District Court for the District of Vermont in Courthouse News Service, et. al. v. Patricia Gabel, et. al., Case No. 2:21-cv-00132 on November 19, 2021. The amendments comport with new procedures for the processing of the initial civil complaint, essentially providing for public access to the same, prior to clerk review and acceptance pursuant to Rule 5(d). The amendments do not alter an electronic filer’s obligations under Rule 5(b), including compliance with Rule 5(b)(5) and (6). The amendments also do not alter the process of clerk

review of new civil complaint filings otherwise prescribed by Rule 5(d).

Beginning on Friday, December 10, 2021, initial civil complaints submitted using the Odyssey File and Serve code “initial filing” were automatically entered in the Judiciary’s electronic case management system without a prior staff review and acceptance. Previously, all electronic filings, including initial complaints and associated documents in such cases, were reviewed by staff before being entered into the electronic case management system. Some initial civil complaints are excepted from the automatic entry, including those in small claims actions, stalking/sexual assault actions, and those within the original jurisdiction of the Supreme Court, or within the jurisdiction of criminal division, family division, environmental division, probate division, or the judicial bureau.

Once initial filings are automatically entered into the case management system, documents and information designated by the electronic filer as public will be viewable to the public on courthouse public access terminals and on the Public Portal website for users with elevated access roles.

Documents submitted under other filing codes in the same envelope or in other envelopes will continue to be reviewed and manually accepted by staff prior to being entered into the case management system.

Pursuant to Rules 7(a)(3) and (4) of the Vermont Rules for Public Access to Court Records, court staff will review all initial complaints after they are entered into the system for the presence of nonpublic information that should not be publicly viewable. As with all cases under the present rules in which this screening reveals that nonpublic documents or information are part of the initial filing, court staff will take corrective or remedial actions authorized by Rules 7(a)(3) and (4) to protect such information from public view and will send notice to the filer along with a specification of what corrective actions are needed to fix defects in the filing.

Note that Rule 6 is not amended so procedures for review of complaints filed non-electronically remain the same as they have been.

2. That these amendments be prescribed and promulgated without resort to the notice and comment requirements of Administrative Order 11 because of the need to comply in a timely way with the injunction issued by the United States District Court for the District of Vermont on November 19, 2021 in Courthouse News Service, et. al. vs. Patricia Gabel, et. al., Case No. 2:21-

cv-00132, which effectively enjoined the continued operation of the prior version of Rule 5(d)(1) as to certain proposed initial civil filings.

3. That these amendments are being made for the sole purpose of complying with the injunction, which is currently being appealed to the U.S. Court of Appeals for the Second Circuit.
4. That these amendments will cease to be in effect if the injunction is terminated or modified.
5. That these amendments be prescribed and promulgated, effective immediately.
6. That the Reporter's Notes are advisory.
7. 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 20th day of December, 2021.



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