

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 Rules and Miscellaneous Information

DATE: May 3, 2019

For your information, please find the following information:

- [Order Abrogating and Replacing Rule 79.2 of the Vermont Rules of Civil Procedure, Rule 53 of the Vermont Rules of Criminal Procedure, and Rule 79.2 of the Vermont Rules of Probate Procedure, and Abrogating Vermont Supreme Court Administrative Directive No. 28](#)
- [Order Abrogating and Replacing Rule 35 of the Vermont Rules of Appellate Procedure](#)
- [Order Promulgating Administrative Order No. 46](#)
- [Order Promulgating Amendments to the Vermont Rules of Civil Procedure, the Vermont Rules for Family Proceedings, and the Vermont Rules of Probate Procedure](#)
- [Order Promulgating Administrative Order No. 47](#)
- [Order Promulgating Amendments to V.R.C.P. 26\(b\)\(A\)\(i\)](#)
- [Order Abrogating and Replacing the Vermont Rules for Public Access to Court Records and Abrogating the Rules Governing Dissemination of Electronic Case Records](#)
- [Order Promulgating Amendments to Rule 3 of the Vermont Rules of Admission to the Bar of the Vermont Supreme Court](#)
- Updated Court Forms
- Obligations Under A.O. 41
- eCabinet Registration

I. PROMULGATED RULE AMENDMENTS

- a. [Order Abrogating and Replacing Rule 79.2 of the Vermont Rules of Civil Procedure, Rule 53 of the Vermont Rules of Criminal Procedure, and Rule 79.2 of the Vermont Rules of Probate Procedure, and Abrogating Vermont Supreme Court Administrative Directive No. 28](#)

This Order was promulgated on May 1, 2019; effective September 3, 2019.

The rule was developed by a special committee composed of judges, court administrators, members of the Supreme Court's procedural rules committees, and representatives of the media. The special committee's draft was previously sent out for public comment, discussed by each of the procedural rules committees, and considered at a public hearing before a final version was recommended to the Supreme Court for promulgation. The Supreme Court made further alterations and sent the proposal out for comment a second time.

The rule governs both possession and use of recording and transmitting devices. It defines terms that are essential to the operation of the rule. Rule 79.2(c) broadly provides that a device may be used nondisruptively anywhere in a courthouse.

Rule 79.2(d) contains limits on use applicable to anyone possessing or using a device in a courtroom. The rule, supplemented by Administrative Order No. 46, lays out a scheme for registration of media and their representatives entitling them to use devices to record and transmit courtroom proceedings. The rule provides that participants may use devices in the courtroom with some restrictions. The rule allows nonparticipants to possess devices in the courtroom, but to use them only in limited circumstances. Devices must be turned off or in silent mode except during nonevidentiary hearings when the jury or jury pool is not present. The rule contains provisions applicable to jurors.

Rule 79.2(e) sets limits designed both to protect the decorum and the necessary confidentiality of certain proceedings. The rule allows limits on use but contains a presumption in favor of media access.

Rule 79.2(f) states that the court may waive any of the limitations imposed by the rule on request for good cause and subject to any necessary or appropriate restrictions.

Former rules V.R.Cr.P. 53 and V.R.P.P. 79.2 are abrogated and replaced with a statement making the civil rule applicable to proceedings in the criminal and probate divisions. No change is made to V.R.F.P. 4.0(a)(2) or V.R.E.C.P. 3 so V.R.C.P. 79.2 will continue to apply to public proceedings in the family and environmental divisions.

Former Administrative Directive No. 28 is abrogated, which concerns use of electronic devices in a courtroom.

The new rules will not become effective until September 3, 2019 to allow time for educating court staff, members of the bar, members of the media, and the public on the provisions of the new rules. There is a short summary of the rule requirements linked below. The rule requires the Advisory Committees on the Rules of Civil Procedure, Rules of Criminal Procedure, Rules for Family Proceedings, and Rules of Probate Procedure to review the operation of the new rules and report back to the Court by September 7, 2021. The new rules will expire on September 6, 2022 absent further order from the Court.

[Summary of Use of Recording and Transmitting Devices in Courthouse or Courtroom](#)

b. [Order Abrogating and Replacing Rule 35 of the Vermont Rules of Appellate Procedure](#)

This Order was promulgated on May 1, 2019; effective September 3, 2019.

Rule 35 is abrogated and replaced consistent with the simultaneous amendment to V.R.C.P. 79.2. See Reporter's Notes to V.R.C.P. 79.2.

Rule 35(b) provides definitions for terms used throughout the rule. These definitions are the same as those provided in V.R.C.P. 79.2(b) except that there is an added definition for "Chief Justice" and no definition for "juror."

Under Rule 35(c) any person is authorized to possess any device in a courthouse and use it in a nondisruptive manner except outside the courtroom, no person can record or transmit images or sound of an individual without express consent.

Rule 35(d) addresses use inside a courtroom. The rule allows registered media, participants, and nonparticipants to possess and use devices in the courtroom, but the devices cannot be used to communicate orally and may not make distracting sounds. Media can record and transmit video and audio. There are limits on the number and position of devices for video recording and transmission. The use for the Supreme Court is broader than the use allowed in the superior court because there are no witnesses or juries at the Supreme Court.

Rule 35(e) sets limits on recording and transmission. Under (e)(1), there are limits on video and audio recording to ensure confidentiality of communications between members of the Court, between co-counsel, and between attorney and client. The Court is authorized in (e)(2) to prohibit, terminate, limit, or postpone recording or transmitting of a proceeding based on several factors.

c. [Order Promulgating Administrative Order No. 46](#)

This Order was promulgated on May 1, 2019; effective September 3, 2019.

Administrative Order 46 provides the administrative implementation and performance standards for recording and transmitting devices as set forth in V.R.A.P. 35 and V.R.C.P. 79.2 and related rules. The administrative directive provides the processes for media registration and for creating a policy for each courtroom on media use and placement of equipment.

d. [Order Promulgating Amendments to the Vermont Rules of Civil Procedure, the Vermont Rules for Family Proceedings, and the Vermont Rules of Probate Procedure](#)

This Order was promulgated on May 1, 2019; effective August 5, 2019.

The addition of V.R.C.P. 43.1 provides a uniform procedure and standards for video or audio conference participation of parties and other necessary persons, as well as testimony of witnesses, in civil actions and in the civil division of the superior court. The rule sets the terms on which video or audio conferencing may be employed, including time lines and factors to be considered. The intent is to favor the use of video or audio conferencing when it will advance disposition of a proceeding as long as technical standards are satisfied and there is no countervailing circumstance in the particular situation.

The amendment to V.R.C.P. 43(a) reflects the fact that new Rule 43.1 and simultaneous amendments to the family and probate rules, permit testimony to be presented by video or audio conference in appropriate circumstances.

Rule 43.1 also applies so far as applicable in small claims actions by virtue of V.R.S.C.P. 6(a) and 13 and in the Environmental Division to the extent provided in V.R.E.C.P. 3, 4(a), and 5(a)(2). The simultaneous amendment to V.R.F.P. 17 makes the rule applicable in family division proceedings, other than juvenile proceedings under V.R.F.P. 1, subject to specific provisions for certain statutory mental-health and guardianship proceedings.

The amendment to V.R.P.P. 43(b) reflects the addition of new V.R.P.P. 43.1, promulgated simultaneously, which permits testimony to be presented by video or audio conference in appropriate circumstances. New V.R.P.P. 43.1 basically adopts the procedures of V.R.C.P. 43.1 with minor changes in terminology and timing to better reflect probate practice.

e. [Order Promulgating Administrative Order No. 47](#)

This Order was promulgated on May 1, 2019; effective August 5, 2019.

Administrative Order No. 47 is adopted to implement V.R.P.P. 43.1 and V.R.C.P. 43.1 and related rules that are simultaneously promulgated to provide for video and audio conference participation of parties and other necessary persons, as well as testimony of witnesses, in actions in the civil, environmental, family, and probate divisions of the superior court. See V.R.C.P. 43.1(e), V.R.P.P. 43.1 and Reporter's Notes to simultaneous adoption of V.R.C.P. 43.1, and simultaneous amendments of V.R.F.P. 17 and V.R.P.P. 43(b). The technical standards are adopted by Administrative Order rather than by Rule to permit more rapid and flexible change as necessary to take advantage of changing technological capabilities.

Sections 1(a)-(c) of the order require that, for video conferencing to be used, both remote participants and those in the courtroom must have visual and aural access to all aspects of the proceedings comparable to that which they would have if the entire proceeding was occurring, and all participants were present, in the courtroom. Sections 1(d)-(f) address the necessary capabilities that the video conference system to be used must have to ensure that those requirements are met. Section (1)(g) is intended to ensure that the use of video conference does not in any way diminish a remote party's ability to communicate confidentially with counsel and to have timely access to any documentary material that may be necessary for full participation in the proceeding.

Sections 2(a)-(f) of the order are intended to adapt the provisions of Section 1 to the circumstances of audio conference and participation.

f. [Order Promulgating Amendments to V.R.C.P. 26\(b\)\(A\)\(i\)](#)

This Order was promulgated on May 1, 2019; effective July 1, 2019.

The amendment to Rule 26(b)(5)(A)(i) adapts the language of F.R.C.P. 26(a)(2)(A) for the provision of the Vermont Rule identifying expert witnesses whose identity must be disclosed in response to an interrogatory. The amended rule applies to “each person” who may be used at trial to present expert testimony under Vermont Rules of Evidence 702, 703, and 705. To remove uncertainty regarding whether this requirement applies to witnesses whose testimony falls within those Evidence Rules but who were not specially retained to develop their opinions, the proposed amendment makes clear that Rule 26(b)(5) applies “whether or not the witness may also testify from personal knowledge as to any fact in issue in the case.”

- g. [Order Abrogating and Replacing the Vermont Rules for Public Access to Court Records and Abrogating the Rules Governing Dissemination of Electronic Case Records](#)

This Order was promulgated on May 1, 2019; effective July 1, 2019.

This order abrogates and replaces the Vermont Rules for Public Access to Court Records and abrogates the Rules Governing Dissemination of Electronic Case Records, which are incorporated into the new public access rules. The rules cover records in both physical and electronic form and their adoption is timed to coincide with the implementation of a new case-management system that will eventually support electronic filing and electronic case files in all dockets and all courts. In many parts, these rules retain the content of the former rules. In other parts, they amend the prior version or adopt entirely new content because of the shift to electronic case records.

Rule 1 contains a scope, purpose, and construction statement, explaining the joint responsibility of providing public access while protecting confidentiality. Rule 2 contains definitions. Rule 3 provides a general policy to grant access and delineates the custodian of records. Rule 4 provides the means of access to physical and electronic case and administrative records. Rule 5 sets out specific rights of access and includes an appendix listing the statutes and court rules providing specific rights of access. Rule 6 sets forth the exceptions to public access for case records, the inspection procedure, denial procedure, grievances, access during appeals, and access to statistical reports. The appendix to Rule 6 lists the statutes and court rules providing restrictions or prohibitions to public access. Rule 7 relates to filing of case records and states the responsibilities of the filer and the Judiciary. Rule 8 is about administrative records. Rule 9 sets out exceptions to the general access policy and contains the method and standards for granting access, sealing, or redacting records. Rules 10-13 are adopted from the Rules Governing Dissemination of Electronic Case Records. They contain provisions on electronic-case-record compilations, electronic-case-record reports, and electronic-data-dissemination contracts.

- h. [Order Promulgating Amendments to Rule 3 of the Vermont Rules of Admission to the Bar of the Vermont Supreme Court](#)

This Order was promulgated on May 1, 2019; effective immediately.

The amendment to Rule 3 increases the number of Examiners from nine to eleven by adding two attorney members and increasing the number of Associate Examiners from seven to eight to facilitate grading the additional questions contained in the Uniform Bar Examination. The number of Examiners necessary to comprise a quorum has been increased accordingly.

II. 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>

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); see A.O. 44, § 1.

Please email those changes to JUD.AttyLicensing@vermont.gov. Your cooperation is very much appreciated.

To ensure you continue to receive these emails, please add JUD.AttyLicensing@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. eCabinet registration is required whether you practice in court or not.*

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. 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.

Notification to JUD.AttyLicensing@vermont.gov or in **eCabinet** of a change to your contact information does not automatically notify the other. It is your responsibility to notify both. If you are a member of the Vermont Bar Association, you will also need to separately notify the VBA.