

SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR

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TO: Members of the Vermont Bar

FROM: Patricia Gabel, Esq., State Court Administrator

RE: Proposed Rules, E-Filing in the Supreme Court and Related Education Session, Odyssey File and Serve and Public Portal Information, Filing of Exhibits & Other Miscellaneous Info

DATE: September 16, 2021

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For your information, please find:

- [*Proposed Order Amending V.R.C.P. 43\(e\) and 54\(d\)\(2\)\(C\)*](#)
- [*Proposed Order Abrogating Rule 6\(e\) of the Vermont Rules of Civil Procedure and Rule 26\(c\) of the Vermont Rules of Appellate Procedure and Amending V.R.A.P. 26\(d\)\(1\) and 31\(a\)*](#)
- [*Proposed Order Amending Rules 5\(c\) and \(d\), 6\(b\)\(20\), \(21\), and \(22\) and Abrogating and Replacing Rule 9 of the Vermont Rules for Public Access to Court Records*](#)
- *E-filing in the Supreme Court and Related Education Session*
- *Odyssey File and Serve and Public Portal Information*
- *Filing of Exhibits*
- *Updated Court Forms*
- *Obligations Under A.O. 41*
- *eCabinet Registration*

I. 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.C.P. 43\(e\) and 54\(d\)\(2\)\(C\)*](#)

The proposed amendment to Rule 43(e) replaces the reference to V.R.C.P. 78(b)(2) (evidence on motions if requested), which was abrogated by order of June 7, effective August 9, 2021, with a reference to V.R.C.P. 7(b)(6), added by that order and embodying the provisions of V.R.C.P. 78(b)(2) in revised form.

The proposed amendment to Rule 54(d)(2)(C) replaces the reference to V.R.C.P. 78 (Motion Day), which was abrogated by order of June 7, effective August 9, 2021, with a reference to V.R.C.P. 7(b)(4)-(6) added by that order and embodying its relevant provisions in revised form.

Comments on these proposed amendments should be sent by **October 13, 2021**, 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

- b. [*Proposed Order Abrogating Rule 6\(e\) of the Vermont Rules of Civil Procedure and Rule 26\(c\) of the Vermont Rules of Appellate Procedure and Amending V.R.A.P. 26\(d\)\(1\) and 31\(a\)*](#)

The proposed amendment abrogates both V.R.C.P. 6(e) and V.R.A.P. 26(c). These rules provide an additional 3 days for certain kinds of service. Abrogation is overdue, given the general simplification of counting time that occurred when the “day is a day” method of counting was adopted in 2018. Further, the Vermont trial courts and the Vermont Supreme Court are now fully operational under the Odyssey File and Serve system and nonelectronic service is limited. Timing difficulties caused by electronic filing outside of normal business hours, or arising in the limited number of cases involving nonelectronic service, can be addressed case by case by the court.

The proposed amendment to Rule 26(d)(1) extends the maximum limits on times to which filing times for briefs may be extended by stipulation. These time limits are identical to those in the Federal Rules of Appellate Procedure, which were put in place when the federal three-day rule was eliminated for electronic filing. Now that electronic filing has been adopted for appeals to the Vermont Supreme Court, and the three-day rule is proposed to be eliminated, the longer time periods are appropriate for Vermont.

The proposed amendment to Rule 31(a) extends the serving and filing times for principal and reply briefs. The proposed time for the appellant’s principal brief is increased from 30 to 40 days. The proposed time for appellee’s principal brief is increased from 21 to 30 days, and that for reply briefs is increased from 14 to 21 days.

Comments on these proposed amendments should be sent by **November 15, 2021**, 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 Amending Rules 5\(c\) and \(d\), 6\(b\)\(20\), \(21\), and \(22\) and Abrogating and Replacing Rule 9 of the Vermont Rules for Public Access to Court Records*](#)

The proposed amendments to Rule 5(c) and (d) clarify that the specific right of access to records for lawyers and guardians ad litem applies unless there is a restriction on access, such as for records containing trade secrets or other confidential information that is sealed from particular parties.

Proposed new Rule 6(b)(20) adds an exception to public access for motions for ex parte relief until there is a court decision on the motion. Proposed new Rule 6(b)(21) adds an exception to public access for records subject to a motion for in camera review subject to the court's decision. Proposed new Rule 6(b)(22) adds an exception to public access for records containing trade secrets or other confidential business information.

The proposal abrogates and replaces Rule 9, which concerns limiting or granting access to court records. Under the proposed amended version, a hearing on a motion to seal or redact is not required unless there is a request or an objection to sealing or redacting or the court orders a hearing. The proposed rule deletes reference to standing and instead provides a practical description of persons who are entitled to notice and an opportunity for hearing. The proposed rule describes the circumstances in which all parties to a case may stipulate to the sealing or redacting of a document or documents, subject to the court's finding of good cause. The proposed rule also contains a provision specifying that a party can seek permission to appeal ruling on a motion to seal or for access through V.R.A.P. 5.1.

Comments on these proposed amendments should be sent by **November 15, 2021**, to Hon. Timothy B. Tomasi, Chair of the Advisory Committee on the Rules for Public Access to Court Records, at the following address:

Honorable Timothy B. Tomasi, Chair
Advisory Committee on the Rules for Public Access
Timothy.Tomasi@vermont.gov

II. E-FILING IN THE SUPREME COURT AND RELATED EDUCATION SESSION

The Supreme Court is live with the Odyssey case management system and electronic filing through Odyssey File & Serve (OFS). There was a remote education session on e-filing at the Supreme Court on Tuesday, August 31, 2021, from 12:00-1:30 p.m. A recording of the session and a link to the power point presentation used during the presentation is available on the judiciary website <https://www.vermontjudiciary.org/news/e-filing-supreme-court-and-related-education-session>

III. ODYSSEY FILE & SERVE AND PUBLIC PORTAL INFORMATION

As of April 1, 2021, there is a new e-filing use fee structure for users of Odyssey File & Serve (OFS). The new per case fee is \$14 per filer or firm, payable upon a party's first filing after April 1, 2021. This replaces the previous \$5.25 fee per envelope model. The Judiciary encourages all practitioners and others interested to learn more at www.vermontjudiciary.org/efiling

Currently, all trial courts, the Environmental Division, and the Judicial Bureau 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.

Odyssey File & Serve. Odyssey File & Serve (OFS) is the platform through which you will electronically file with the courts. To access OFS, please visit <https://vermont.tylerhost.net/ofswb> 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 <https://www.vermontjudiciary.org/about-vermont->

[judiciary/electronic-access/electronic-filing](#) 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.

Efiling Training Opportunities

Watch a pre-recorded efilng training webinar from the Vermont Judiciary. The judiciary's NG-CMS project team recorded a demonstration of how to use Odyssey File & Serve that you can view here: https://www.youtube.com/watch?v=ke2ouMDK4VQ&feature=emb_title

Practice setting up your firm and submitting filings. For hands on practice, you can create your firm, register users, and begin filing practice cases in the Vermont "**Stage**" environment. Be sure that the web address includes the word "stage" (<https://vermont-stage.tylerhost.net/ofswb>). The Stage environment is available any time. Please note that submissions will only be reviewed periodically, so you may not get a timely response on whether your practice submissions have been accepted. The Stage environment is available now only for familiarity and direct hands-on experience and is not a substitute for registering on the actual efilng site when you are ready.

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.