

**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, Filing of Exhibits & Other Miscellaneous Info

DATE: June 7, 2023

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

For your information, please find:

- *Promulgation Order Adding Rule 26.2 to the Vermont Rules of Criminal Procedure and Amending A.O. 47*
- *Proposed Order Amending Proposed Order Amending V.R.P.A.C.R. 2, 5, 6, 7, and 9*
- *Proposed Order Amending A.O. 11*
(Public Notice and Opportunity to Comment Relative to Proposed Rules or Changes in Rules)
- *Proposed Order Amending Rules 28(e) and 30 of the Vermont Rules of Appellate Procedure*
- *Proposed Order Amending Rule 64 of the Vermont Rules of Civil Procedure*
- *Odyssey File and Serve and Public Portal Information*
- *Filing of Exhibits*
- *Miscellaneous*
- *Receipt of Court Notices and Orders (eCabinet)*

I. PROMULGATED RULE AMENDMENTS

Promulgation Order Adding Rule 26.2 to the Vermont Rules of Criminal Procedure and Amending A.O. 47

<https://www.vermontjudiciary.org/PROMULGATED--VRCrP26.2&AO47--STAMPED>

This Order was promulgated on **June 5, 2023, effective September 5, 2023.**

New Rule 26.2 allows for video conference testimony in evidentiary criminal proceedings, upon agreement of the parties and approval by the court. In contrast to the provisions of V.R.C.P. 43.1 and V.R.P.P. 43.1, video testimony under the proposed rule may not be provided over defendant's objection, and absent express waiver, in recognition of the Sixth Amendment and Article 10 rights to

confrontation and cross examination accorded to the accused. The rule sets the timing and required content of a written notice of intent to provide testimony of a witness via video conference at trial. The new rule requires the court to address the defendant directly in open court and determine that the defendant understands the nature of the rights being waived. The rule sets out the requirements for providing video conference testimony. Finally, the rule provides criteria for the court to consider if a party seeks to withdraw from agreement for testimony of a witness by video teleconference.

The amendment to A.O. 47 § 1 incorporates the technical standards currently applicable in video and audio proceedings under V.R.P.P. 43.1 and V.R.C.P. 43.1 to proceedings under V.R.Cr.P. 26.2.

II. PROPOSED RULE AMENDMENTS

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

- a. *Proposed Order Amending Proposed Order Amending V.R.P.A.C.R. 2, 5, 6, 7, and 9*
<https://www.vermontjudiciary.org/PROPOSED-VRPACR2567and9--FOR-COMMENT>

The proposed 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 proposed 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 proposed 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.

Comments on this proposed amendment should be sent by **August 7, 2023**, 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
Timothy.Tomasi@vermont.gov

- b. *Proposed Order Amending A.O. 11*
(Public Notice and Opportunity to Comment Relative to Proposed Rules or Changes in Rules)
<https://www.vermontjudiciary.org/PROPOSED-AO11--FOR-COMMENT>

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

Proposed 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 that rules should have 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.

Comments on this proposed amendment should be sent by **August 7, 2023**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
emily.wetherell@vermont.gov

c. Proposed Order Amending Rules 28(e) and 30 of the Vermont Rules of Appellate Procedure
[https://www.vermontjudiciary.org/PROPOSED-VRAP28\(e\)and30--FOR-COMMENT](https://www.vermontjudiciary.org/PROPOSED-VRAP28(e)and30--FOR-COMMENT)

The proposed 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 the system allowed production of an appeal volume containing all the documents that are part of the electronic case file from the superior court. Rule 30 was amended to make the printed case optional for cases that contain an appeal volume because the Court and the parties were able to access the documents from the proceedings below. The name printed case was retained even though the document is electronic.

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. Some appeal volumes contain thousands of pages, often not relevant to the issues on appeal, making it difficult to locate or read the most pertinent information.

The proposed amendments to Rule 30(a)(1) require a printed case for most appeals. The appellant must compile a printed case with a table of contents and include, at a minimum, the record of actions from the trial court, the decision on appeal, and other parts of the record relevant to the party’s argument. Having a printed case will allow the Court to access the most relevant information more easily. It is not necessary for parties to include all the information from the record below as an

appeal volume will continue to be produced so that the Court will have access to all parts of the record, even if not contained in the printed case. The printed case should contain the documents related to the appeal.

The existing limited exceptions to the printed case requirement are retained for appeals from small claims, the Human Services Board, and Employment Security Board. These types of cases tend to have self-represented appellants and the record is generally small. In addition, under the proposed amendment to Rule 30(a)(1)(B), the printed case may be waived on the Court's initiative or pursuant to a motion.

Comments on this proposed amendment should be sent by **August 7, 2023**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
emily.wetherell@vermont.gov

d. Proposed Order Amending Rule 64 of the Vermont Rules of Civil Procedure
<https://www.vermontjudiciary.org/PROPOSED-VRCP64--FOR-COMMENT>

The proposed amendment to Rule 64(b)(1) deletes an obsolete reference to a District Judge. The proposed 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.

Comments on this proposed amendment should be sent by **August 7, 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

III. 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 efileing 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.

IV. 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>

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](#)

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 \(cognitofirms.com\)](#)

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.