

**SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR**

THERESE CORSONES, Esq.
State Court Administrator
Therese.Corsones@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: 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: July 12, 2023

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For your information, please find:

- *Promulgation Order Amending V.R.Cr.P. 26(c) and (d)*
- *Promulgation Order Amending V.R.F.P. 1(a)(1) and 17*
- *Promulgation Order Amending V.R.C.P. 43.1*
- *Promulgation Order Amending A.O. 47 (Technical Standards for Remote and Hybrid Hearings)*
- *Promulgation Order Amending A.O. 41 §§ 4 and 16*
- *Promulgation Order Amending V.R.P.P. 43.1*
- *Promulgation Order Amending 2020 V.R.E.F. 3(c) and 12, V.R.P.P. 5(e) and Adding V.R.P.P. 78*
- *Promulgation Order Amending A.O. 38*
- *Proposed Order Amending Rule 47(e) of the Vermont Rules of Probate Procedure*
- *Odyssey File and Serve and Public Portal Information*
- *Filing of Exhibits*
- *Miscellaneous*
- *Receipt of Court Notices and Orders (eCabinet)*

I. PROMULGATED RULE AMENDMENTS

- a. *Promulgation Order Amending V.R.Cr.P. 26(c) and (d)*
[https://www.vermontjudiciary.org/PROMULGATED-VRCrP26\(c\)&\(d\)--STAMPED](https://www.vermontjudiciary.org/PROMULGATED-VRCrP26(c)&(d)--STAMPED)

This Order was promulgated on **July 10, 2023, effective October 2, 2023.**

The amendment to Rule 26(c) updates the existing rule to conform to the 2020 amendment to Federal Rule of Evidence 404(b), by imposing additional notice requirements on the State in seeking the introduction of other crimes, wrongs, or acts evidence in a criminal case. Under F.R.E. 404(b) the prosecution must: (1) identify the evidence that it intends to offer; (2) articulate the nonpropensity purpose for which the evidence is offered, and (3) state the basis for concluding that the evidence is relevant in light of this purpose. Although the text of Vermont Rule of Criminal Procedure 26(c) itself has not required an articulation of the nonpropensity purpose for which the evidence is being offered, Vermont caselaw requires the proponent seeking to admit evidence under Rule 404(b) to state the purpose of the evidence and the reasoning. The amendment adds these requirements into the rule.

The amendment of Rule 26(d) makes nonsubstantive amendments to terminology to eliminate offensive language, and to comport with similar amendments made in 2020 to Vermont Rule of Evidence 804a (and to the 2023 amendment of V.R.E. 807). The phrase “person with a mental illness, or an intellectual or developmental disability” is substituted for former language, in referring to the individuals whose hearsay statements may be admissible at trial pursuant to V.R.E. 804a. There is no substantive change to the existing provisions of V.R.Cr.P. 26(d).

b. Promulgation Order Amending V.R.F.P. 1(a)(1) and 17

[https://www.vermontjudiciary.org/PROMULGATED-VRFP1\(a\)\(1\)and17--STAMPED](https://www.vermontjudiciary.org/PROMULGATED-VRFP1(a)(1)and17--STAMPED)

This Order was promulgated on **July 10, 2023, effective October 2, 2023.**

Vermont Rule for Family Proceeding 1(a)(1) is amended to make V.R.C.P 43.1 applicable to delinquency proceedings for the purposes of remote proceedings under V.R.F.P. 17.

The amendments to Vermont Rule for Family Proceedings 17 update its provisions concurrent with changes to V.R.C.P. 43.1. Rule 17 as originally adopted in 2009 authorized testimony by telephone in family division proceedings. The rule was amended in 2019 concurrent with the adoption of V.R.C.P. 43.1, which addressed appearance by video and audio conference generally. The amendment to V.R.F.P. 17(a) clarifies that V.R.C.P. 43.1 applies in parentage proceedings in addition to the existing named proceedings under V.R.F.P. 4 (divorce, annulment, and separation). The amendment to V.R.F.P. 17(b) modifies the application of V.R.C.P. 43.1 in juvenile matters. New V.R.F.P. 17(c) makes V.R.C.P. 43.1 applicable in juvenile delinquency and youthful offender proceedings in a modified way. All status conferences and pretrial proceedings are subject to V.R.C.P. 43.1 but other proceedings are in person absent good cause. New V.R.Cr.P. 26.2 regarding testimony of a remote witness is incorporated for these proceedings given the applicable confrontation rights.

V.R.F.P. 17(d), formally 17(c), regarding mental-health proceedings provides that hearings for involuntary treatment, continued treatment, and involuntary medication are scheduled as remote proceedings. However, if a party reasonably in advance of a hearing requests, or the court on its own initiative orders, the proceedings will be in-person. The intent of the change is that a request by a party for an in-person proceeding is granted automatically, i.e., the request is not a motion that the court must rule upon. Likewise, the court may, on its own initiative, schedule an in-person hearing.

V.R.F.P. 17(e), formally 17(d), pertaining to minor guardianship proceedings, is unchanged.

New subdivision (f) governs hearings in abuse-prevention hearings under Rule 9. The rule adopts the identical language governing stalking proceedings under new V.R.C.P. 43.1(k). Both rules

provide that proceedings will be hybrid unless upon a party's request or the court's own initiative the court orders participation by a particular method.

New subdivision (f) incorporates V.R.C.P. 43.1 into other proceedings in the family division that are not otherwise specifically addressed in the rule.

c. Promulgation Order Amending V.R.C.P. 43.1

<https://www.vermontjudiciary.org/PROMULGATED--VRCP43.1--STAMPED>

This Order was promulgated on **July 10, 2023, effective October 2, 2023.**

Vermont Rule of Civil Procedure 43.1 was originally promulgated in 2019 to provide a uniform process for participation by audio and video conference. The COVID-19 pandemic reached Vermont less than a year later and court procedures were modified after the Supreme Court declared a judicial emergency. Remote and hybrid proceedings became much more widespread. The Court created the Special Advisory Committee on Remote Hearings to study, advise the Court about, and propose potential permanent rule changes governing remote participation in court proceedings. The amendments to Rule 43.1 are the result, in large part, of the Special Advisory Committee's study and analysis of the experience of members of the bar, judges, court staff, and members of the public with fully remote and hybrid proceedings.

The promulgated rule contains different standards for nonevidentiary and evidentiary proceedings, relaxes the timelines for requesting remote participation, and introduces the concepts of remote and hybrid proceedings. Paragraph (a)(1) is added to set a default of in-person participation. Subdivision (b) adds definitions for evidentiary proceeding, hybrid proceeding, and remote proceeding. New subdivision (c) addresses nonevidentiary proceedings, which can be remote or hybrid in the court's discretion. Subdivision (d) addresses evidentiary proceedings, which can be remote or hybrid for good cause based on a consideration of the relevant factors. Under the amended rule, judges have the discretion to schedule remote and hybrid nonevidentiary proceedings while evidentiary proceedings require a determination of good cause based on a consideration of the factors in subdivision (h). Judges may issue standing orders for categories of proceedings or provide for remote or hybrid proceedings on a case-by-case basis. The court can do this on its own initiative or based on a motion or stipulation of the parties. Subdivision (e) revises the former (c)(4) regarding the judge presiding from a remote location. Subdivision (f) sets out the requirements for the hearing notice to require information on how the hearing will be conducted and how to request a different type of participation. Subdivision (g), entitled Exceptions, revises former (c)(5), previously entitled "Emergencies," to allow exceptions from the rule's time and notice requirements in certain circumstances. Subdivision (h) includes the factors for a court to consider in determining if there is good cause to have an evidentiary remote or hybrid proceeding. Subdivision (i) addresses the conduct of the proceedings. New subdivision (j) provides that jury selection is governed by the standards for evidentiary proceedings. New subdivision (k) applies to civil stalking proceedings under 12 V.S.A. §§ 5131-5138 and sets a default of hybrid proceedings. Former subdivision (d), on technical standards, is relabeled as subdivision (l).

d. Promulgation Order Amending A.O. 47 (Technical Standards for Remote and Hybrid Hearings)

<https://www.vermontjudiciary.org/PROMULGATED-AO47Amendments--STAMPED>

This Order was promulgated on **July 10, 2023, effective October 2, 2023.**

Administrative Order No. 47 is amended in conjunction with amendments to V.R.C.P. 43.1 and related rules given the experience of the bar, judges, court staff, and members of the public with fully remote and hybrid proceedings over the last few years.

As originally adopted, AO 47 had separate standards for video and audio conferencing. Amended § 1 now provides one set of standards applicable to both remote and hybrid proceedings. In general, participants must be able to hear all other participants during proceedings. Where participation is by video conference, participants must also be able to see other participants. The amended rule retains the requirement that all participants must have access to documents and other types of exhibits. It also continues to require that parties be able to confidentially consult with counsel.

Section 2, formerly about audio proceedings, now addresses access to public proceedings for nonparticipants. For fully remote proceedings, new § 2(a) states that when requested the public will be provided with a means to view and hear the proceeding remotely, absent extraordinary circumstances. Remote viewing may be through a link to a video platform or through a livestream. For hybrid proceedings, new § 2(b) states that the public may hear and view the proceeding in person in the courtroom and may also be able to observe remotely. For either remote or hybrid proceedings, an inability to accommodate a request to observe remotely will not serve as grounds to continue the proceeding.

e. Promulgation Order Amending A.O. 41 §§ 4 and 16

<https://www.vermontjudiciary.org/PROMULGATED-A.O.41§§4and16--STAMPED>

This Order was promulgated on **July 10, 2023, effective October 2, 2023.**

The amendment to Administrative Order 41, § 4(a) clarifies that the attorney licensing statement must be submitted in a manner approved by the State Court Administrator. The revised text is consistent with current practice in which relicensing is done through an online portal and not using a paper form. Amended § 4(c), regarding an attorney's obligation to report any changes to contact information, clarifies that attorneys are responsible for keeping their contact information current and notice sent to the registered email address is sufficient even if not received due to a failure to update the information.

The amendment to Administrative Order 41, § 16 corrects a cross reference to Vermont Rule of Appellate Procedure 45.1 regarding appearance of attorneys not admitted in Vermont.

e. Promulgation Order Amending V.R.P.P. 43.1

<https://www.vermontjudiciary.org/PROMULGATED-VRPP43.1--STAMPED>

This Order was promulgated on **July 10, 2023, effective October 2, 2023.**

The amendments to Rule 43.1 incorporate lessons learned regarding remote and hybrid proceedings based on the experience of the bar, judges, court staff, and the public.

Amended Rule 43.1(a) provides a default of remote proceedings with hybrid and in-person proceedings permissible with court permission. Most probate proceedings are conducted with relaxed evidentiary rules. Probate proceedings also often involve self-represented parties and individuals from a wide geographic area, including outside Vermont. The experience during the pandemic demonstrated that remote participation provides a good balance between the cost and

convenience for the participants and the overall effectiveness of the proceeding, which is consistent with the scope of the Rules, set out in V.R.P.P. 1.

Amended Rule 43.1(b) contains new definitions for hybrid and remote proceedings. Under 43.1(c)(1), the court has discretion to issue standing orders or case-specific orders for hybrid or in-person participation based on a consideration of any relevant factors provided in (g). The parties may also move or stipulate to hybrid or in-person participation under (c)(2). In assessing whether to grant or deny a motion or stipulation, the court is guided by a consideration of the factors in subdivision (g). Because a hybrid or in-person hearing requires the availability of a courtroom and additional court staff, when a motion is granted, the court may need to reschedule the proceeding. The amendments to Rule 43.1(d) pertain to the judge to presiding remotely. The amendments to Rule 43.1(e) address the required notice to the parties in advance of the hearing. The notice must specify whether the proceeding is in person, remote, or hybrid and describe the process for requesting an alternate means of participation. Subdivision (f) allows exceptions to the notice and timing requirements of the rule. Rule 43.1(g) incorporates the factors from former (c)(6) and (d)(3) and (4) for the court to consider in evaluating whether to have hybrid or in-person proceedings. New 43.1(h) addresses the conduct of the proceedings and allows the court to impose conditions to ensure the fairness of the proceeding, ensure reliability of the evidence, or to protect public health. Finally, former 43.1(e), regarding technical standards, is relabeled (i).

f. Promulgation Order Amending 2020 V.R.E.F. 3(c) and 12, V.R.P.P. 5(e) and Adding V.R.P.P. 78

[https://www.vermontjudiciary.org/PROMULGATED-VREF3\(c\)12_VRPP5\(e\)\(8\)_78--STAMPED](https://www.vermontjudiciary.org/PROMULGATED-VREF3(c)12_VRPP5(e)(8)_78--STAMPED)

This Order was promulgated on **July 10, 2023, effective October 2, 2023.**

These amendments address the need in some probate proceedings for the court to inspect paper documents during consideration of the case. The amendment to 2020 V.R.E.F. 3(c) mandates retention of a paper document by the court when required by statute or other provision of law. The amendment to 2020 V.R.E.F. 12 directs that the court must retain a paper document even after it has been converted to electronic form if otherwise required by law. Contemporaneous amendment of V.R.P.P 5(e) and addition of V.R.P.P 78 delineate testamentary documents and vital records that must be provided on paper subject to retention and return to the parties upon completion of the case.

g. Promulgation Order Amending A.O. 38

<https://www.vermontjudiciary.org/PROMULGATED-A.O.38--STAMPED>

This Order was promulgated on **July 10, 2023, effective October 2, 2023.**

Administrative Order No. 38 is amended to conform to concurrent amendments to V.R.F.P. 17 and V.R.C.P. 43.1. The amendment removes the reference to juvenile delinquency proceedings in the title and in § I because delinquency (and youthful offender) proceedings are now addressed in revised V.R.F.P. 17(c), which incorporates V.R.C.P. 43.1 for certain types of nonevidentiary proceedings. Subdivision I(c) is amended to update the cross reference to the factors for a court and parties to consider in evaluating whether to allow remote audio or video testimony by agreement under (b)(2), which now incorporates by reference consideration of and compliance with the provisions of V.R.Cr.P. 26.2.

Subdivision I(a) addresses circumstances of remote participation by the court and the parties where the presence of the defendant is not required by law; subdivision (b) prescribes circumstances in which parties may participate remotely by agreement of the parties, and in other proceedings where the defendant's presence is required by law. In contrast to I(a)(1), paragraph (b)(1) reflects the concern that where the judge must serve as a factfinder, and in other circumstances in which a defendant's presence is required by law, the judge may preside remotely only upon agreement of the parties, and not on the judge's own motion and over objection.

Subdivision I(c) directs that the court and parties must observe the requirements of V.R.Cr.P. 26.2 in conjunction with any proposal for remote witness testimony by agreement.

II. PROPOSED RULE AMENDMENTS

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

Proposed Order Amending Rule 47(e) of the Vermont Rules of Probate Procedure
[https://www.vermontjudiciary.org/PROPOSED-VRPP47\(e\)--FORCOMMENT](https://www.vermontjudiciary.org/PROPOSED-VRPP47(e)--FORCOMMENT)

The proposed amendment to Rule 47(e) updates the language regarding production of transcripts for probate proceedings. The proposed language conforms to parallel provisions in V.R.C.P. 72(c) and to V.R.A.P. 10(b)(2).

Comments on this proposed amendment should be sent by **September 11, 2023**, to Hon. Jeffrey Kilgore, Chair of the Advisory Committee on the Rules of Probate Procedure, at the following address:

Hon. Jeffrey Kilgore
Jeffrey.Kilgore@vermont.gov

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 efile 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 efile 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.