

**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: Emergency, Promulgated and Proposed Rules, Odyssey File and Serve and Public Portal Information, Filing of Exhibits & Other Miscellaneous Info

DATE: December 13, 2022

For your information, please find:

- *Order Promulgating Emergency Amendment to Rule 56(b) of the Vermont Rules of Civil Procedure*
- *Promulgation Order Amending Rule 79.1(e) of the Vermont Rules of Civil Procedure and Rule 44.2(b) of the Vermont Rules of Criminal Procedure, Rule 79.1(d) of the Vermont Rules of Probate Procedure, and Rule 15(e) of the Vermont Rules for Family Proceedings*
- *Order Permanently Adopting Amendments to Rule 79.2 of the Vermont Rules of Civil Procedure, Rule 53 of the Vermont Rules of Criminal Procedure, Rule 79.2 of the Vermont Rules of Probate Procedure, Rule 35 of the Vermont Rules of Appellate Procedure and Administrative Order 46*
- *Proposed Order Amending Rule 43.1 of the Vermont Rules of Civil Procedure*
- *Proposed Order Amending Rule 17 of the Vermont Rules for Family Proceedings*
- *Proposed Amendment to Administrative Order No. 47*
- *Odyssey File and Serve and Public Portal Information*
- *Filing of Exhibits*
- *Miscellaneous*

I. PROMULGATED RULE AMENDMENTS

- a. Order Promulgating Emergency Amendment to Rule 56(b) of the Vermont Rules of Civil Procedure*
[http://www.vermontjudiciary.org/PROMULGATED-EmergencyOrderAmendingVRCP56\(b\)](http://www.vermontjudiciary.org/PROMULGATED-EmergencyOrderAmendingVRCP56(b))

This Order was promulgated on **December 12, 2022, effective January 1, 2023.**

Rule 56(b) is amended without notice and comment to restore language consistent with the federal rule allowing a party to file for summary judgment “at any time until” 30 days after the close of all discovery that was changed in the 2022 amendment to require a party to file “within” the 30-day

period. The amendment clarifies that a party may file a motion for summary judgment before as well as after the close of discovery.

- b. Order Promulgating Amendments to Rule 79.1(e) of the Vermont Rules of Civil Procedure and Rule 44.2(b) of the Vermont Rules of Criminal Procedure, Rule 79.1(d) of the Vermont Rules of Probate Procedure, and Rule 15(e) of the Vermont Rules for Family Proceedings*
[https://www.vermontjudiciary.org/PROMULGATED-OrderAmendingVRCP79.1\(e\)-VRCrP44.2\(b\)-VRPP79.1\(d\)-VRFP15\(a\)](https://www.vermontjudiciary.org/PROMULGATED-OrderAmendingVRCP79.1(e)-VRCrP44.2(b)-VRPP79.1(d)-VRFP15(a))

This Order was promulgated on **December 12, 2022, effective February 13, 2023.**

Rule 79.1(e) is amended to make clear that admission pro hac vice is a matter of course on motion supported by the pro hac vice licensing card issued by the Court Administrator pursuant to A.O. 41, § 16. The card is issued on payment of fee and the applicant's certification that the applicant is not suspended or disbarred in any jurisdiction and is in good standing and admitted to practice in the licensing state. The licensing card is sufficient to show the court where the case is pending that the applicant is in good standing and not subject to any discipline. The court retains control over the conduct of the out-of-state attorney and of the sponsoring attorney, whose signature is on the motion, and the court may revoke the admission for good cause. This amendment is made with contemporaneous amendment of parallel provisions of V.R.Cr.P. 44.2(b), V.R.P.P. 79.1(d) and V.R.F.P. 15(a).

- c. Order Permanently Adopting Amendments to Rule 79.2 of the Vermont Rules of Civil Procedure, Rule 53 of the Vermont Rules of Criminal Procedure, Rule 79.2 of the Vermont Rules of Probate Procedure, Rule 35 of the Vermont Rules of Appellate Procedure and Administrative Order 46*
<https://www.vermontjudiciary.org/PROMULGATEDExtendingVRCP79.2VRCrP53VRPP79.2AO46>

This Order was promulgated on **December 12, 2022, effective immediately.**

These rules were amended on May 1, 2019, effective September 3, 2019, and further amended on September 4, 2019, to provide guidelines for the possession and use of recording and transmitting devices in the courtroom to accommodate advances in technology. When adopted, the amendments contained a sunset provision and a requirement that the advisory rules committees report back to the Court on whether the amendments should be made permanent. The rules committees have not reported any objection to the current state of the rules or proposed any further revision. Therefore, the 2019 amendments are now made permanent.

II. PROPOSED RULE AMENDMENTS

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

- a. Proposed Order Amending Rule 43.1 of the Vermont Rules of Civil Procedure*
<https://www.vermontjudiciary.org/PROPOSED-VRCP43.1-FORCOMMENT>

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 proposed 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 proposed 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 remote or hybrid nonevidentiary proceedings. Subdivision (d) provides the standards for remote or hybrid evidentiary proceedings. 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. Subdivision (g) revises former (c)(5), previously entitled "Emergencies," to allow a waiver of 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). In general, under the amended version of the rule, judges have the discretion to schedule remote and hybrid participation for 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.

Comments on these proposed amendments should be sent by **February 13, 2023**, to Scott Griffith, Chair of the Special Advisory Committee on Remote Hearings, at the following address:

Scott Griffith, Chair
Special Advisory Committee on Remote Hearings
Scott.Griffith@vermont.gov

b. Proposed Order Amending Rule 17 of the Vermont Rules for Family Proceedings
<https://www.vermontjudiciary.org/PROPOSED-VRFP17-FORCOMMENT>

The proposed amendments to Vermont Rule for Family Proceedings 17 update its provisions concurrent with proposed 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 proposed 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 proposed amendment to V.R.F.P. 17(b) adds juvenile delinquency and youthful offender proceedings under V.R.F.P. 1 and 1.1 to the types of proceedings that are subject to V.R.C.P. 43.1 and modifies the application of V.R.C.P. 43.1 in juvenile matters.

The proposed amendment to V.R.F.P. 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(d), pertaining to minor guardianship proceedings, is unchanged. Proposed new subdivision (e) 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. Proposed 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.

Comments on these proposed amendments should be sent by **February 13, 2023**, to Scott Griffith, Chair of the Special Advisory Committee on Remote Hearings, at the following address:

Scott Griffith, Chair
Special Advisory Committee on Remote Hearings
Scott.Griffith@vermont.gov

c. *Proposed Amendment to Administrative Order No. 47*
<https://www.vermontjudiciary.org/PROPOSEDAO47Amendment-FORCOMMENT>

The amendments to Administrative Order No. 47 are proposed in conjunction with changes 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, A.O. 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 requirements 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, which formerly addressed audio proceedings, now addresses access to public proceedings for nonparticipants. For fully remote proceedings, the 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. For hybrid proceedings, new § 2(b) provides public access by observation in the courtroom and may also be available remotely.

Comments on these proposed amendments should be sent by **February 13, 2023**, to Scott Griffith, Chair of the Special Advisory Committee on Remote Hearings, at the following address:

Scott Griffith, Chair
Special Advisory Committee on Remote Hearings
Scott.Griffith@vermont.gov

III. ODYSSEY FILE & SERVE AND PUBLIC PORTAL INFORMATION

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 efilng 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.tylerhost.net/ofsw eb>

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. 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 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 only works with Internet 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 if you have difficulty accessing eCabinet or with any questions.

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.

To ensure you continue to receive these emails, please add JUD.AttyLicensing@vermont.gov and JUD.CAOMemotoBar@vermont.gov to your Safe Senders list.