

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

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TO: Members of the Vermont Bar
FROM: Patricia Gabel, State Court Administrator
RE: Promulgated and Proposed Rule Amendments and Miscellaneous Information
DATE: July 18, 2017

For your information, please find the following:

- [Order Promulgating Amendments to V.R.C.P. 1, 26, 34\(b\), 37\(f\), and 55\(c\)](#)
- [Order Promulgating Amendment to V.R.C.P. 5\(h\)](#)
- [Order Promulgating Amendment to V.R.P.P. 5\(e\)](#)
- [Order Promulgating Amendment to V.R.Cr.P. 32\(g\)](#)
- [Order Promulgating Amendment to V.R.Pr.C. 8.4](#)
- [Order Promulgating Amendment to Rule 8 of the Vermont Rules of Admission](#)
- [Proposed Order Abrogating and Replacing V.R.C.P. 79.2](#)
- [Proposed Order Abrogating and Replacing V.R.A.P. 35](#)
- [Proposed Order Promulgating Administrative Order No. 46](#)
- *Updated Court Forms*
- *Obligations Under A.O. 41*
- *eCabinet Registration*

I. PROMULGATED RULE AMENDMENTS

- a. [Order Promulgating Amendments to V.R.C.P. 1, 26, 34\(b\), 37\(f\), and 55\(c\)](#)

This Order was promulgated on July 14, 2017, effective September 18, 2017. The amendments to the civil rules incorporate or adapt recent changes to the federal rules.

The amendment to Rule 1 is intended to encourage increased cooperation among the parties by clarifying that parties as well as courts have a responsibility to achieve “the just, speedy, and inexpensive determination of every action.”

The amendment to Rule 26 redefines the scope of discovery. Discovery must now be relevant to any party’s claim or defense, as opposed to being reasonably calculated to lead to the discovery of admissible evidence. A proportionality requirement has been added, saying that discovery may now only be obtained if it is “proportional to the needs of the case” as defined by five factors.

The amendment to Rule 34(b) requires the grounds for objection to be stated specifically consistent with the requirement that an objection must state whether materials are being withheld.

The amendment to Rule 37(f) clarifies the consequences for failing to preserve electronically stored or other evidence.

The amendment to Rule 55(c) makes clear that the standards of Rule 60(b) apply only to a judgment that is “final.”

b. [Order Promulgating Amendment to V.R.C.P. 5\(h\)](#)

This Order was promulgated on July 14, 2017, effective September 18, 2017. Rule 5(h), as added effective September 21, 2015, is amended to clarify and make uniform the procedures under it. In some clerks’ offices it has been interpreted to (1) require a separate form for each item served, (2) require that the form be on a separate document from the items it identifies, and (3) allow court staff to return filings that lack a certificate, rather than accepting them and then having the judge determine how to handle the absence. The amendment clarifies that the certificate may be incorporated in the document filed or be on a separate page and may embrace multiple documents. Further, the amendments to paragraph (3) clarify that a document filed without a certificate should be accepted for filing, subject to compliance with the order of the judge concerning the filing of a proper certificate.

c. [Order Promulgating Amendment to V.R.P.P. 5\(e\)](#)

This Order was promulgated on July 14, 2017, effective September 18, 2017. Rule 5(e) is amended to adopt language virtually identical to V.R.C.P. 5(h) as simultaneously amended, requiring a certificate of service to be filed after service of any document under Rule 5.

d. [Order Promulgating Amendment to V.R.Cr.P. 32\(g\)](#)

This Order was promulgated on July 14, 2017, effective September 18, 2017. The amendment adds subdivision (g) to V.R.Cr.P. 32 to provide specific procedures for conduct of restitution hearings convened pursuant to 13 V.S.A. § 7043.

e. [Order Promulgating Amendment to V.R.Pr.C. 8.4](#)

This Order was promulgated on July 14, 2017, effective September 18, 2017. The amendment to Rule 8.4(g) and new Comments [3]-[5] adopt, with minor verbal changes, amendments to the American Bar Association’s Model Rules of Professional Conduct approved by the ABA on August 8, 2016. The amendment prohibits conduct in the practice of law that discriminates or harasses on the basis of a lengthy list of characteristics.

f. [Order Promulgating Amendment to Rule 8 of the Vermont Rules of Admission](#)

This Order was promulgated on July 14, 2017, effective September 18, 2017. The amendment revises Rule 8 to reflect the Board’s practice, based on prior Rule § 6(h) and current Rule 8(c)(3)(A), of requiring that an Applicant requesting an equivalency determination for a Foreign Law School have exposure to the common law. This training is now an express requirement of Rule 8(b)(1), ensuring Applicants complete their legal education at a Foreign Law School whose curriculum is based on the principles of common law.

Rule 8(c)(4) is added to include a cure provision for Applicants who do not otherwise meet the requirements of Rule 8(b)(1). The cure provision permits Applicants to correct a deficiency by completing a Master of Laws degree at an Approved Law School in the United States, subject to specific requirements which focus on ensuring that Applicants receive sufficient training in common law principles, professional responsibility, legal writing, U.S. law, and UBE topics.

II. PROPOSED RULE AMENDMENTS

a. [Proposed Order Abrogating and Replacing V.R.C.P. 79.2](#)

The proposed amendment abrogates and replaces V.R.C.P. 79.2. The current rule focuses primarily on the recording of court proceedings by news media using conventional cameras and audio equipment for broadcasting or publication. The proposed rule reflects extensive advances in technology that place the ability to record and transmit images and sound in the hands of any person in a courthouse or courtroom with a smartphone or other portable electronic device in his or her pocket.

The rule was developed by a special committee composed of judges, court staff, members of all of the Supreme Court procedural rules committees, and representatives of the media. Virtually identical rules will replace V.R.P.P. 79.2 and V.R.Cr.P. 53.

b. [Proposed Order Abrogating and Replacing V.R.A.P. 35](#)

The proposed amendment abrogates and replaces V.R.A.P. 35 consistent with the simultaneous amendment to V.R.C.P. 79.2. Rule 35 incorporates the policies and language of V.R.C.P. 79.2, except where the Supreme Court structure and proceedings are different from those in the superior court.

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

The proposed A.O. 46 provides for the administrative implementation and performance standards for V.R.A.P. 36, V.R.C.P. 79.2, V.R.Cr.P. 53, and V.R.P.P. 79.2 governing the use of electronic devices in the court.

Comments on these proposed amendments should be sent by **September 18, 2017**, to the Hon. John A. Dooley at the following address:

Hon. John A. Dooley, Chair
Special Committee on Video and Electronics in the Courtroom
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
John.Dooley@vermont.gov

A public hearing on all three amendments will be held on August 3, 2017 at 11 a.m. in Room 11 of the Statehouse.

III. 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.