

**STATE OF VERMONT
VERMONT SUPREME COURT
DECEMBER TERM, 2019**

Order Promulgating Amendments to Vermont Rules for Environmental Court Proceedings 3, 4, and 5, Vermont Rules of Civil Procedure 4, 10, 44.2, 45, 77, and 79.1, Vermont Rule of Probate Procedure 4 and 79.1, and Vermont Rule for Family Proceedings 15

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3 of the Vermont Rules for Environmental Court Proceedings be amended to read as follows (new matter underlined):

RULE 3. CIVIL ACTIONS

The following actions within the original jurisdiction of the Environmental Court shall be commenced and conducted as civil actions under the Vermont Rules of Civil Procedure, the 2010 Vermont Rules for Electronic Filing, and the Vermont Rules of Appellate Procedure, so far as those rules are applicable and except as they may be modified by subdivisions (b)-(e) of Rule 2:

Reporter's Notes—2020 Amendment

In anticipation of implementation of a new case management system and concurrent electronic filing, the 2020 Vermont Rules for Electronic Filing are being simultaneously promulgated. The new case management will be rolled out across the state in phases. Until the new case management system and electronic filing are fully implemented, different divisions of the superior court will be operating under different electronic filing rules. The Environmental Division has electronic filing under the 2010 Vermont Rules for Electronic Filing and so references are amended to specify that those rules are applicable. After the Court Administrator directs that electronic filing under the 2020 Vermont Rules for Electronic Filing will begin in the Environmental Division, the 2010 Vermont Rules for Electronic Filing will no longer apply, and the Rules for Environmental Court Proceedings will require revision.

Rule 3 is amended to clarify that its cross reference is to the 2010 Vermont Rules for Electronic Filing.

2. That Rule 4(a)(2), (d)(6), and (e)(5) of the Vermont Rules for Environmental Court Proceedings be amended to read as follows (new matter underlined):

RULE 4. REVIEW OF ENVIRONMENTAL ENFORCEMENT ORDERS

(a) Applicability of Rules.

(1) This rule applies to review of environmental enforcement orders in the Environmental Court under 10 V.S.A. §§ 8001-8013 and 24 V.S.A. § 2297b and to appeals from the Environmental Court to the Supreme Court in those proceedings.

(2) The Vermont Rules of Civil Procedure, as modified by Rules 2(b)-(e), the 2010 Vermont Rules for Electronic Filing, and the Vermont Rules of Appellate Procedure apply to all proceedings under this rule except as otherwise provided in paragraph (3) of this subdivision and except where another procedure is expressly provided by subdivisions (b)-(e) of this rule.

(3) The following provisions of the Vermont Rules of Civil Procedure shall not apply to proceedings under this rule: Rules 3 (Commencement of Action), 4 (Process), 4.1 (Attachment), 4.2 (Trustee Process), 7(a) and (c) (Pleadings Allowed), 8(a)-(f) (General Rules of Pleading), 9 (Pleading Special Matters), 10 (Form of Pleadings), 12 (Defenses and Objections), 13 (Counterclaim and Cross-Claim), 14 (Third-Party Practice), 18 (Joinder of Claims and Remedies), 22 (Interpleader), 23 (Class Actions), 23.1 (Derivative Actions), 24(a)(2) (Nonstatutory Intervention as of Right), 24(b)(2) (Nonstatutory Intervention by Permission), 38-39 (Jury Trials), 40(b) (Progress Calendar), 47-49 (Jurors and Juries), 51 (Argument of Counsel; Instructions to Jury), 53 (Masters), 56 (Summary Judgment), 57 (Declaratory Judgments), 64 (Replevin), 68 (Offer of Judgment), 72 (Appeals from Probate Courts), 74 (Appeals from Decisions of Governmental Agencies), 75 (Review of Governmental Action), the last sentence of Rule 77(d) (Lack of Notice of Entry), 80.1 (Foreclosure of Mortgages and Judgment Liens), 80.2 (Naturalization of Aliens), 80.4 (Habeas Corpus), 80.5 (District Court Procedures for Civil License Suspensions and Penalties for DWI), 80.6 (Judicial Bureau Procedures), 80.7 (Procedures for Immobilization or Forfeiture Hearings Pursuant to 23 V.S.A. § 1213c), and 80.8 (Transfer from District to Superior Court).

(d) Procedure for Review of Administrative Orders.

(6) Appeal to Supreme Court; Stay Pending Appeal.

(A) A final judgment under this rule shall be appealable as of right to the Supreme Court pursuant to 10 V.S.A. § 8013(c). The notice of appeal shall be filed within 14 days of the date of receipt of the judgment appealed from in accordance with 2010 Vermont Rule for Electronic Filing 5(f).

(B) Notwithstanding Rule 62 of the Vermont Rules of Civil Procedure and Rule 8 of the Vermont Rules of Appellate Procedure, an appeal to the Supreme Court by the Secretary shall stay the dissolution of an emergency judicial order. An appeal by the respondent or the Attorney General shall not stay the operation of an emergency or other order but shall stay payment of a penalty. A respondent may seek a stay in the Supreme Court pursuant to Rule 8 of the Vermont Rules of Appellate Procedure.

(e) Procedure for Review of Final Municipal Solid Waste Orders.

(5) Appeals; Stay on Appeal. Appeals from Environmental Court decisions under this rule are governed by the 2010 Vermont Rules for Electronic Filing and the Vermont Rules of Appellate Procedure. On an appeal of a final judgment under this rule, Rule 62 of the Vermont Rules of

Civil Procedure and Rule 8 of the Vermont Rules of Appellate Procedure shall govern stays, and the decision of the Environmental Court on all matters other than penalties shall be deemed to be judgments in an action for an injunction for purposes of those rules.

Reporter's Notes—2020 Amendment

Rule 4(a)(2), (d)(6), and (e)(5) is amended to clarify that the references are to the 2010 Vermont Rules for Electronic Filing, which are currently applicable in the Environmental Division. See Reporter's Notes to simultaneous amendment to V.R.E.C.P. 3.

3. That Rule 5(a)(2), (b)(1), (c), (f), (h)(1)(A), and (k)(1) of the Vermont Rules for Environmental Court Proceedings be amended to read as follows (new matter underlined):

RULE 5. APPEALS

(a) Applicability of Rules.

(2) Except as modified by this rule and by subdivisions (b)-(e) of Rule 2, the Vermont Rules of Civil and Appellate Procedure, and the 2010 Vermont Rules for Electronic Filing, so far as applicable, govern all proceedings under this rule.

(b) Notice of Appeal.

(1) *Filing the Notice of Appeal.* An appeal under this rule shall be taken by filing with the clerk of the Environmental Court by certified mail or other means, including electronic filing in accordance with the 2010 Vermont Rules for Electronic Filing, a notice of appeal containing the items required in paragraph (3) of this subdivision within 30 days of the date of the act, decision, or jurisdictional opinion appealed from, unless the court extends the time as provided in Rule 4 of the Vermont Rules of Appellate Procedure. The appellant shall pay to the clerk with the notice of appeal any required entry fee. If a notice of appeal is mistakenly filed with the tribunal appealed from, or the Natural Resources Board, or either of its panels or its predecessor boards, the appropriate officer of the tribunal, board, or panel shall note thereon the date on which it was received and shall promptly transmit it to the clerk of the Environmental Court, and it shall be deemed filed with the Environmental Court on the date so noted. Failure of an appellant to take any step other than the timely filing of the notice of appeal does not affect the validity of the appeal but is ground only for such action as the court deems appropriate, which may include dismissal of the appeal.

(c) **Appearance.** An appellant enters an appearance by filing a notice of appeal as provided in subdivision (b) of this rule. Any other person may enter an appearance within 21 days after the date on which notice of filing of the last notice of appeal to be filed was served, or, if necessary, published pursuant to subparagraph (b)(4)(B) of this rule, by filing a written notice of appearance with the clerk and by serving the notice of appearance in accordance with Rule 5 of the Vermont Rules of Civil Procedure and the 2010 Vermont Rules for Electronic Filing; provided that any person enumerated in 10 V.S.A. § 8504(n)(1)-(3) may file and serve an appearance in a timely fashion. Any other person who has not previously entered an appearance as provided in this paragraph may enter an appearance by filing a timely motion to intervene.

Attorneys shall comply with Civil Rule 79.1(i).

(f) **Statement of Questions.** Within 21 days after the filing of the notice of appeal, the appellant shall file with the clerk of the Environmental Court a statement of the questions that the appellant desires to have determined. The statement shall be served in accordance with Rule 5 of the Vermont Rules of Civil Procedure and the 2010 Vermont Rules for Electronic Filing. No response to the statement of questions shall be filed. The appellant may not raise any question on the appeal not presented in the statement as filed, unless otherwise ordered by the court in a pretrial order entered pursuant to subdivision (d) of Rule 2. The statement is subject to a motion to clarify or dismiss some or all of the questions.

(h) Appeals to the Environmental Court on the Record.

(1) *From an Appropriate Municipal Panel.*

(A) An appeal from an appropriate municipal panel from which appeals may be on the record pursuant to 24 V.S.A. §§ 4471 and 4472 shall be governed by the Vermont Rules of Appellate Procedure and the 2010 Vermont Rules for Electronic Filing so far as applicable and except as modified by this rule. The record on appeal shall consist of the original papers filed with the municipal panel; any writings or exhibits considered by the panel in reaching the decision appealed from; and a written transcript of the proceedings, whether recorded electronically or stenographically, certified by the presiding officer of the municipal panel as the full, true and correct record of the proceedings. Within 30 days after the filing of the notice of appeal, the clerk or other appropriate officer of the municipal panel shall transmit the papers and exhibits filed to the clerk of the Environmental Court in the manner provided in Rule 11(b) of the Rules of Appellate Procedure.

(k) Appeals to the Supreme Court.

(1) *Rules Applicable.* Except as modified by this subdivision, the Vermont Rules of Appellate Procedure and the 2010 Vermont Rules for Electronic Filing, so far as applicable, shall govern all proceedings under this subdivision.

Reporter's Notes—2020 Amendment

Rule 5(a)(2), (b)(1), (c), (f), (h)(1)(A), and (k)(1) is amended to clarify that the cross references are to the 2010 Vermont Rules for Electronic Filing. See Reporter's Notes to simultaneous amendment to V.R.E.C.P. 3.

4. That Rule 4(b) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

RULE 4. PROCESS

(b) **Same: Form.** The summons shall be signed by the plaintiff's attorney or, if the plaintiff has no attorney, by any Superior Judge or a judge or the clerk of the court to which it is returnable. It shall contain the name and address of the court and the names of the parties, be directed to the defendant, state the name and postal and e-mail addresses of the plaintiff's attorney, and the time and manner within which these rules require the defendant to respond to the complaint, and shall

notify defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint. A summons shall comply with the format provisions of the 2010 or 2020 Vermont Rules for Electronic Filing, if applicable. The plaintiff must include with the summons a blank Notice of Appearance form.

Reporter's Notes—2020 Amendment

Rule 4(b) is amended to clarify that its cross references are to the 2010 or 2020 Vermont Rules for Electronic filing, if either is applicable.

5. That Rule 10(d) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

RULE 10. FORM OF PLEADINGS

(d) **Other Requirements of Form.** All pleadings shall comply with applicable format provisions of the 2010 or 2020 Vermont Rules for Electronic Filing.

Reporter's Notes—2020 Amendment

Rule 10(d) is amended to clarify that its cross references are to the 2010 or 2020 Vermont Rules for Electronic filing, if either is applicable.

6. That Rule 44.2(e) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

RULE 44.2. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

(e) **Attorney License Number; eCabinet Registration Number.** Any document that constitutes a first appearance of an attorney shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the 2010 Vermont Rules for Electronic Filing.

Reporter's Notes—2020 Amendment

Rule 44.2(e) is amended to clarify that it cross references the 2010 Vermont Rules for Electronic filing.

7. That Rule 45(a)(1)(E) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

RULE 45. SUBPOENA

(a) **Form; Issuance.**

- (1) Every subpoena shall
 - (A) state the name of the court from which it is issued; and
 - (B) state the title of the action, the name of the court in which it is pending, and its civil action number; and
 - (C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and
 - (D) set forth the text of subdivisions (c) and (d) of this rule; and
 - (E) comply with applicable format provisions of the 2010 or 2020 Vermont Rules for Electronic Filing.

Reporter’s Notes—2020 Amendment

Rule 45(a)(1)(E) is amended to clarify that its cross reference is to the 2010 or 2020 Vermont Rules for Electronic filing, if either is applicable.

8. That Rule 77(c) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

RULE 77. SUPERIOR COURTS AND CLERKS

(c) **Clerk’s Office and Orders by Clerk.** The clerk’s office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays and shall be open for electronic filing at all times provided in either the 2010 or 2020 Vermont Rules for Electronic Filing, if applicable. All motions and applications in the clerk’s office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults, and for other proceedings which do not require allowance or order of the court, if accepted for filing pursuant to the 2010 or 2020 Vermont Rules for Electronic Filing, are grantable of course by the clerk; but the clerk’s action may be suspended or altered or rescinded by the court upon cause shown.

Reporter’s Notes—2020 Amendment

Rule 77(c) is amended to clarify that its cross references are to the 2010 or 2020 Vermont Rules for Electronic filing, if either is applicable.

9. That Rule 79.1(g) and (i) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

RULE 79.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

(g) **Same: Notification of Party.** When an attorney has been granted leave to withdraw the

attorney's appearance, the clerk shall notify the party forthwith, electronically if the party is a registered filer under the 2010 Vermont Rules for Electronic Filing, otherwise by mail, of such withdrawal, and inform said party that unless the party appears pro se or by attorney within thirty days after receipt of such notification, the action will be dismissed or defaulted, as the case may be.

(i) **Attorney License Number; eCabinet Registration Number.** Any document that constitutes a first appearance of an attorney shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the 2010 Vermont Rules for Electronic Filing.

Reporter's Notes—2020 Amendment

Rule 79.1(g) and (i) is amended to clarify that its cross references are to the 2010 Vermont Rules for Electronic filing.

10. That Rule 4(a) of the Vermont Rules of Probate Procedure be amended to read as follows (new matter underlined):

RULE 4. NOTICE; PROCESS

(a) **Form of Notice.** A notice required under these rules shall bear the signature or facsimile signature of the judge or register, or petitioner's attorney; contain the name and address of the court and, as appropriate, the name of the decedent, the child or adult in need of or under guardianship, or the settlor and beneficiaries of a trust; be directed individually to each interested person identified pursuant to Rule 3(a) by name if known; state the name and postal and e-mail addresses and telephone number of the petitioner or of the petitioner's attorney; be accompanied by a copy of the petition and any annexed documents; state the date and place of hearing or reply if either is required; and advise the recipient that the action or order sought may be granted if no interested person appears to object. Where appropriate, the notice shall also state clearly that the recipient must enter an appearance to receive notice of further actions or filings in the proceeding and shall specify how the recipient can enter an appearance. A notice shall comply with the format provisions of the 2020 Vermont Rules for Electronic Filing, if applicable. The petitioner must include with the notice a blank Notice of Appearance form.

Reporter's Notes—2020 Amendment

Rule 4(a) is amended to clarify that its cross reference is to the 2020 Vermont Rules for Electronic filing, if they are applicable.

11. That Rule 79.1(i) of the Vermont Rules of Probate Procedure be amended to read as follows (new matter underlined):

RULE 79.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

(i) **Attorney License Number; eCabinet Registration Number.** Any document that

constitutes a first appearance of an attorney shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the 2010 Vermont Rules for Electronic Filing.

Reporter’s Notes—2020 Amendment

Rule 79.1(i) is amended to clarify that it cross references the 2010 Vermont Rules for Electronic filing.

12. That Rule 15(i) of the Vermont Rules for Family Proceedings be amended to read as follows (new matter underlined):

RULE 15. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

(i) **Attorney License Number; eCabinet Registration Number.** Any document that constitutes a first appearance of an attorney shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the 2010 Vermont Rules for Electronic Filing.

Reporter’s Notes—2020 Amendment

Rule 15(i) is amended to clarify that it cross references the 2010 Vermont Rules for Electronic filing.

13. That these rule as amended are prescribed and promulgated effective March 2, 2020. The Reporter’s Notes are advisory.

14. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 10th day of December, 2019.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice