

**STATE OF VERMONT
VERMONT SUPREME COURT
OCTOBER TERM, 2023**

**Order Promulgating Amendments to Rules 28(e) and 30 of the
Vermont Rules of Appellate Procedure**

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

1. That Rule 28(e) of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter struck through):

RULE 28. BRIEFS

(e) References to the Record.

The parties must provide citations in their briefs to the record. ~~Parties must cite to the record in their briefs~~ The proper format for citations is as follows:

(1) If there is an Appeal Volume and no printed case or the document is not in the printed case ~~for the case~~, cite to the page in the Appeal Volume where the document is located as follows: AV-28;

(2) If there is a Printed Case, cite to the page in the Printed Case where the document is located as follows: PC-28;

(3) Cite to the page in the transcript or time stamp in audio recording as follows: 5/12/20-TR-52 or 5/1/21-R-21:01.

Reporter's Notes—2024 Amendment

Rule 28(e) is amended in conjunction with an amendment to Rule 30(a)(1) requiring a printed case in most appeals, with limited exceptions. As amended, Rule 28(e) states that the parties are required to provide the Court with references to the record in accordance with V.R.A.P. 28(a)(3) and provides the proper format for record citations. These references are important for the Court's efficient and full evaluation of the parties' arguments. Under revised (e)(1), if there is an appeal volume and no printed case or a document is not in the printed case, the parties must cite to the location of the document in the appeal volume. Under existing (e)(2), if there is a printed case, the briefs must reference the location of the document in the printed case. There is no requirement to provide parallel citations to the appeal volume in the brief. However, amended V.R.A.P. 30(d)(2)(A) requires that the index for the printed case contain a page reference to the document's location in the appeal volume.

2. That Rule 30 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter struck through):

RULE 30. PRINTED CASE

(a) **Required Printed Case.**

(1) *When Required.* ~~In cases where there is no Appeal Volume, including appeals from executive branch administrative agencies, the~~ The appellant must file a printed case in all appeals except:

(A) A printed case is not required in small claims appeals or appeals from the Human Services Board and Employment Security Board.

(B) The Court may waive the requirement on its own initiative or on a party's motion.

(2) *Contents.* A required printed case must contain extracts from the record that are necessary to present fully the questions raised, including:

(A) the relevant record of actions in the proceedings below;

(B) the relevant parts of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the Court's attention.

(b) **Supplemental Printed Case.** The appellee may assemble a supplemental printed case. The appellee must file any supplemental printed case when the appellee's principal brief is filed.

(c) **Optional Printed Case.** When a printed case is not required under (a), any party may file an optional printed case containing extracts from the record to which the party wishes to direct the Court's attention.

(d) **Format.**

(1) The pages of the printed case must be numbered sequentially so that the electronic and paper page references are consistent. This may be done either by designating the cover page as page one or by using separate sectional pagination and adjusting the PDF settings so that the page search function recognizes the numbering scheme.

(2) The sections of the printed case must be reproduced in the following order:

(A) a table of contents—listing the parts of the record included, with references to the page of the printed case and the page of the appeal volume, if one exists for the case, at which each part begins;

(B) the decision appealed from;

(C) the record of actions; and

(D) the remaining parts of the record in chronological order.

(3) Only materials that are part of the record below may be included in the printed case. The Court and the parties may rely on parts of the record that are not included in the printed case.

(e) **Costs of Production.** Mindful that the entire record is always available to the Court, the parties must not include unnecessary material in the required printed case or supplemental printed case. The cost of producing a required paper printed case is a taxable cost. If any party unnecessarily produces a printed case or causes unnecessary parts of the record to be included in the required printed case, the Court may impose the cost of producing those parts on that party.

Reporter's Notes—2024 Amendment

Rule 30 is amended to require a printed case 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 easy access to the relevant materials from the trial court or administrative record. In 2021, with the implementation of an electronic case management system at the Supreme Court, all cases records from the superior courts became electronic, and the case-management 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 at that time 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 continue to be used even though the document is electronic and there is no longer a requirement to file a paper copy with the Court.

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.

Rule 30(a)(1) is amended to require a printed case for most appeals. The appellant must compile a printed case with an index of its contents. Rule 30(d)(2)(A) is amended to require the index to the printed case to contain the page in the appeal volume where the document is located in addition to the page in the printed case. Under existing (a)(2), the printed case contains, 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 and the parties will have access to all parts of the record, even if not contained in the printed case. The printed case should contain the documents relevant 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 Rule 30(a)(1)(B), the printed case may be waived on the Court’s initiative or pursuant to a motion.

The requirement to file a printed case will apply to pending cases where the time for filing a printed case has not yet passed.

3. That these amendments be prescribed and promulgated, effective on January 1, 2024. The Reporter’s Notes are advisory.

4. 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 October, 2023.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice



Signed by the Vermont Supreme Court