

STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2023

**Order Amending Rules 3(c) and 12 of the 2020 Vermont Rules for Electronic Filing,
Amending Rule 5(e) of the Vermont Rules of Probate Procedure, and Adding Rule 78 of
the Vermont Rules of Probate Procedure**

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

1. That Rule 3(c) of the 2020 Vermont Rules for Electronic Filing be amended as follows (new matter underlined):

RULE 3. REQUIRED ELECTRONIC FILINGS; EXCEPTIONS

(c) **Nonelectronic Filing Required.** A document must be nonelectronically filed when:

(1) nonelectronic filing is expressly required by these rules, a statute, or an applicable rule of procedure; or

(2) the court orders a filer to nonelectronically file upon a finding that the filer has abused the system by repeated filing of irrelevant, abusive, or duplicative documents or information.

Reporter's Notes—2023 Amendment

Paragraph 3(c) is amended to add statutes as among those sources of law that could require filing a document nonelectronically.

2. That Rule 12 of the 2020 Vermont Rules for Electronic Filing be amended as follows (new matter underlined; deleted matter struck through):

RULE 12. OFFICIAL RECORD; CERTIFIED COPIES

(a) **Official Record.** If an electronic version of a document exists in the electronic case management system, it is the official record regardless of whether the document was electronically filed or nonelectronically filed and converted to electronic form.

(b) **Maintaining Nonelectronic Document.** Unless otherwise provided by law, the court is not required to maintain a nonelectronically filed paper document after it has been converted to electronic form.

(c) **Exception for Nonelectronic Documents Which Must be Retained by Law.** Notwithstanding 12(b), where required by statute or other provision of law, the court must retain the paper document, even if the document has also been converted to electronic form.

(e ~~d~~) **Certified Copies.** Certified copies may be issued in the conventional manner or in any manner authorized by law.

Reporter's Notes—2023 Amendment

New subdivision (c) expressly mandates retention of a paper document by the court when required by statute or other provision of law. Contemporaneous amendment of V.R.P.P 5(e) and addition of V.R.P.P 78 delineate testamentary documents and vital records as those that must be provided on paper subject to retention and ultimate disposition in the Probate Division. When paper documents are submitted under V.R.P.P. 78, the filer should notify the court that the paper version must be retained for the duration of the case as provided in V.R.P.P. 8(c)(2). Former subdivision (c), regarding certified copies is relabeled as (d).

3. That Rule 5(e) of the Vermont Rules of Probate Procedure be amended as follows (new matter underlined):

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER DOCUMENTS

(e) **Filing with the court defined.**

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(8) *Paper Documents.* The documents specified by V.R.P.P. 78 must be filed with the court on paper, and the court will not consider a petition or motion that references the document until the paper original or certified copy of the document has been filed with the court.

Reporter's Notes—2023 Amendment

Rule 5(e) is amended to add paragraph (8) regarding paper documents. New paragraph 5(e)(8) specifies that paper documents must be filed in certain proceedings in the Probate Division. Although the document may be filed electronically and made part of the electronic case file, the original paper document or a certified copy of the document must also be submitted to the court before the court will consider a petition or motion referencing the document to ensure the authenticity of the document. The filers submitted the paper document should indicate to the court that it is being submitted pursuant to V.R.P.P. 78 and should be retained until proceeding is final. V.R.P.P. 78(c)(2).

4. That Rule 78 of the Vermont Rules of Probate Procedure be added to read as follows:

RULE 78. FILING OF ORIGINAL DOCUMENTS

(a) **Wills and other documents relating to the probate of an estate.** Regardless of whether documents relating to the probate of an estate are electronically filed, the following original paper documents must also be submitted before the court will consider testate or intestate estates:

(1) Last will and testament,

- (2) codicils,
- (3) apostilles,
- (4) documents from principal jurisdictions indicating the need for creation of an ancillary estate proceeding in Vermont,
- (5) foreign wills if there has been no probate in a foreign jurisdiction,
- (6) translations of the foregoing, certifications as to translations of the foregoing, and
- (7) international wills pursuant to 14 V.S.A. §§ 131-140.

(b) **Vital Records.** Where a vital record is required to be filed with the court, the original paper record or a paper certified copy must be filed before the court will consider the matter requiring a vital record.

(c) **Storage and Return.**

(1) Original wills and other documents relating to the probate of an estate will be stored by the Probate Division. The court will maintain such original testamentary documents in a nonelectronic case file until the court approves the fiduciary's closing report or issues another order closing the proceeding, after which the Register will return all such original documents to the last serving fiduciary.

(2) Original paper vital records or paper certified copies will be returned to the filer when the proceeding for which the vital record was filed becomes final.

(d) **Definitions.** For purposes of this rule:

(1) An original will or codicil or other document means the paper wet-signed document signed by the testator and subscribing witnesses.

(2) An original apostille means the paper wet-signed, and/or raised sealed, as originally created by the issuing jurisdiction.

(3) An original translation means a translation, wet-signed, and/or raised sealed, certification that the translation is the correct translation from the foreign language. Translations must be accompanied by a copy of the original document from which the translation was generated.

(4) A vital record means a paper record from the issuing agency or a certified copy issued by the entity having custody of the original document, which contains either a wet signature authorized by the issuing entity or a raised seal of the issuing entity, or is printed on serially numbered, anti-fraud paper.

Reporter's Notes—2023 Amendment

Rule 78 (formerly reserved) is added, with contemporaneous amendments of Probate Rule 5(e) and Rule 12(c) of the Vermont Rules for Electronic Filing, to specify those paper documents that must be submitted in certain Probate Divisions proceedings, as well as the general provisions for storage, retention, and ultimate disposition of such documents by the court.

Subdivision (a) requires certain documents relating to the probate of an estate to be submitted on paper in addition to any required electronic filing. These documents are: last wills and testaments; codicils thereto; apostilles; documents from principal jurisdictions indicating the creation of a foreign estate proceeding; foreign wills if there has been no probate in a foreign jurisdiction; translations of

the foregoing documents; certifications as to translations of the foregoing, and international wills pursuant to 14 V.S.A. §§ 131-140. While Vermont statutes at this time do not authorize creation and execution of electronic wills, provision of a certified paper copy of an out of state electronic will may be recognized in ancillary estates administration under V.R.P.P. 78(a)(4) in Vermont, if the electronic will was executed and paper copy certified consistent with the electronic wills statutes of the jurisdiction in which the electronic will was executed, or under (Vermont) court order specific to the circumstances of the case, if no other governing provision of law is applicable.

Subdivision (b) prescribes that a paper original or certified copy of a vital record must be filed as a condition of court consideration of the matter in issue.

Subdivision (c) establishes procedures for storage and return of any paper original wills and related documents or vital records, upon completion of the relevant proceedings.

Subdivision (d) provides definitions of the terms “original will or codicil,” “original apostille,” “original translation,” and “vital record,” for purposes of the rule.

5. That these rules as amended are prescribed and promulgated, effective on October 2, 2023. The Reporter’s Notes are advisory.

6. 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 July, 2023.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy Waples, Associate Justice