

**STATE OF VERMONT
VERMONT SUPREME COURT
NOVEMBER TERM 2023**

Order Amending Rule 5 of the 2020 Vermont Rules for Electronic Filing

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

1. That Rule 5 of the 2020 Vermont Rules for Electronic Filing be amended as follows (new matter underlined; deleted matter stricken):

RULE 5. PROCEDURE FOR ELECTRONIC FILING

(a) **In General.** An electronic filer may initiate a new action or proceeding, or efile documents in an action or proceeding that is in the electronic filing system, when required or permitted under Rule 3, by logging in, and complying with the instructions in the electronic filing system.

(b) **Electronic Filing Requirements.** The efiler must submit each electronic filing in accordance with the instructions in the electronic filing system and must:

- (1) prepare and format the efilings in accordance with Rule 5(g) and (h), and Rule 7;
- (2) sign the efilings as provided in Rule 9;
- (3) provide a mailing address and email address on the documents electronically filed;
- (4) satisfy payment requirements of Rule 10, except that failure to pay a Supreme Court entry fee to the Vermont Judiciary in connection with the filing of a notice of appeal, or to seek a waiver of that fee, is not grounds for rejecting a filing;
- (5) take any actions required under Rule 7(a)(1) of the Rules for Public Access to Court Records;
- (6) certify that each document filed complies with the Rules for Public Access to Court Records; and
- (7) for initial filings, provide service contacts that will enable post-commencement service on the efiler and maintain updated contacts.

(c) **Electronic Filing Time.** An electronic filing may be submitted on any day, including holidays and weekends, and at any time.

- (1) *Filing Date.* An efilings is considered submitted on a date if it is submitted prior to midnight on that date;
- (2) *Technology Failure of Filer.* Failure of the efiler's system or internet unavailability will not excuse a failure to comply with a filing deadline, unless the court specifically authorizes an extension of the deadline;
- (3) *System Unavailability.* A deadline will be extended for unavailability of the electronic filing system, if the efiler could not reasonably file nonelectronically pursuant to Rule 3(b)(8).

(d) Court Staff Processing in the Superior Court.

(1) *Court Staff Review.* Court staff will review all electronic filings for compliance with these rules and Rule 7(a)(1) of the Rules for Public Access to Court Records, in the manner prescribed by Rule 7(a)(3) and (4).

(A) Except as designated in (B), court staff review will occur prior to entry into the electronic case management system.

(B) Initial civil complaints made in commencement of an action pursuant to Vermont Rule of Civil Procedure 3 will be reviewed after entry into the electronic case management system, subject to the corrective and remedial actions of Rule 7(a)(3) and (4) of the Rules for Public Access to Court Records. Electronic filers remain obligated under Rule 5(b) to comply with filing requirements. Complaints initiating the following civil actions will continue to be reviewed prior to entry:

(i) Actions for Orders Against Stalking or Sexual Assault (12 V.S.A. Ch. 178),

(ii) Small Claims Actions (12 V.S.A. Ch. 187), and

(iii) Any civil action that is within the original jurisdiction of the Supreme Court, or within the jurisdiction of criminal division, family division, environmental division, probate division, or the judicial bureau.

(2) *Accepting or Rejecting a Filing.* Court staff will electronically notify the efiler either that the efile has been accepted or rejected. A rejection will provide the reason for the rejection. ~~that it cannot be accepted until specified actions required under these rules have been taken.~~ Court staff may reject a filing that does not comply with these rules or Rule 7(a)(1) of the Rules for Public Access to Court Records. Court staff may also reject a filing that contains an error that cannot be corrected by court staff. The Court Administrator will delineate the permissible reasons for rejecting a filing and provide the list in a prominent place on the Judiciary website.

(3) *Failed Submission.* A filing that does not comply with the instructions in the efile system or the formatting requirements in Rule 7 may not be processed by the electronic filing system and may result in a failed submission. A failed submission does not reach the clerk queue and may not be appealed.

(4) *Correcting an eFiling.* An efiler may submit a corrected efile within 7 days after receiving the notification that a filing resulted in a failed submission or was rejected if the efiler follows the instructions for efile a correction on the electronic filing system. It is the efiler's responsibility to demonstrate the date of rejection or failed submission. The court may extend the time for correction for good cause. Court staff will accept a corrected efile if all requirements of those rules and the instructions for correction have been met.

(5) *Filing Date.* When an efile has been accepted, the date and time of efile for all purposes under the applicable rules of procedure are the date and time that the initial efile was submitted if the corrected filing complied with the time limits in (d)(4) (3).

(6) *Assigning Case Number.* The electronic filing system will provide a case number for a new case filing that has been accepted in the acceptance notification. The assigned case number must appear on all subsequent efiles pertaining to the case.

(7) Appeal of Rejected Filing. In the event an efiler and court staff are unable to resolve a dispute regarding an electronic filing, the efiler may appeal the basis for a rejected filing to the Court Administrator. The appeal must be filed within 7 days from the date of the rejection. The time period in (d)(4) for correcting an e filing is tolled until the appeal is decided.

(e) Court Staff Processing in the Supreme Court.

(1) *Court Staff Review.* Court staff will review all electronic filings for compliance with these rules, the Vermont Rules of Appellate Procedure, and Rule 7(a)(1) of the Rules for Public Access to Court Records.

(2) *Accepting or Rejecting a Filing.* Court staff will electronically notify the efiler that the e filing has been accepted or rejected. A rejection will provide the reason for the rejection. Court staff may reject an e filing for noncompliance with Rule 7(a)(1) of the Vermont Rules for Public Access to Court Records, the applicable limit on the number of words in the brief as contained in V.R.A.P. 32(a)(4), the failure to include a word count in a brief as required by V.R.A.P. 32(a)(4)(D), or the failure to sign a document as required by these rules or the Vermont Rules of Appellate Procedure. Court staff may also reject a filing that contains an error that cannot be corrected by court staff.

(3) *Failed Submission.* A filing that does not comply with the instructions in the e filing system or the formatting requirements in Rule 7 may not be processed by the electronic filing system and may result in a failed submission. A failed submission does not reach the clerk queue and may not be appealed.

(4) *Correcting an eFiling.* If court staff rejects an e filing pursuant to this subdivision, the efiler may correct the e filing as set forth in (d)(4) (3), and (d)(5) (4) will apply to determine the filing date.

(5) *Limit of Review.* This rule does not limit the actions the Supreme Court may take for violation of these rules, the Vermont Rules of Appellate Procedure, or the Vermont Rules for Public Access to Court Records.

(6) *Assigning Case Number.* The electronic filing system will provide a case number for a new case filing that has been accepted in the acceptance notification. The assigned case number must appear on all subsequent e filings pertaining to the case.

(7) Appeal of Rejected Filing. In the event an efiler and court staff are unable to resolve a dispute regarding an electronic filing, the efiler may appeal the basis for a rejected filing to the Court Administrator. The appeal must be filed within 7 days from the date of the rejection. The time period in (e)(4) for correcting an e filing is tolled until the appeal is decided.

(f) Serving Notice of Electronic Filing. The efiler must complete service as required in Rule 11.

(g) Motions. Efilers must submit motions, responses, and supporting materials in a manner consistent with any other applicable rules of procedure and the following:

(1) *Separating Individual Motions and Responses to Motions* ~~*Requirements for Motions in the Supreme and Superior Courts.*~~

~~(A) *Motions Requesting Alternative Forms of Relief.* An efiler may file motions, or responses, requesting alternative forms of relief as a single document.~~

~~(B) *Motions Requesting Independent Forms of Relief.* An e-filer must file motions, or responses, requesting independent forms of relief as separate documents.~~

~~(A) *Motions; Separate Filing.* All motions must be filed as separate lead documents.~~

~~(C) (B) *Separating Motions and Responses.* An e-filer may not respond to a motion and file a new motion in the same document.~~

(2) *Memoranda and Supporting Material.*

(A) *Memoranda of Law.* A memorandum of law may be included as part of a motion or response or may be filed as a separate document. The same memorandum may be filed in support of multiple motions or responses but must identify the motions or responses to which it relates and be referenced in the motions or responses.

(B) *Supporting Material.* Any supporting material, including affidavits, exhibits, or other supporting or required attachments, must be separated from the motion. The supporting material may be filed either as individual documents or compiled into a single document. Supporting material must identify the motions or responses to which it relates.

(C) *Format of Compiled Supporting Material Filed as a Single Document.* If all supporting material for a motion or response is filed as a single, compiled document, it must:

(i) be numbered sequentially with numbers that match the electronic page counter;

and

(ii) contain a table of contents listing the separate parts of the supporting material included, with electronic page references for each item.

~~(2) *Additional Requirements for Motions in the Superior Court.* Efilers in the superior court must also submit motions in accordance with the following requirements for supporting material:~~

~~(A) *Single Motion or Response.* A memorandum of law, affidavit, exhibit, or other supporting material or required attachment to a single motion or response may be efiled with the single motion or single response or may be filed as a separate document.~~

~~(B) *Multiple Motions or Responses.* A memorandum of law, affidavit, exhibit, or other supporting matter or required attachment for multiple motions or responses must be efiled as a separate document.~~

~~(C) *Separate Document.* If supporting material is efiled as a separate document, it must identify the motions or responses to which it relates and must be referenced in the motions or responses unless it is efiled after them.~~

~~(D) *Format of Supporting Material.* If supporting material relates to more than a single memorandum of law, it must:~~

~~(i) be numbered sequentially so that the electronic and paper page references are consistent; and~~

~~(ii) contain a table of contents listing the separate parts of the supporting material included, with references to the page of the document at which each part begins.~~

(h) **Criminal History Information.** Criminal history information, filed in connection with a criminal case, must be separately efiled in the superior court in the following parts for which there is information:

(1) Misdemeanor or felony convictions in Vermont courts and resulting sentences;

- (2) Misdemeanor or felony convictions in courts of other jurisdictions, including in federal court and resulting sentences;
- (3) Any other criminal history information.

Reporter’s Note—2024 Amendment

Rule 5(d) and (e) are amended to clarify the provisions regarding accepting and rejecting filings. In addition to rejections made by court staff, the amended rule addresses failed submissions, which are done automatically by the efilings system. The amendments also clarify the bases for rejection. Court staff and user experience demonstrate that a number of rejected efilings result from efiler noncompliance with requirements that are not articulated specifically in existing rules. These include, but are not limited to, such errors as efilings into the wrong case, filing by someone not a party or attorney in a case, filing in the wrong county, duplicate filings, initiating a new case instead of filing into an existing one, and filing by someone not authorized to submit the filing type. Some rejections stem from rule-based requirements, such as failure to sign a document and failure to comply with V.R.P.A.C.R. 7(a)(1) by publicly filing nonpublic documents or content.

Rule 5(b) continues to prescribe the requirements for any efilings, with reference to other Rules for Electronic Filing, including Rules 5 and 7 (formatting); Rule 9 (signature); Rule 10 (payment of necessary fees, or a request for waiver of them); and certification of compliance with V.R.P.A.C.R. 7(a)(1) (public documents containing nonpublic information; redacted and original versions required). For successful submission and acceptance, the existing rule also requires that efilers comply with the instructions in the efilings system and provide correct mailing and emailing addresses and service contact information.

Rule 5(d)(2) is amended to clarify the bases for rejecting a filing. The amended language provides that a filing may be accepted or rejected and that a rejection will provide the reason for the rejection. To supplement the general provision of 5(d)(1) that all electronic filings are reviewed “for compliance with these rules, and Rule 7(a)(1) of the Rules for Public Access to Court Records,” amended 5(d)(2) states that staff may reject a filing that contains an error that cannot be corrected by court staff. Rule 5(b) requires efilers to comply with the instructions in the efilings system. Some errors by efilers cannot be corrected by court staff after acceptance and therefore must be rejected. This includes errors such as filing

into the wrong case, filing an initial filing as a subsequent filing or vice versa, or filing a criminal case with the wrong date or incorrect charge. The rule indicates that the Court Administrator will provide a list of permissible reasons for rejecting filings and make it available on the Judiciary website. This will provide transparency to efilers regarding the reasons for rejection and greater consistency across the state in how filings are handled.

New paragraph 5(d)(3) addresses failed submissions. In limited situations, efilings that do not comply with the efilings instructions or the system's formatting requirements may result in a submission failure. This means the document cannot be fully processed by the efilings system and it will not reach the queue for clerk review. In these situations, the efiler will receive an automated email notice from the electronic filing system that there was a failed submission.

Former (d)(3) regarding correcting an efilings is renumbered (d)(4) and amended to allow an efiler the benefit of the date of initial submission of a failed submission if corrected within 7 days. Because a failed submission does not appear in the clerk review queue, it is the efiler's responsibility to demonstrate the date a filing was initially submitted. During the efilings process, efilers sometimes experience an "internal error," which indicates that the information is nonresponsive—for example, when unusable credit card information is entered to pay for a filing—incorrect or incomplete and therefore cannot be processed. These internal errors do not result in a submission and therefore are not subject to the correction period. Instructions on how to resubmit a rejected filing or a failed submission are provided on the Judiciary website. <https://www.vermontjudiciary.org/about-vermont-judiciary/electronic-access/electronic-filing/faqs>

Former paragraphs (d)(4) and (5) are renumbered (5) and (6) without amendment.

New paragraph (d)(7) is added to provide a process for appealing a rejected efilings. The new provision indicates that the Court Administrator will provide an administrative process for reviewing the basis for a rejected efilings and delineate that process on the Judiciary website. It is expected that this process will be required in very few cases, only after an efiler and court staff are unable to resolve rejection disputes otherwise. The appeal must be initiated within 7 days from the date of rejection and the time for correcting

the filing is tolled until the appeal is decided. There is no further appeal from this administrative appeal process.

Rule 5(e) regarding court staff processing in the Supreme Court is revised similarly to 5(d). Amended 5(e)(2) requires that a reason for rejection be provided and that court staff may reject a filing that contains an error which cannot be corrected by court staff, including filing into the wrong case or filing a subsequent filing as an initial filing. New 5(e)(3) addresses failed submissions. Former paragraphs (e)(3)-(5) are renumbered (e)(4)-(6). New (e)(7) contains a provision similar to (d)(7) on appealing a rejected e-filing.

Rule 5(g)(1) is amended to delete former subparagraphs (g)(1)(A) and (B), which allowed motions requesting alternative forms of relief to be filed in a single document but required motions requesting independent forms of relief to be filed separately. This rule has been difficult to implement in practice because the distinction between alternative and independent forms of relief was not easily ascertainable by court staff reviewing filings. Thus, the requirement was implemented nonuniformly. To achieve more clarity, new (g)(1)(A) requires that all motions be filed as separate lead documents. Submitting these motions as individual lead documents with the correct e-filing code will provide clarity for court staff, judges, and parties and ensure that the requests are each identified, tracked, responded to, and resolved. Former (g)(1)(C) is relabeled (g)(1)(B) and continues to require motions and responses to be filed separately.

Rule 5(g) is amended regarding supporting material for motions. New 5(g)(2)(A) allows a memorandum of law in support of a motion to be filed as part of the motion document itself or as a separate document. One memorandum may be filed in support of multiple motions or responses as long as the memorandum identifies the motions or responses to which it relates.

Under revised (g)(2) efilers must file supporting material, including affidavits or exhibits, separately from the motion or memorandum. The separate document must identify the motion(s) or response(s) to which it relates. Supporting material may be submitted either as individual files or as a single compiled document. Under (g)(2)(C), supporting material that is compiled into a single document must be numbered sequentially with numbers that match the electronic page counter. In other words, the first page (including the table of contents) should begin with page

one. The references in the party’s motion to the supporting material should use this numbering to allow other parties and the court to easily locate the referenced material. Under (g)(2)(C)(ii), the compiled document must begin with table of contents that lists the page reference for each item. In deciding whether to submit supporting material as individual files or as a single, compiled document, the filer should consider the accessibility for the court and the parties. It may be difficult for the court to easily locate and view different types of supporting material at the same time if it is compiled into a single document.

2. That these amendments be prescribed and promulgated, effective on January 8, 2024. The Reporter’s Notes are advisory.

3. That the Chief Justice is authorized to report this rule as amended to the General Assembly in accordance with the provisions of 12 V.S.A. § 1.

Dated in Chambers at Montpelier, Vermont, this 6th day of November, 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