

**STATE OF VERMONT
VERMONT SUPREME COURT
MAY TERM, 2022**

Order Promulgating Amendments to Rule 25 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 25 of the Vermont Rules of Appellate Procedure be amended to read as follows(new matter underlined; deleted matter struck through):

RULE 25. FILING AND SERVICE

(a) Filing.

(1) *Filing in General.* All documents must be filed with the Supreme Court in the manner provided by V.R.C.P. 5(e) and the 2020 Vermont Rules for Electronic Filing, where applicable. ~~A document required or permitted to be filed in the Supreme Court must be filed electronically or nonelectronically in accordance with the 2020 Vermont Rules for Electronic Filing.~~

(2) *Method and Timeliness for Nonelectronic Filing.*

(A) *Nonelectronic Filing In general.* ~~Nonelectronic filing may be used when permitted or required by 2020 V.R.E.F. 3 or 6. Nonelectronic filing may be accomplished by ordinary first class mail or by third party commercial carrier addressed to the clerk, but filing is not timely unless the clerk receives the documents within the time fixed for filing.~~

(B) *A brief or printed case.* ~~A brief or printed case is timely filed if mailed or delivered to the carrier on or before the last day for filing.~~

(C) *Filing by an inmate confined in an institution.*

(i) ~~A document filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement accompanying the document stating the date the document was deposited in the institution's internal mailing system. The notarized statement establishes a presumption that the document was deposited in the institution's internal mailing system on the date shown in the statement. The presumption may be rebutted by documentary or other evidence.~~

(ii) ~~Nothing in this rule precludes other evidence of timely filing such as a postmark or an official date stamp showing the filing date of the paper.~~

(3) *Filing a Motion with a Single Justice.* ~~If a motion requests relief that may be granted by a single justice, the justice may permit the motion to be filed with the justice by any appropriate method. The justice must note the filing date on the motion and forward it to the clerk.~~

(4) *Public Access Compliance.* All new filings in the Supreme Court, including filings of briefs and printed cases, must comply with Rule 7(a)(1) of the Rules for Public Access to Court Records. An efiler must certify compliance as part of the electronic filing process. A nonelectronic filer must certify compliance in a separate certification. Any preexisting document that is part of the record on appeal, and for which public access was restricted in whole or in part in the trial court or in the administrative body from which an appeal is taken, must continue to be

so restricted in the Supreme Court.

(b) **Manner of Service.** Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal in the manner provided by V.R.C.P. 5(b) and 2020 V.R.E.F. 11, if applicable, but documents filed after the deadline for filing an appellee’s docketing statement do not need to be served on a party who has neither filed a docketing statement nor entered an appearance in the Supreme Court.

(c) **Proof of Service.**

(1) *Certifying Service When Electronically Filing.* When a document is filed electronically, the filer must certify compliance with service requirements as set out in 2020 V.R.E.F. 11(g).

(2) *Certifying Service When Nonelectronically Filing.* When a document is filed nonelectronically, the filer must certify compliance with service requirements as set out in V.R.C.P. 5(h).

(d) **Signing of Documents; Representations; Sanctions.**

(1) *Signing of Documents.* If a party is represented by counsel, at least one attorney of record must sign every document filed and provide his or her address. If a party is not represented, ~~he or she~~ the party must sign the document and provide ~~his or her~~ the party’s address. The Court will strike any unsigned document unless the document is signed promptly after the omission is brought to the attention of the person who filed it.

(2) *Representations.* By presenting a document to the Court—whether by signing, filing, submitting, or later advocating it—an attorney or self-represented party is making the certification provided by V.R.C.P. 11(b) as to that paper.

(3) *Sanctions.* If after notice and a reasonable opportunity to respond, the Court determines that V.R.C.P. 11(b) has been violated, the Court may, subject to V.R.C.P. 11(c), impose an appropriate sanction on those violating the rule or responsible for the violation.

Reporter’s Notes—2022 Amendment

The former language of V.R.A.P. 25(a)(1)-(3), regarding filing of documents, is deleted. Amended 25(a)(1) instead states that filing must be made as provided in V.R.C.P. 5(e) and the 2020 Vermont Rules for Electronic Filing, where applicable. V.R.C.P. 5(e) is simultaneously amended to clarify the methods of filing permitted and to generally allow email filing by parties that are not required and have not elected to file using the Judiciary’s electronic filing system. Amended V.R.C.P. 5(e)(4) delineates the standards for email filing. For consistency, the provisions of V.R.C.P. 5(e) are incorporated into the appellate rule. As indicated in V.R.C.P. 5(e)(4)(A), email filings must be sent to the general email account for the court where the filing is made. This general email for the Supreme Court is jud.supremecourt@vermont.gov.

V.R.A.P. 25(a)(2)(B) is deleted. The subparagraph previously provided “A brief or printed case is timely filed if mailed or delivered to the carrier on or before the last day for filing.” Former V.R.A.P. 25(a)(2)(B) was based upon F.R.A.P. 25. Generally, under the federal rules, a filing is not timely unless the papers are received by the clerk within the time allowed. See F.R.A.P. 25(a)(2)(A)(i). An exception is made in the case of briefs and appendices under F.R.A.P. 25(a)(2)(A)(ii). This exception is made to afford the parties the maximum time to prepare their briefs. See Notes of Advisory Committee, F.R.A.P. 25.

Given the implementation of electronic filing in the Supreme Court and the concurrent amendments allowing filing by email, the provision is outdated. To the extent the purpose of the exception for briefs is to give parties the maximum time to complete their briefs, currently proposed amendments would expand the deadlines for these filings from 30 to 40 days for an appellant’s principal brief, from 21 to 30 days for an appellee’s principal brief, and from 7 days to 14 days for a reply brief.

In addition, this special exception to the general rule that filing means filing, not mailing, is a source of confusion for parties and court staff. Removing the provision is consistent with ongoing efforts to simplify and clarify time-counting in the rules that began when the “day is a day” method of counting was adopted in 2018. See Reporter’s Notes to 2018 amendment of Rule 6(a).

V.R.A.P. 25(a)(2)(C) previously contained the inmate filing rule. The text is the same as incorporated V.R.C.P. 5(e)(6) and so it is not necessary to repeat the language in the appellate rule.

Former V.R.A.P. 25(a)(3) allowed filing of a motion directly with a Justice when permitted. Incorporated V.R.C.P. 5(e)(1) allows a judge to accept a document for filing and then to pass it to the clerk for filing. Therefore, 25(a)(3) is redundant and deleted.

V.R.A.P. 25(a)(4), concerning public access compliance, is carried forward and renumbered (2).

Some minor wording changes are made in V.R.A.P. 25(d)(1) to remove gendered pronouns.

2. That these amendments be prescribed and promulgated, effective on September 6, 2022. The Reporter’s Notes are advisory.

3. 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 9th day of May 2022.



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 J. Waples, Associate Justice