

STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2015

**Order Promulgating Amendments and Additions to the Vermont Rules of Civil Procedure
and Appendix of Forms**

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

1. That Rules 4(b) and (l) of the Vermont Rules of Civil Procedure be amended, and Rule 4(l)(3)(H) be added, to read as follows (deleted matter struck through; 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 Vermont Rules for Electronic Filing, if applicable. The plaintiff must include with the summons a blank Notice of Appearance form.

* * * * *

(l) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

* * * * *

(3) *Method.* The notice and request given under this subdivision

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to any other person authorized under subdivision (d) of this rule to receive service of process on behalf of a defendant who is not an individual, provided that notice may not be given hereunder to a public officer who is designated by statute as an agent to receive service of process;

(B) shall be dispatched through first class mail or other reliable electronic or nonelectronic means;

(C) shall be accompanied by a copy of the complaint and shall identify

the court in which it has been filed;

(D) shall inform the defendant, by means of a form conforming substantially to Forms 1B and 1C as contained in the Appendix of Forms to these rules, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any state or territory of the United States; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as an electronic or prepaid nonelectronic means of compliance in writing; and

(H) shall include a blank Notice of Appearance form.

* * * * *

Reporter's Notes—2015 Amendment

Rules 4(b) and (l) are amended to address a problem that arises with increasing frequency with the increase of self-representation. It is not uncommon for a court to get a letter or answer from an unrepresented defendant with no return address, email address, or phone number. The court may then have an answer or other pleading but no good address to which to mail hearing notices, and no way to call or email the party if there are last minute continuances of court dates. A notice of appearance form for self-represented parties is already in use informally in some Civil Division courts, but it is only available once a party comes to the courthouse. Provision of a blank notice of appearance form at the time the complaint is served will encourage unrepresented defendants to provide contact information for the court as well as to comply with V.R.C.P. 79.1(d). Form 28, Notice of Appearance for Self-Represented Litigant, is added by simultaneous amendment to the Appendix of Forms.

2. That Rule 5(d) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through):

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

* * * * *

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, except that all requests for discovery under Rules 26-34 and 36 and answers and responses thereto shall not be filed unless on order of the court or for use in the proceeding. If a paper is not to be filed, the party serving it shall file instead a certificate that each deposition has been completed and sealed pursuant to Rule 30(f) or that each request, interrogatory, answer or response has been served in accordance with this rule. ~~A filing pursuant to this rule by a party's attorney shall constitute a representation by the attorney, subject to the obligations of Rule 11, that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice.~~

Reporter's Notes—2015 Amendment

Rule 5(d) is amended to delete the provision that a filing by an attorney constitutes a representation that the paper filed has been or will be served. The amendment removes language inconsistent with simultaneously adopted V.R.C.P. 5(h), which requires a certificate of service to be filed by an attorney as well as by a self-represented litigant.

3. That Rule 5(h) of the Vermont Rules of Civil Procedure be added to read as follows:

(h) Certificate of Service. Every document filed with the court after the complaint, and required by this rule to be served upon a party, must be accompanied by a separate certificate of service that meets the following requirements:

(1) *Signing.* The certificate must be signed by the party's lawyer or an authorized employee of the lawyer, or by a self-represented party, subject to the obligations of Rule 11.

(2) *Contents.* The certificate must:

- (A) certify that the document has been served upon every other party to the case;
- (B) state the manner of service (mail, personal delivery, or other service authorized by this rule);
- (C) state the name and address of each person or entity served; and
- (D) state the date of the mailing or other means of delivery.

(3) *Acceptance.* The court may strike any document not accompanied by a certificate of service, may suspend running of the time for response by the other party or parties until the filing of a proper certificate of service, and may decline to act on the filing until a proper certificate is filed.

Reporter's Notes—2015 Amendment

Rule 5(h) is added to require a separate certificate of service to be filed after service of any document under Rule 5. The new provision is primarily intended to address a problem resulting from the fact that more and more cases involve one or more self-represented parties. However, it applies to filings by attorneys as well as by self-represented parties. Form 29, incorporating the requirements of the certificate laid out in new Rule 5(h)(1) and (2), has been added to the Appendix of Forms by simultaneous amendment. Consistent with the new rule, a simultaneous amendment to V.R.C.P. 5(d) deletes the provision that filing by an attorney is sufficient proof of service.

Many self-represented parties are unfamiliar with the requirement of Rule 5(a) that every filing with the court must also be sent to all other parties or their lawyers. Although sometimes unrepresented parties list a “cc” to other parties, this is often not the case. It is therefore impossible to tell whether other parties have been informed of the filing. Thus, the court may rule on a motion because the time to respond has passed and it is unopposed, only to find out later, when a motion to reconsider or reopen is filed, that the other parties were not even aware of the motion until the court’s ruling. The court must then vacate the ruling, potentially wait again for the motion reaction time to pass, and then revisit the motion. This results in more work for the court staff, the judge, and the other parties who should have been served. It can also create extensive delays. To avoid this, in some courts staff routinely make photocopies of filings by self-represented litigants and mail them to the other side to be sure the other side is aware of the motion or filing. This practice, however, shifts to already overburdened staff a duty that is legally the obligation of the parties. It also shifts the costs of photocopying and mailing to the court.

Even when lawyers appear in a case there are times when it is unclear whether service has been made—for example, where new counsel came in close to the time of a filing, and it is not apparent whether the filing was served on the new counsel. This lack of clarity can lead to misunderstandings, wasted hearing time, reconsideration, or time spent by court staff calling or emailing counsel to determine who has been served.

Finally, when the courts move to electronic filing, cover letters will likely be eliminated. Thus, even the “cc” that now may appear on a cover letter will no longer be submitted to assist the court in determining whether copies of filings were sent to other parties.

All of these problems will be greatly reduced by the simple requirement of a certificate of service, by which every lawyer or party filing a document with the court certifies to whom he or she has mailed the document, on what date, and to what address. The rule is not intended to change the requirements of Rule 5 regarding what documents must be served or the manner of service. Federal Rule 5(d) has required certificates of service since 1991. See 4B C. Wright & A. Miller, Federal Practice & Procedure: Civil § 1150 (3d ed. 2002).

4. That Form 1 in the Appendix of Forms to the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

FORM 1. SUMMONS

STATE OF VERMONT
COUNTY OF _____
_____ Unit

SUPERIOR COURT
CIVIL DIVISION
Docket No. _____

Plaintiff(s)

v.

SUMMONS

Defendant(s)

THIS SUMMONS IS DIRECTED TO _____

1. **YOU ARE BEING SUED.** The plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights.

2. **YOU MUST REPLY WITHIN 20* DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Plaintiff a **written response** called an Answer within 20* days of the date on which you received this Summons. You must send a copy of your Answer to the [Plaintiff][Plaintiff's attorney] located at:

_____ ,

You must also give or mail your Answer to the Court located at:

3. YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT. If you do not Answer within 20* days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint.

5. YOU MUST MAKE ANY CLAIMS AGAINST THE PLAINTIFF IN YOUR REPLY. Your Answer must state any related legal claims you have against the Plaintiff. Your claims against the Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to bring them up at all. Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.

6. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. **Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.**

7. NOTICE OF APPEARANCE FORM. THE COURT NEEDS TO KNOW HOW TO REACH YOU SO THAT YOU WILL BE INFORMED OF ALL MATTERS RELATING TO YOUR CASE. If you have not hired an attorney and are representing yourself, in addition to filing the required answer it is important that you file the Notice of Appearance form attached to this summons, to give the court your name, mailing address and phone number (and email address, if you have one). You must also mail or deliver a copy of the form to the lawyer or party who sent you this paperwork, so that you will receive copies of anything else they file with the court.

{Plaintiff's attorney}/Plaintiff

Dated

Served on

Date

Sheriff

* Use 20 days, except that in the exceptional situations where a different time is allowed by the court in which to answer, the different time should be inserted.

Reporter's Notes—2015 Amendment

Form 1 is amended to alert a self-represented defendant that he or she must complete and file Form 28, the newly adopted Notice of Appearance form that the simultaneous amendment to Rule 4(b) requires to be attached to the summons.

5. That Form 1B in the Appendix of Forms to the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

FORM 1B. NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * * * *

If you do not return the signed waiver by _____(F)_____, I will have formal service made in a manner authorized by the Vermont Rules of Civil Procedure. I will then ask the court to require [you] [the party on whose behalf you are addressed] to pay the full costs of that service, to the extent authorized by those rules. In that connection, please read the statement concerning the duty of the parties to waive the service of summons, which is set forth on the enclosed waiver form.

THE COURT NEEDS TO KNOW HOW TO REACH YOU SO THAT YOU WILL BE INFORMED OF ALL MATTERS RELATING TO YOUR CASE. If you have not hired an attorney and are representing yourself, in addition to filing the required answer it is important that you file the Notice of Appearance form attached to this notice and request, to give the court your name, mailing address and phone number (and email address, if you have one). You must also mail or deliver a copy of the form to the lawyer or party who sent you this paperwork, so that you will receive copies of anything else they file with the court.

I affirm that this request is being sent to you on _____(I)_____.

* * * * *

Reporter's Notes—2015 Amendment

Form 1B is amended to alert a self-represented defendant that he or she must complete and file Form 28, the simultaneously adopted Notice of Appearance form that the simultaneous amendment to Rule 4(I) requires to be attached to the notice and request.

6. That Form 1C in the Appendix of Forms to the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

FORM 1C. WAIVER OF SERVICE OF SUMMONS

* * * * *

I understand that a judgment may be entered against [me] [entity] if an answer or motion under Rule 12 of the Vermont Rules of Civil Procedure is not served upon you by [date from Form 1B, note H]. If I have not hired an attorney and am representing myself, I am filing the attached Notice of Appearance form in addition to filing the required answer.

* * * * *

Reporter’s Notes-2015 Amendment

Form 1C is amended, consistent with the simultaneous amendments of Rule 4(l) and Form 1B, to provide for submission of Form 28, the simultaneously adopted Notice of Appearance form that the simultaneous amendment to Rule 4(l) requires to be attached to the notice and request.

7. That Form 28 be added to the Appendix of Forms in the Vermont Rules of Civil Procedure to read as follows:

FORM 28. NOTICE OF APPEARANCE FOR SELF-REPRESENTED LITIGANT

STATE OF VERMONT

SUPERIOR COURT
CIVIL DIVISION

_____ Unit

Docket No. _____

Plaintiff(s)

v.

**NOTICE OF APPEARANCE
For Self-Represented Litigant**

Defendant(s)

I am a ___ Plaintiff ___ Defendant in this case.

I will represent myself and, in addition to filing the required answer, I hereby enter my appearance with the court. If I decide to be represented by an attorney in the future, either my attorney or I will notify the court of the change.

In representing myself, I understand that I **MUST**:

- 1. Notify the court in writing of any changes in my address, phone number, or email address.**
- 2. Give or send copies of any papers I file with the court to every other party in this case. If another party has an attorney, I will give or send copies to that party's attorney.**
- 3. File a certificate of service with the court swearing that I have sent the papers I am filing to all parties. I understand that I can find that form on the Vermont Judiciary website or at the court house.**

All court papers may be mailed to me by first class mail at the address listed below.

My Street Address (or my Mailing Address if different from my street address) is:

Town/City State Zip Code

Telephone Number (day): _____ Telephone Number (evening): _____

Email address: _____

Date: _____ Signature: _____

Name Printed: _____

Reporter's Notes

Form 28 is added to implement the simultaneous amendment of V.R.C.P. 4(b) and (l) requiring a notice of appearance by a self-represented litigant to assure compliance with V.R.C.P. 79.1(d). The form is similar to that found on the Judiciary website for use in the Family Division.

8. That Form 29 be added to the Appendix of Forms in the Vermont Rules of Civil Procedure to read as follows:

FORM 29. CERTIFICATE OF SERVICE

STATE OF VERMONT

SUPERIOR COURT
CIVIL DIVISION

_____ Unit

Docket No. _____

Plaintiff(s)

CERTIFICATE OF SERVICE

v.

Defendant(s)

I certify that I have today delivered the attached [title of filings] to all other parties to this case as follows:

- By first class mail by depositing it in the U.S. mail;
- By personal delivery to [name of party or parties] or his/her counsel;
- Other. Explain:

The names and addresses of the parties/lawyers to whom the mail was addressed or personal delivery was made are as follows:

[List each party served]

Dated at _____, Vermont this ____ day of ____, 20__

Signature: _____

[Typed Name]

Counsel for _____

Reporter's Notes

Form 29 is added to implement the simultaneous addition of V.R.C.P. 5(h) requiring a certificate of service on a motion under Rule 5. If service was by electronic means the "Other" box should be checked and that fact noted.

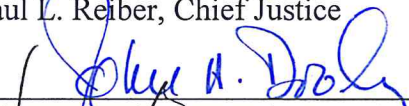
9. That these rules and forms, as added or amended, are prescribed and promulgated effective September 21, 2015. The Reporter's Notes are advisory.

10. 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 20th day of July, 2015.



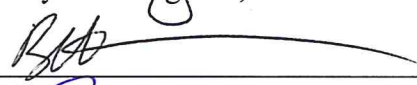
Paul L. Reiber, Chief Justice



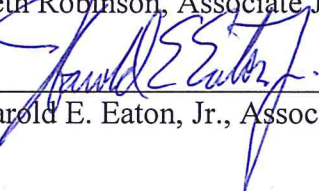
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice