

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

Order Amending Rule 45 of the Vermont Rules of Criminal Procedure

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

1. That Rule 45 of the Vermont Rules of Criminal Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 45. TIME

(a) **Computing Time.** The following rules apply in computing any time period specified in these rules, in any court order, or in any applicable statute that does not specify a method of computing time.

* * * * *

(4) *“Last Day” Defined.* Unless a different time is set by a statute or court order, the last day ends:

- (A) for email and electronic filing, at midnight in the court’s time zone; and
- (B) for filing by other means, when the clerk’s office is scheduled to close.

* * * * *

~~(e) **Additional Time After Certain Kinds of Service.** Whenever a party must or may act within a specified time after being served and service is made under V.R.C.P. 5(b)(2) (mailing), (3) (leaving with the clerk), or (4) (sending by electronic means), 3 days are added after the period would otherwise expire under Rule 6(a).~~

Reporter’s Notes—2022 Amendment

Rule 45(a)(4)(A) is amended in conjunction with amendments to V.R.C.P. 5 which authorize filing and service by email in contrast to electronic service and filing employing the Odyssey File and Serve (OFS) system, or by nonelectronic means, for those specific parties (principally non-e-filers), and in those specific circumstances described in the amendments revising V.R.C.P. 5(b) and (e). The amendments to V.R.C.P. 5 are made following the specific direction of the Court in its June 25, 2021, amendment of Administrative Order 49, ¶ 6. Attorneys making filings and service on behalf of their clients must still employ the OFS system, unless a specific exception is recognized under the 2020 Vermont Rules for Electronic Filing.

For those parties authorized to engage in filing and service via email under the referenced amendments to V.R.C.P. 5, the amendment to V.R.Cr.P. 45(a)(4)(A) clarifies that such email filings are timely made at any time prior to midnight on the last day specified for required action.

V.R.Cr.P. 45(e) is deleted. V.R.C.P. 6(e) and V.R.A.P. 26(c), which are virtually identical, are also simultaneously deleted. As most recently amended in 2018, Rule 45(e) provided:

(e) Additional Time After Certain Kinds of Service.

Whenever a party must or may act within a specified time after being served and service is made under V.R.C.P. 5(b)(2) (mailing), (3) (leaving with the clerk), or (4) (sending by electronic means), 3 days are added after the period would otherwise expire under Rule 6(a).

Deleting this provision is overdue, given the general simplification of counting time that occurred when the “day is a day” method of counting was adopted in 2018. See Reporter’s Notes to 2018 amendment of Rule 45(a). Federal Criminal Rule 45(c), which is virtually identical to V.R.Cr.P. 45(e), was amended in 2016 to remove service by electronic means under F.R.C.P. 5(b)(2)(E) from the modes of service that allow 3 days to be added after the prescribed period runs. That amendment reflected the narrower scope given to electronic service under the Federal Rules. Further amendments in 2018 substantially revised F.R.Cr.P. 49, which had previously defaulted to Federal Civil Rule 5, to move the instructions for filing and service from the Civil Rules into Federal Rule 49.

Vermont trial courts, and the Vermont Supreme Court, are now fully operational under the Odyssey Electronic Case Management and File and Serve systems. All attorneys (who are required to register and efile), and self-represented litigants who elect to register are required to use the system and receive service of case related documents through it. Service outside of OFS is limited to cases involving self-represented litigants who do not opt to use OFS or to a limited number of special instances where nonelectronic service is authorized. See 2020 Vermont Rules for Electronic Filing, Rule 3(a) and (b), as amended effective July 15, 2020. Timing difficulties caused by electronic filing outside of normal business hours, or arising in the limited number of cases involving nonelectronic service, can be addressed case by case by the trial court.

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