

**STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_ TERM, 2019**

**Order Promulgating Amendments to Rules 3, 5, 5.1, 6, 9, 10, 11, 12, 13, 28, 30, and 45.1 of  
the Vermont Rules of Appellate Procedure**

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

1. That Rule 3(b)(2) and (d)(2) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 3. APPEALS AS OF RIGHT—HOW TAKEN**

**(b) Filing and Serving the Notice of Appeal.**

*(2) Sentence of Life Imprisonment.*

(A) In a criminal case resulting in a sentence of life imprisonment, an appeal will be entered without the filing of a notice of appeal, except that a notice of appeal must be filed by the defendant in a case in which

(i) the defendant has, with the advice of counsel waived his right to appeal on the record in open court, or

(ii) the defendant, with the advice of counsel, entered a plea of guilty or nolo contendere to the underlying charge.

(B) When an appeal is entered without the filing of a notice of appeal in accordance with subparagraph (A), the following procedures will apply:

(i) The date of entry of judgment will be treated as the date from which all time periods will run that would otherwise be triggered by the filing of the notice of appeal.

(ii) The judge will direct the clerk to ~~mail~~ transmit a copy of the notice of entry of judgment required by V.R.Cr.P. 56(d), and the record of actions ~~a copy of the docket entries~~, to the Supreme Court clerk.

(iii) The appeal will be docketed in the Supreme Court and the record and transcript prepared and forwarded as provided in these rules for appeals in other criminal cases. The Supreme Court will review the record in the interests of justice and consider any claim of error as if a notice of appeal has been filed.

**(d) Contents of the Notice of Appeal.**

(2) A notice of appeal signed by an attorney or by a self-represented litigant, who is required to register an e-mail address by 2010 V.R.E.F. 3, must include the eCabinet registration number assigned to that attorney or litigant on registering an e-mail address pursuant to V.R.E.F. 3.

## Reporter's Notes—2019 Amendment

Rule 3(b)(2)(B)(ii) is amended to update its language in two ways in anticipation of the new case management system, which will be rolled out in phases throughout the state. With the new case management system, there will be both electronic filing and electronic case files. The rollout will initially be in divisions of the superior court, and the Supreme Court will be at the end of the rollout period. The amendments to the appellate rules are made to accommodate appeals from cases that were filed under the new case management system and have electronic case files. When the case management system is implemented in the Supreme Court, further amendments to the appellate rules will be required.

The rule is amended to use “transmit” instead of “mail” to allow electronic or other types of transmission of the notice of entry of judgment. The term “docket entries” is replaced with the more general term “record of actions” in anticipation of the new case management system.

Rule 3(d)(2) is amended to clarify that the reference in that rule is to the 2010 Vermont Rules for Electronic Filing.

2. That Rule 5(b)(6) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

### **RULE 5. APPEALS BEFORE FINAL JUDGMENT**

#### **(b) Appeal of Interlocutory Order by Permission.**

##### *(6) Permission To Appeal Granted.*

(A) The superior court order permitting appeal will be filed, served, and a copy mailed to the Supreme Court clerk—with the record of actions ~~docket entries~~ and any required entry fee—in the manner provided for notices of appeal in Rule 3.

(B) The record must then be forwarded and the action will be entered, considered, and determined in the Supreme Court as provided by these rules for other appeals.

## Reporter's Notes—2019 Amendment

The term “docket entries” in Rule 5(b)(6)(A) is replaced with the more general term “record of actions” in anticipation of the new case management system. See Reporter's Notes to Rule 3.

3. That Rule 5.1(c)(1) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

## RULE 5.1. COLLATERAL FINAL ORDER APPEALS

### (c) Motion for Permission Granted.

(1) The order permitting appeal and ruling on a stay must be filed and served, and a copy transmitted to the Supreme Court clerk ~~copies mailed~~ —with the record of actions docket entries and any required entry fee—in the manner provided for notices of appeal in Rule 3.

### Reporter’s Notes—2019 Amendment

Rule 5.1(c)(1) is amended to update its language in two ways in anticipation of the new case management system, which will be rolled out in phases throughout the state. See Reporter’s Notes to Rule 3. The rule is amended to allow an order to be “transmitted” instead of “mailed” to allow electronic or other types of transmission. The term “docket entries” is replaced with the more general term “record of actions.”

4. That Rule 6(a)(2)(B) and (b)(10)(C) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

## RULE 6. DISCRETIONARY APPEALS

### (a) Appeals from Final Judgment Based on Superior Court Permission.

(1) When an appeal from a final judgment may be taken only with the superior court’s permission, the party seeking the appeal must file a motion for permission to appeal with the clerk within 14 days of the date of the entry of the judgment or order to be appealed from. The running of the time for filing a motion for permission is tolled to the extent provided, and for the grounds stated, in Rule 4(b).

(2) If permission to appeal is granted by the trial court, the order permitting the appeal must be:

(A) signed by the superior court, stating whether the proceedings will be stayed and, if so, whether the stay will be on conditions necessary to protect the rights of the adverse party; and

(B) filed, served, and a copy ~~mailed~~ transmitted to the Supreme Court clerk—with the record of actions docket entries and any required entry fee—in the manner provided for notices of appeal in Rule 3.

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### (b) Appeals from Final Judgment Based on Supreme Court Permission.

(10) If the Supreme Court grants permission:

(A) The order permitting the appeal must state whether the proceedings will be stayed and, if so, whether the stay will be on conditions necessary to protect the rights of the adverse party;

(B) the appellant must pay to the superior court clerk the entry fee required under 32 V.S.A. § 1431 within 14 days after the decision is entered in the superior court; and

(C) the record, including the record of actions ~~docket entries~~, must be forwarded to the Supreme Court, and the action will be entered, considered, and determined in the Supreme Court as provided by these rules for other appeals.

### **Reporter's Notes—2019 Amendment**

Rule 6(a)(2)(B) and 6(b)(10)(C) are amended to update the language in two ways in anticipation of the new case management system, which will be rolled out in phases throughout the state. See Reporter's Notes to Rule 3. Rule 6(a)(2)(B) is amended to allow an order to be "transmitted" instead of "mailed" to allow electronic or other types of transmission. The term "docket entries" formerly used in both 6(a)(2)(B) and 6(b)(10)(C) is replaced with the more general term "record of actions."

5. That Rule 9(c) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

### **RULE 9. RELEASE IN CRIMINAL CASES**

(c) **The Record.** For purposes of any appeal or review to be conducted in accordance with Rule 9(a) or (b), the record consists of the charging document, the record of actions ~~all docket entries~~, affidavits, all pertinent parts of the transcript of the proceeding of which appeal or review is sought, and any order or orders entered therein.

### **Reporter's Notes—2019 Amendment**

Rule 9(c) is amended to update its language in anticipation of the new case management system, which will be rolled out in phases throughout the state. See Reporter's Notes to Rule 3. The term "docket entries" is replaced with the more general term "record of actions."

6. That Rule 10(a)(3) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

### **RULE 10. THE RECORD ON APPEAL**

(a) **Composition.** The record on appeal consists of:

(1) the original documents, data, and exhibits filed electronically or nonelectronically in the superior court;

(2) any transcript of the proceedings, which may be filed either electronically or nonelectronically, and the video or audio recording of the proceedings, if authorized under Rule 10(c) or Rule 10(b)(8); and

(3) the record of actions from the superior court, which as used in these rules means the docket entries or the case summary. ~~a certified copy of the docket entries prepared by the~~

superior court clerk, which must contain the eCabinet registration number assigned to attorneys for parties to the appeal, or to any self-represented litigant, on registering an e-mail address pursuant to V.R.E.F. 3.

### Reporter's Notes—2019 Amendment

Rule 10(a)(3) is amended to update its language in anticipation of the new case management system, which will be rolled out in phases throughout the state. See Reporter's Notes to Rule 3. The term "docket entries" is replaced with the term "record of actions," which, as the rule describes, is a general term for the docket entries or case summary. The prior obligation to include the eCabinet registration number for assigned attorneys is removed because attorneys must include the number on filings under Rule 45.1(g) and this registration number will be phased out as the new case management system is implemented.

7. That Rule 11(b)(4), (c)(1)(B), and (e)(1) and (3) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

### RULE 11. FORWARDING THE RECORD

#### (b) Clerk's Duty To Forward the Record; Transcript.

(1) Within 14 days after filing of the notice of appeal, the superior court clerk must forward any entry fee, and the record on appeal, including necessary exhibits, but not including the transcript, to the Supreme Court, unless the time is shortened or extended under Rule 11(d). When the superior court clerk receives a statement to be filed under Rule 10(c) or (d), the superior court clerk must forward that statement to the Supreme Court clerk.

(2) In any criminal case where the defendant receives a sentence of life imprisonment and has not waived appeal, the superior court clerk must expeditiously perform all actions required under this rule without any notification or assistance from the appellant.

(3) Unless directed to do so by a party or the Supreme Court clerk, the superior court clerk will not send unusually bulky or heavy documents, and physical exhibits other than documents. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(4) The record is considered forwarded when the superior court clerk ~~sends~~ transmits it to the Supreme Court clerk. The superior court clerk must indicate—on the face of the record or otherwise—the date it is forwarded.

(5) When each transcript is complete, the transcriber will promptly notify the Supreme Court clerk and the parties, indicate the balance due, and, upon payment, deliver the transcript to the ordering party and the Supreme Court. If the transcript has not been filed electronically, the appellant must file the original with the Supreme Court clerk at or before the time of oral argument.

(c) **Retaining the Record Temporarily in the Superior Court for Use in Preparing the Appeal.** The parties may stipulate, or the superior court on motion may order, that the superior court clerk retain the record temporarily for the parties to use in preparing appellate filings.

(1) The appellant must ensure that the appeal is docketed and the record filed within the time fixed or allowed by:

(A) complying with the provisions of Rule 12(a); and

(B) forwarding to the Supreme Court clerk a partial record composed of ~~a copy of the record of actions docket entries~~, and a certificate prepared by counsel or a self-represented appellant stating that the record, including all necessary exhibits, is complete except for the transcript.

(2) After receiving the appellee's brief, or earlier if the Supreme Court orders or the parties agree, the appellant must request that the superior court clerk forward the record.

**(d) Extending or Reducing Time for Forwarding the Record.**

(1) The superior court may extend the time for forwarding the record for cause if:

(A) the request for extension is made within the time originally prescribed or within an extension previously granted; and

(B) the extension does not exceed 90 days from the date of filing of the first notice of appeal.

(2) If the superior court lacks authority to grant relief or has denied a request, the Supreme Court may, on motion or for cause, extend the time for forwarding the record or may permit the record to be forwarded and filed after the expiration of the time allowed or fixed. If the superior court has previously denied a request, the motion must state any reasons given for the denial.

(3) The superior court or the Supreme Court may require the record to be forwarded and the appeal to be docketed at any time within the time otherwise fixed or allowed.

**(e) Retaining the Record by Court Order.**

(1) The Supreme Court may order that a certified copy of the ~~docket entries~~ record of actions be forwarded instead of the entire record. But a party may at any time request that designated parts of the record be forwarded.

(2) The superior court may order the record or some part of it retained if needed by the court while the appeal is pending, subject to the request of the Supreme Court.

(3) If all or part of the record is retained, the superior court clerk must send a copy of the order and ~~docket entries~~ the record of actions together with the parts of the original record allowed by the superior court and copies of any parts of the record designated by the parties.

### **Reporter's Notes—2019 Amendment**

Rule 11(b), (c), and (e) are amended to update language in anticipation of the new case management system, which will be rolled out in phases throughout the state. See Reporter's Notes to Rule 3. Rule 11(b)(4) is amended to allow the record to be transmitted rather than sent to allow for electronic or other types of transmission. The term "docket entries" formerly used in Rule 11(c)(1)(B) and (e)(1) and (3) is replaced with the more general term "record of actions."

8. That Rule 12(a) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

## **RULE 12. DOCKETING THE APPEAL; FILING THE RECORD**

(a) **Docketing the Appeal.** Upon receiving the copy of the notice of appeal, the record of actions certified docket entries, and any entry fee the Supreme Court clerk must docket the appeal under the title of the superior court action and must identify the appellant, adding the appellant's name if necessary.

### **Reporter's Notes—2019 Amendment**

Rule 12(a) is amended to update language in anticipation of the new case management system, which will be rolled out in phases throughout the state. See Reporter's Notes to Rule 3. The term "docket entries" is replaced with the more general term "record of actions."

9. That Rule 13(a) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

## **RULE 13. RECORD IN DIRECT APPEALS FROM THE PROBATE DIVISION AND ADMINISTRATIVE AGENCIES**

(a) **Record: Probate Appeals.** In direct appeals from the Probate Division, the record consists of a certified copy of the proceedings appealed from, setting forth the questions of law to be determined on appeal. This record must contain the eCabinet registration number assigned to each attorney who has appeared in the case, or to any self-represented litigant, on registering an e-mail address pursuant to 2010 V.R.E.F. 3.

### **Reporter's Notes—2019 Amendment**

Rule 13(a) is amended in anticipation of the new case management system, which will be rolled out in phases throughout the state and will have both electronic filing and electronic case files. See Reporter's Notes to Rule 3. Rule 13(a) is amended to clarify that the reference in that rule is to the 2010 Vermont Rules for Electronic Filing.

10. That Rule 28(d) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined):

## **RULE 28. BRIEFS**

(d) **References to the Record.**

(1) Cases with Nonelectronic Case File. References in the brief to parts of the record contained in the printed case must be to the pages of the printed case where those parts appear. If the record is reproduced in accordance with Rule 30(e), or if references are made in the

briefs to parts of the record not reproduced, the references must be to the pages of the original document involved.

(2) Cases Filed Under the 2010 Vermont Rules for Electronic Filing. If the parties chose not to file a printed case, the parties must directly cite to the particular document in the superior court record, identified by document name and file date, as well as the relevant page number(s).

(3) Cases Filed Under the 2019 Vermont Rules for Electronic Filing. The parties must cite to pages of the record created from the electronic filing system where the document appears.

(4) References to Challenged Evidence. A party referring to evidence whose admissibility is in controversy must cite the pages of the printed case, of the record from the efilings system where the document appears, or of the transcript at which the evidence was identified, offered, and received or rejected, with the number of any interrogatory and answer or the name and mark of any document offered.

### **Reporter's Notes—2019 Amendment**

Rule 28(d) is amended in anticipation of the new case management system, which will be rolled out in phases throughout the state, and the concurrent use of both electronic filing and electronic case files. See Reporter's Notes to Rule 3. The 2019 Vermont Rules for Electronic Filing will be used for this new system. The rule is amended to reflect that for a time there will be appeals from cases filed under both the 2010 Vermont Rules for Electronic Filing and the 2019 Vermont Rules for Electronic Filing.

Rule 28(d) is broken into four paragraphs with new headings. Rule 28(d)(1) retains the existing rule about references to the record where there is a nonelectronic case file. Rule (d)(2) is added to explain how to refer to the record for cases filed under the 2010 Vermont Rules for Electronic Filing. Rule (d)(3) is added to explain how to refer to the record in cases filed under the 2019 Vermont Rules for Electronic Filing. In those cases, the new case management system will create a paginated record. Rule (d)(4) is substantially the same in requiring parties to cite to pages of the printed case or record where challenge evidence was identified, offered, and received or rejected.

11. That Rule 30(a)(b) and (c) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

### **RULE 30. PRINTED CASE**

(a) Appellant's Duty. No printed case is required when there is an electronic case file under the 2010 or 2019 Vermont Rules for Electronic Filing. In all other cases, the appellant is required to file a printed case in accordance with this rule.

(1) *Contents.* ~~In all cases where there is no electronic case file as defined in Rule 12(b) of the Vermont Rules for Electronic Filing, the~~ The appellant must prepare and file a printed case containing extracts from the record that are necessary to present fully the questions raised, including:

- (A) the relevant docket entries in the proceedings below;
- (B) the relevant parts of the pleadings, charge, findings, or opinion;
- (C) the judgment, order, or decision in question; and
- (D) other parts of the record to which the parties wish to direct the Court's attention.

(2) *Format.*

(A) The pages of the printed case must be numbered sequentially so that the electronic and paper page references are consistent. This may be done either by designating the cover page as page one or by using separate sectional pagination and adjusting the PDF settings so that the page search function recognizes the numbering scheme.

(B) The sections of the printed case must be reproduced in the following order:

- (i) a table of contents—listing the parts of the record included, with references to the page of the printed case at which each part begins;
- (ii) the decision appealed from;
- (iii) the docket entries; and
- (iv) the remaining parts of the record in chronological order.

(3) *Number of Copies.* The appellant must file with the Supreme Court clerk eight paper copies and an electronic version of the printed case as set forth in Rule 32(b)(1) when the appellant serves and files the appellant's brief as provided in Rule 31(a).

(4) *Excluded Material.* The Court and the parties may rely on parts of the record that are not included in the printed case.

(b) **Electronic Case File.** When the case on appeal contains an electronic case file as defined in Rule 12(b) of the 2010 Vermont Rules for Electronic Filing, the appellant is not required to assemble and file a printed case as described in Rule 30(a), but may do so if desired. ~~The parties' briefs shall instead directly cite the particular document in the superior court record, identified by document name and file date, as well as the relevant page number(s).~~ When the case on appeal was filed under the 2019 Vermont Rules for Electronic Filing, no printed case may be filed.

(c) **Supplemental Printed Case.** In cases where there is no electronic case file ~~as defined in Rule 12(b) of the Vermont Rules for Electronic Filing~~ and if necessary to direct the Court's attention to parts of the record not included in the appellant's printed case, the appellee may assemble a supplemental printed case. The appellee must file the supplemental printed case when the appellee's brief is filed by sending the Supreme Court clerk eight paper copies and an electronic version of the supplemental printed case as set forth in Rule 32(b)(1).

(d) **Costs of Production.** Mindful that the entire record is always available to the Court, the parties must not include unnecessary material in the printed case or supplemental printed case. The cost of producing the printed case or supplemental printed case is a taxable cost. If any party causes unnecessary parts of the record to be included in the printed case, however, the Court may impose the cost of producing those parts on that party.

(e) **Reproduction of Exhibits.** Exhibits designated for inclusion in the printed case may be reproduced in a separate appendix. Eight paper copies and an electronic copy must be filed with the printed case or supplemental printed case. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a superior court action and has been designated for inclusion in the printed case, the transcript will be treated as an exhibit.

(f) **Considering Appeals Without the Printed Case.**

(1) The Court may dispense with the requirement of the printed case and consider the appeal on the relevant parts of the original record.

(2) A printed case is not required in small claims appeals.

(g) **Service of Printed Case, Supplemental Printed Case, and Appendix.** Service of the printed case, supplemental printed case, or any appendix must be made by sending an electronic version of the document to each party to the appeal. If a party is self-represented, then a paper copy must be served as provided in Rule 25, unless the parties agree otherwise.

### **Reporter's Notes—2019 Amendment**

Rule 30 is amended in anticipation of the new case management system, which will be rolled out in phases throughout the state, and the concurrent use of both electronic filing and electronic case files. See Reporter's Notes to Rule 3. The 2019 Vermont Rules for Electronic Filing will be used for this new system. The rule is amended to reflect that for a time there will be appeals from cases filed under both the 2010 Vermont Rules for Electronic Filing and the 2019 Vermont Rules for Electronic Filing.

Rule 30(a) is amended to clarify that no printed case is required when there is an electronic case file under either the 2010 or 2019 Vermont Rules for Electronic Filing. In cases with no electronic case file, a printed case remains a requirement.

Rule 30(b) is amended to clarify that the reference is to the 2010 Vermont Rules for Electronic Filing. The correct manner for referencing the record when there is an electronic case file is deleted because it is included in Rule 28(d). A final sentence is added to Rule 30(b) to state that no printed case may be filed for cases filed under the 2019 Vermont Rules for Electronic Filing. In those cases, an electronic record will be created from the case management system and must be referenced directly by the parties.

Rule 30(c) is amended to delete the reference to the 2010 Vermont Rules for Electronic Filing.

12. That Rule 45.1(a) and (g) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 45.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS**

**(a) Appearance: In General.**

(1) *Docketing Attorneys of Record.* At the time the appeal is filed, the Supreme Court clerk must enter the names of the parties’ attorneys ~~on the docket~~ as they appear in ~~on the certified copy of the superior court record docket entries.~~

**(g) Attorney License Number; eCabinet Registration Number.** Any document that is a first appearance of an attorney, in addition to a notice of appeal governed by Rule 3(d), must contain not only the name of the appearing attorney, but also the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to 2010 V.R.E.F. 3. The requirement to provide a registration number also applies to a self-represented litigant who has elected, or is required, to receive documents and notices by e-mail. A document filed under Rule 5 or 5.1 triggers the obligation to provide attorney license and/or eFiling registration numbers.

**Reporter’s Notes—2019 Amendment**

Rule 45.1 is amended in anticipation of the new case management system, which will be rolled out in phases throughout the state, and the concurrent use of both electronic filing and electronic case files. See Reporter’s Notes to Rule 3.

Rule 45.1(a) is amended to remove the term “docket entries” and refer more generally to the superior court record.

Rule 45.1(g) is amended to clarify that the reference is to the 2010 Vermont Rules for Electronic Filing.

13. That these rules, as amended or added, are prescribed and promulgated effective \_\_\_\_\_, 2019. The Reporter’s Notes are advisory.

14. 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 \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

PROPOSED