

April 8, 2013

**CONSOLIDATED AMENDMENTS TO
*Vermont Rules for Electronic Filing et al.***

[Adopted as Emergency Rules on August 17, 2010; amended on October 20, 2010,
December 14, 2010, February 23, 2011, March 22, 2011]

Emergency amendments made permanent on August 30, 2011, effective October 31, 2011

Further Amendments to Rules 3(f) and 10(a) adopted on August 30, 2011, eff. October 31, 2011

Additional Amendments to Rules 3(b) and (c), adopted on May 30, 2012, eff. July 30, 2012

Additional Amendments to V.R.E.F. 3(a) and (b), 7(d), 12(g), V.R.C.P. 79.1(i), V.R.A.P. 3(d), 10(a)(3),
13(c), 45.1(h), V.R.F.P. 15(i), V.R.E.P. 5(c), V.R.Cr.P. 44.2(e), and V.R.P.P. 79.1(i)
adopted on February 6, 2013; eff. April 8, 2013.

ELECTRONIC FILING,

DISSEMINATION OF ELECTRONIC CASE RECORDS,

APPELLATE PROCEDURE,

CIVIL PROCEDURE,

CRIMINAL PROCEDURE,

FAMILY PROCEEDINGS,

ENVIRONMENTAL PROCEEDINGS,

PROBATE PROCEDURE,

ADMINISTRATIVE ORDER No. 41,

ADMINISTRATIVE ORDER No. 44, and

ADMINISTRATIVE ORDER No. 45

VERMONT RULES FOR ELECTRONIC FILING

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RULE 1. APPLICABILITY; EFFECTIVE DATES; TITLE

(a) These rules apply to all civil actions and proceedings commenced in the Superior Court, Civil Division, Rutland and Windsor county units, after the dates indicated, except small claims actions, small claims appeals, and stalking and sexual assault actions:

(1) Electronic filing in accordance with these rules is permitted in all cases commenced between October 18, 2010, and January 25, 2011.

(2) Electronic filing in accordance with these rules is required in all cases commenced on or after January 26, 2011.

(b) These rules may be known and cited as the Vermont Rules for Electronic Filing.

RULE 2. WHO MUST FILE ELECTRONICALLY; EXCEPTIONS

(a) Except as provided in (b), (c), and (d), and other provisions of these rules, all parties, and others required or permitted to file, in all civil actions and proceedings, including appeals from the probate courts and any governmental agency, entered in the Superior Court, Civil Division, on or after the filing dates provided by Rule 1(a), must electronically file all documents required or permitted by the applicable rules of procedure to be filed in court. All documents generated by the court, and by masters, receivers, guardians ad litem, and neutrals required to file a report, under the applicable rules of procedure in all actions and proceedings entered in the Superior Court, Civil Division, on or after the required filing dates provided by Rule 1(a) will be filed electronically, or scanned by court staff.

(b) A document may be filed by nonelectronic means when

(1) the filer is self-represented, except that if the filer has elected to file all required or permitted documents and information by electronic means, the filer must thereafter file all documents electronically except as provided in (2)-(5) or if required to file nonelectronically under (c);

(2) nonelectronic filing of a particular document or information is permitted by the court to protect confidentiality or for other good cause;

(3) a filer in a particular case is excused from electronic filing in that case by the court when exceptional circumstances make electronic filing unfeasible;

(4) nonelectronic filing is expressly permitted by these rules or an applicable rule of procedure;

(5) a document cannot reasonably be scanned and filed electronically because of its size, shape, or condition; or

(6) it is filed in a case commenced on or before January 25, 2011, in which documents were filed by nonelectronic means, unless the court orders that documents filed on or after January 26, 2011, in such a case be filed electronically.

(c) A document must be filed by nonelectronic means when

(1) nonelectronic filing is expressly required by these rules or an applicable rule of procedure; or

(2) the court orders a filer to file by nonelectronic means upon a finding that the filer has abused the system by repeated filing of irrelevant, abusive, or duplicative documents or information.

(d) A document may be filed directly with the court by electronic means other than electronic filing through the court's internet-based e-filing portal system when circumstances beyond the filer's control prevent the timely filing of the document through the court's system.

RULE 3. REGISTERED FILERS

(a) An attorney, a represented party, or any other person who is permitted or required under Rule 2 to file documents electronically, or a self-represented party who elects or is ordered under that rule to file electronically, must register by obtaining a user name, password, and assigned eCabinet registration number through the electronic filing system website in accordance with (b) or (c). Registration constitutes consent to e-mail service of all documents or information filed in accordance with these rules.

(b) An attorney licensed to practice law in the State of Vermont and in active status must register on the electronic filing system website by submitting his or her attorney license number and all information required by the Court Administrator on the registration screen displayed on the website, including a current e-mail address. An attorney registered under this subdivision may submit up to two additional e-mail addresses. All e-mail addresses submitted will be listed on the Judiciary website. The attorney's license number and all e-mail addresses submitted must be listed on all electronic filings by that attorney. The addresses submitted are the addresses to which all service, notice, or other communication submitted must be sent. The attorney must report any change in the information and e-mail addresses submitted forthwith by amendment to the electronic filing system registration. The Court Administrator may permit an attorney on request to submit one or more additional registrations that the attorney shows are required to facilitate the practice of law from multiple offices with independent staffing and technology systems.

(c) An attorney who is admitted pro hac vice under applicable rules of procedure or administrative orders must, and a represented or self-represented party and any other person permitted to file electronically may, register on the electronic filing system website by submitting all information required by the Court Administrator on the registration screens displayed on the website, including a current e-mail address. A person registered under this subdivision may submit up to two additional e-mail addresses. All e-mail addresses submitted will be listed on the Judiciary website. The license number of an attorney filer and all e-mail addresses submitted by any person must be listed on all electronic filings by that attorney or

other person. The addresses submitted are the addresses to which all service, notice, or other communication submitted must be sent. The person must report any change in the information and any e-mail addresses submitted forthwith by amendment to the electronic filing system registration.

(d) A registered filer may, in any action in which the filer has appeared in accordance with the applicable rules of procedure and has submitted his or her user name and password,

(1) file documents electronically as provided in Rule 4 and access or download any such documents remotely;

(2) access or download documents that have been filed by any other party or the court as provided in Rule 10.

(e) An attorney who is a registered filer may permit an associated attorney or legal assistant to file documents under the registered filer's user name and password. The registered filer is responsible for all such filings.

(f) (1) Justices, judges, and court clerks may file court-generated documents and access or download documents that have been filed in any action.

(2) Other authorized court personnel or officers, including masters, receivers, guardians ad litem, and neutrals required to file a report, may file documents they have generated in any matter in which they have participated, may access or download any such documents remotely, and may access or download any other documents filed in such matters only as provided for registered filers in Rule 10(a).

RULE 4. PROCEDURES FOR ELECTRONIC FILING

(a) A registered filer may initiate a new action or proceeding, or file documents in an action or proceeding that is in the electronic filing system, when required or permitted under Rule 2, by logging in on the electronic filing system website with a user name and password obtained as provided in Rule 3.

(b) Each filing will be accomplished by completing the "new case" or "existing case" pages on the electronic filing system website by attaching documents required or permitted to be filed that have been prepared, formatted, and signed as provided in Rules 6 and 7 and redacted if required under Rule 3(c)(3) of the Rules Governing Dissemination of Electronic Case Records; and by paying the fees as provided in Rule 8.

(c) An electronic filing may be submitted on any day, including holidays and weekends, and at any time. A filing is considered submitted on a date if it is submitted prior to midnight on that date. Failure of the filer's system will not excuse a failure to comply with a filing deadline unless filing pursuant to Rule 2(d) was ineffective and, under the applicable rules of procedure, the court exercises its discretion to extend the deadline. A deadline shall be extended for unavailability of the electronic filing system, or any of its subsystems, due to system maintenance or failure.

(d) The electronic filing system will automatically acknowledge receipt of any filing, but will automatically reject any filing that does not comply with the requirements of Rule 6(a). A filer may resubmit a rejected filing at any time after addressing the reasons for rejection, but the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the filing is resubmitted.

(e) A filing that has not been rejected will be reviewed by court staff for compliance with subdivision (g); Rules 6(b), 7, and 8; and Rule 3(c)(3) of the Rules Governing Dissemination of Electronic Case Records. Court staff will then electronically notify the filer either that the filing has been accepted or that it cannot be accepted until specified actions required under those rules have been taken. A filer may submit a corrected filing within seven calendar days after receiving the notification, unless the court extends the time for good cause. Court staff will accept a corrected filing if all requirements of those rules have been met. When an original or corrected filing has been accepted, or when a court-generated document is filed, the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the original filing was submitted. Court staff will provide a docket number for a new filing that has been accepted in the acceptance notification. The assigned docket number must appear on all subsequent filings pertaining to the case.

(f) The filer, or court staff in the case of a court-generated document, must serve notice of filing and a copy of an electronically filed document as provided in Rule 11 on all parties or persons upon whom service is required by the applicable rules of procedure.

(g) Motions, responses, and supporting matters must be filed as provided in this subdivision.

(1) A motion requesting alternative forms of relief may be filed as a single document. A response to such a motion may also be filed as a single document.

(2) Motions requesting independent forms of relief must be filed as separate documents. Responses to such motions must also be filed as separate documents.

(3) A response to a motion may not be combined in the same document with a new motion.

(4) A memorandum of law, affidavit, exhibit, or other supporting matter or required attachment to a motion or response may be filed with the motion or response or may be filed as a separate document. A memorandum of law, affidavit, exhibit, or other supporting matter or required attachment for multiple motions or responses may be filed as a separate document. If supporting matter is filed as a separate document, it must identify the motions or responses to which the supporting matter relates and must be referenced in the motions or responses unless it is filed after them.

RULE 5. NONELECTRONIC DOCUMENTS

(a) If nonelectronic filing of a document is permitted or required by these rules, the court staff will scan the document in PDF format and include it in the electronic file; provided that, if a document cannot reasonably be scanned and filed electronically because of its size, shape, or

condition, it will be filed in a nonelectronic file maintained as provided in (b). If a scanned document pertains to the merits of the case, court staff will return it to the filer. If a document that is required to be filed electronically is filed nonelectronically, it will not be accepted and will not be scanned. The filer may resubmit the document electronically pursuant to these rules, and the date and time of filing for all purposes under the applicable rules of procedure will be the date and time that the original filing was submitted.

(b) The clerk is not required to maintain nonelectronic files for actions or proceedings commenced after the dates on which electronic filing is permitted under Rule 1, except for items that cannot be filed or scanned in electronic format.

(c) A party who files a nonelectronic document must serve notice of the filing and a copy of the document on all parties and the court in any manner appropriate under the applicable rules of procedure, except for documents filed ex parte.

(d) A paper filing may be made at any time permitted by the applicable rules of procedure. A filing by electronic facsimile transmission (fax) is treated by the electronic filing system as a nonelectronic document and may be made on any day, including holidays and weekends, and at any time. A fax filing is considered made on a specific date if it is made prior to midnight on that date.

(e) After review of the filing for compliance with Rules 6(c), 7, and 8 and Rule 3(c)(3) of the Rules Governing Dissemination of Electronic Case Records, court staff will notify the filer either that the filing has been accepted or that it cannot be accepted until specified actions required under those rules have been taken. A filer may submit a corrected filing within seven calendar days after receiving the notification, unless the court extends the time for good cause. Court staff will accept a corrected filing if all requirements of those rules have been met. When an original or corrected filing has been accepted, or when a court-generated document is filed, the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the original filing was submitted. Court staff will provide a docket number for a new filing that has been accepted. The assigned docket number must appear on all subsequent filings pertaining to the case.

(f) A notice of appeal from a final decision of the superior court to the Supreme Court in a case filed under this rule must be filed with the clerk of the superior court by nonelectronic means and any entry fee paid in the manner set forth in Rule 3 of the Vermont Rules of Appellate Procedure. A request for permission to appeal pursuant to Rules 5, 5.1, or 6 of the Vermont Rules of Appellate Procedure may be filed electronically.

RULE 6. FORMAT OF DOCUMENTS

(a) An electronically filed document will be automatically rejected by the electronic filing system without acknowledgement of receipt if it

- (1) is not created or saved in, or converted to, PDF, PDF/A, or MS Word format;
- (2) is larger than 10 MB, unless it is filed in segments no larger than 10 MB; or

(3) contains a virus detected by the electronic filing system.

(b) An electronically filed document that has not been rejected by the electronic filing system pursuant to (a) will be accepted by court staff as provided in Rule 4(e) only if

(1) it has been formatted as required by the applicable rules of procedure and is clearly legible in the electronic format in which it was filed; and

(2) any password protection or other security device has been removed.

(c) A nonelectronically filed document that has not been rejected by court staff under Rule 5(a) will be accepted as provided in Rule 5(e) only if it

(1) is clearly legible, with all text visible and dark enough to be readable on a scanned image;

(2) is formatted as required by the applicable rules of procedure;

(3) is printed on white paper and on only one side of the paper;

(4) is not secured by staples;

(5) is free of bar codes on any page; and

(6) uses exhibit separator pages instead of exhibit tabs.

RULE 7. SIGNATURES

(a) Form and Effect of Signature.

(1) The electronic filing of a pleading, motion, or other procedural document by a registered filer constitutes the filer's signature on the document and for all other purposes under the applicable rules of procedure, including the imposition of sanctions under V.R.C.P. 11, V.R.Cr.P. 49(d), and V.R.A.P. 25(d). An electronically filed procedural document must include a signature block containing the filer's typed-in name preceded by "/s/," or an electronic facsimile of the filer's signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), and the filer's name, address, telephone number, and e-mail address.

(2) A procedural document filed by nonelectronic means, when permitted under Rule 2(b) or otherwise required by these rules, must be signed as provided in the applicable rules of procedure.

(3) If a stipulation or other signed document relevant to the merits of any issue in an action or proceeding is to be filed electronically under these rules, the original, signed as provided in the applicable rules of procedure or other provisions of law, must be scanned and filed as a PDF file by the filer. If such a document is to be filed by nonelectronic means when permitted under Rule 2(b), it must be an original or a legible

copy, unless otherwise provided in the applicable rules of procedure or other provisions of law.

(b) Multiple Signatures.

(1) A pleading, motion or other procedural document filed jointly by a registered filer and other parties or counsel aligned in interest with the filer must contain the signature of the filer and the other parties or counsel in the form provided in (a)(1) or (2). If such a document is filed electronically, the filer's signature constitutes a representation that all the other signers consented to the filing of the document.

(2) Any other document that contains the signatures of persons other than the filer must be filed and signed as provided in (a)(3).

(3) The filer of any document containing the signatures of other persons must retain a paper or electronic copy of the document available for inspection by the signers or the court until the longer of two years or final disposition of the action, including the disposition of all appeals or the running of the time for appeal.

(c) Documents under Oath. If a notarized, acknowledged, or verified document or a document signed under oath is to be filed electronically under these rules, the original, signed and attested as provided in the applicable rules of procedure or other provisions of law, must be scanned and filed as a PDF file by the filer. The filer must retain the original of the document available for inspection by the signers or the court until the longer of two years from the date of filing or final disposition of the action, including the disposition of all appeals or the running of the time for appeal.

(d) Signatures of Court Personnel.

(1) *Judicial Officers.* Judicial officers of the Supreme Court, the Superior Court and the Judicial Bureau may sign any court-generated document created and to be sent or filed in electronic form subject to the following conditions:

(A) Each judicial officer must create through the Office of the Court Administrator, and maintain, an electronic facsimile of his or her signature.

(B) A judicial officer may sign any court-generated document created and to be sent or filed in electronic form with his or her electronic facsimile signature followed by a signature block containing the signer's typed name and title. That signature shall have the same effect as a handwritten signature on a nonelectronic document.

(C) An electronic facsimile signature of a judicial officer on a document sent from his or her official state e-mail address or from another e-mail address registered with the Court Administrator, or filed by him or her in the electronic filing system, is presumed valid.

(D) A judicial officer may delegate the use of his or her electronic facsimile signature image to an authorized designee. Whenever the designee uses the facsimile signature image, the designation shall be disclosed on the document.

(E) Unauthorized use of an electronic facsimile signature will render invalid the document that was issued with the unauthorized signature unless the judicial officer ratifies the use of the signature.

(2) *Court Personnel and Others.* The electronic filing or transmission of any court-generated document by court personnel authorized to sign the document and by others authorized to sign, including masters, receivers, guardians ad litem, and neutrals required to file a report, will be deemed signed by the sender if transmitted from his or her official state, or professional, e-mail address or filed by him or her in the electronic filing system accompanied by a signature block containing the signer's typed name and title.

RULE 8. PAYMENT OF FEES AND COSTS

(a) No electronically or nonelectronically filed document will be accepted under Rule 4(e) or 5(e) until any fees and costs attributable to the filing are paid. No advance deposit on account of future fees will be accepted.

(b) Fees and costs for electronically filed documents may be paid electronically by approved credit card or electronic funds transfer, or may be paid directly over the counter at the office of the clerk by cash, check, or money order. Fees and costs for nonelectronically filed documents must be paid by cash, check, or money order.

(c) A party who wishes to proceed in forma pauperis must comply with the provisions of the applicable rules of procedure.

RULE 9. REDACTION

Rule 3 of the Rules Governing Dissemination of Electronic Case Records applies to all electronic documents filed in accordance with these rules.

RULE 10. ACCESS TO ELECTRONIC CASES FILES

(a) Registered filers may have remote access to all documents that they have filed electronically. A registered filer may have access through a terminal provided by court staff in a court location to the full electronic file of any case in which he or she has appeared in accordance with the applicable rules of procedure.

(b) Self-represented parties who are not registered filers, and others excused from filing electronically in a particular case under Rule 2, may have access to the electronic file of a case in which they have appeared or are represented through a terminal provided by court staff in a court location to the full electronic file of any cases in which they have appeared in accordance with the applicable rules of procedure.

(c) Members of the general public may have access to electronic case files only by use of a public access terminal, at least one of which will be placed and maintained in each court location. Public access is subject to the Rules for Public Access to Court Records and the Rules

Governing Dissemination of Electronic Case Records as adopted or amended by the Supreme Court.

RULE 11. SERVICE

(a) Service upon a party of the original notice of an action or proceeding (including a notice of appeal to the Superior Court, Civil Division, from a probate court under V.R.C.P. 72 or a governmental agency under V.R.C.P. 74), other original process, or a writ of execution or possession, or service upon a nonparty of a subpoena or other original or final process, and any documents accompanying any such notice or process must be made by nonelectronic means. Any required return of service must be filed electronically in accordance with these rules unless otherwise provided in Rule 2(b) or by the applicable rules of procedure.

(b) Notice (other than original notice), documents, and exhibits required or permitted by applicable rules of procedure to be served on an attorney or party must be served by e-mail attachment on a registered filer unless otherwise agreed in writing by the parties, or by nonelectronic means on any other attorney, party, or person unless that attorney, party, or person agrees in writing to service by electronic means.

(c) Any original notice, process, or writ required to be issued to an attorney or served on a party or nonparty by the clerk in an action or proceeding in the Superior Court, Civil Division, by applicable rules of procedure, may be issued or served by non-electronic means.

(d) In an appeal to the Superior Court, Civil Division, from a probate court or a governmental agency, the register of probate, or clerk or other officer of the agency, must transmit the record on appeal to the clerk of the Civil Division by nonelectronic means as provided in V.R.C.P. 72 or 74. The court staff of the Civil Division will scan and electronically file the record, or file it nonelectronically, as provided in Rule 5(a). The certificate of decision of the Civil Division, required to be certified to a probate court or governmental agency, and the record on appeal, required to be returned by the clerk of the Civil Division, must be transmitted in accordance with V.R.C.P. 72 or 74 by nonelectronic means.

RULE 12. DEFINITIONS

(a) **Document.** A “document” is a related and paginated grouping of information items that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(b) **Electronic Case File.** An “electronic case file” is an assemblage of the items pertaining to a single case or matter under a single docket number electronically submitted to the Judiciary’s electronic filing system and stored in its temporary data store, by a registered user via the electronic filing system website, sent by interface from another agency, or electronically filed by the court via the electronic filing system website and any paper or fax document that was scanned by the court and electronically stored into the data store.

(c) **Electronic Filing.** “Electronic filing” is the process of transmitting a document from a registered filer’s computer, using the Court’s Internet-based electronic filing system, to file the document in the Court’s case file.

(d) **Electronic Means.** “Electronic means” is any method of direct electronic transmission of a document from the sender’s computer or electronic filing system to the recipient’s computer or electronic filing system.

(e) **Nonelectronic Means.** “Nonelectronic means” is any method of transmitting a document for filing or service by any means (including electronic facsimile transmission [fax]) other than by direct electronic transmission from the sender’s computer or electronic filing system to the recipient’s computer or electronic filing system.

(f) **Registered Filer.** A “registered filer” is an attorney, a represented party, or any other person who is permitted or required under Rule 2 to file documents electronically, or a self-represented party who elects or is ordered under that rule to file electronically and has registered through the electronic filing system website as provided in Rule 3. The term includes any other person authorized to file documents electronically under Rule 3.

(g) **Court-Generated Document.** A “court-generated document” is any document generated by a judicial officer or other court personnel, or by masters, receivers, guardians ad litem, and neutrals required to file a report, under the applicable rules of procedure in all actions and proceedings entered in the Supreme Court, the Superior Court, or the Judicial Bureau.

Reporter’s Notes

2013 Amendments [April 8, 2013]

Rule 3(a) is amended to provide that any attorney or other party or person who is to file electronically must also obtain an assigned eCabinet registration number.

Rule 3(b) is amended to specify that an attorney can have more than one registration, and as a result more than one registration number, if so approved by the Court Administrator because the attorney practices from multiple offices with independent staffing and technology systems.

Rule 7(d) is amended to specifically provide for the creation, maintenance and use of electronic facsimile signatures by judicial officers. Such electronic facsimile signatures have the same effect as handwritten signatures. Subsection (2) provides that court-generated electronic documents, as defined in new Rule 12(g), filed or transmitted by other authorized signers from an official state or professional e-mail address, or e-filed, are considered signed if there is a signature block containing the signer’s typed name and title.

Rule 12(g) is added to provide a definition of court-generated document, a term now used in Rule 7(d).

2012 Amendment [May 30, 2012]

Rules 3(b) and (c) are amended to facilitate the procedure for electronic delivery of court notices that will be rolled out by January 1, 2013, under Administrative Order No. 45, which is being simultaneously added. See Reporter's Notes to that order. Consistent with the simultaneous addition of Administrative Order No. 44 and the amendment of Administrative Order No. 41, these amendments are intended to decouple the requirement of submission of an e-mail address for bar administrative purposes under A.O. 41 from the submission of e-mail addresses under Rule 3 by all registered filers, which will now be required under this rule and A.O. 44. See Reporter's Notes to addition of A.O. 44 and amendment of A.O. 41.

The amended rules now require both a Vermont lawyer and an out-of-state lawyer appearing pro hac vice to register and to include at least one, and up to two more, e-mail addresses on the registration screen that will be used for transmission of all required electronic communication. This submission is in addition to, and separate from, the requirement that an e-mail address be furnished under A.O. 41, though that address may also be furnished under Rule 3. Rule 3(c) continues to apply to nonlawyers permitted to file electronically.

2011 Amendments [August 30, 2011]

The Vermont Rules for Electronic Filing, adopted as emergency rules on August 17, 2010, and several emergency amendments to them are now made permanent. Emergency adoption was deemed necessary to permit initial use of the Judiciary's eCabinet filing system in civil actions in Rutland and Windsor, the two pilot units, beginning on October 18, 2010. Nearly a year of experience has proven the rules and several necessary amendments to be effective. Though they are now made permanent, it may be expected that further changes will be made as the result of continuing experience, and that there will be significant revisions to accompany the implementation of VCase, the fully electronic case management system, in all divisions of the Superior Court, now anticipated in summer 2013.

Two additional minor amendments to the now-permanent rules are adopted simultaneously, reflecting experience in the pilot units: Rule 3(f) is amended to address problems raised by the fact that the present software gives full remote access to all court documents only to judges and clerks. Other court personnel may file and have access to any documents that they generate in matters in which they participate. They may, however, like registered filers, access documents filed by parties or others in those matters only through terminals provided by court personnel in court facilities in accordance with Rule 10(a). Rule 10(a) is amended to eliminate language requiring a registered filer's user name and password, because that requirement is established in Rule 3(d). Note that when public access terminals are available in the pilot and other courthouses, registered filers, as well as court personnel, will be able to access all

documents in any proceeding through use of those terminals as provided in Rule 10(c).

2011 Emergency Amendment [March 22, 2011]

Rule 5 is amended to set forth the proper procedure for filing a notice of appeal to the Supreme Court. The amendment specifies that a notice of appeal from a final decision must be filed in the trial court by nonelectronic means because the eCabinet system cannot handle a second filing fee. Any required entry fee must be paid by nonelectronic means. On the other hand, a motion for permission to appeal may be filed electronically and any fee paid at the appropriate time.

2011 Emergency Amendment [February 23, 2011]

Rule 2(b)(6) is added to make clear that nonelectronic filing may continue after January 26, 2011, in actions commenced by nonelectronic filing before that date, unless the court orders electronic filing in a particular case. Such an order might issue when a case will clearly remain open for a protracted period of time or involves an unusually large number of documents, especially if they are of unusual length. Otherwise, court staff will continue to scan all nonelectronic filings made after January 26, 2011, in those cases, thus maintaining an electronic file for each such case.

Rule 4(e) is amended to substitute a uniform time period in which a filer may submit a corrected filing for the provision that the clerk in each case specify the time in which the correction must be made. Conforming amendments are being made simultaneously in Rules 5(e) and 12(a) of these rules and in Rule 3(c) of the Vermont Rules for Dissemination of Electronic Case Records. The seven calendar days provided in the amendment may be extended by the court for good cause. The “actions” that the listed rules provisions require include compliance with the motion filing requirements of new Rule 4(g), correct formatting under Rule 6(b), compliance with the signature requirements of Rule 7, payment of required fees under Rule 8, or omission or redaction of personal identifiers as required under Rule 3(c)(3) of the Rules Governing Dissemination of Electronic Case Records.

Rule 4(g) is added to address a problem that has emerged in the application of the electronic filing rules during the Rutland and Windsor pilot projects. When a motion is filed that combines requests for relief for multiple independent purposes, the present ecabinet software does not adequately identify what are essentially separate motions. Thus, users cannot readily locate documents in the table of contents of an electronic file, and court staff are not able to place each motion and related materials before the judge in a timely and orderly fashion that will allow clear rulings on discreet requests to be made.

Rule 4(g)(1) provides that a motion seeking “alternative forms of relief” may be filed as a single motion, with a single response permitted. Rule 4(g)(2)

requires that any motion seeking an “independent” form of relief, and a response to such a motion, must be filed as a separate document.

“Alternative forms of relief” are forms of relief that address the same issues by providing remedies that are mutually exclusive and may be of decreasing impact on the party against whom relief is sought. For example, in a motion filed under V.R.C.P. 37(b), a defendant claiming that a plaintiff has refused to comply with discovery obligations and orders may request dismissal of a claim or an action and may request in the alternative that if the court does not dismiss, the court preclude plaintiff from using nondisclosed evidence at trial. In another example, a motion to dismiss for failure to state a claim under V.R.C.P. 12(b)(6) or a motion for judgment on the pleadings under V.R.C.P. 12(b)(3) may be combined with a motion for summary judgment under Rule 56. These are really single motions based on the same facts and legal requirement; only the relief sought is different.

“Independent forms of relief,” conversely, are forms of relief addressing independent issues and providing different and independent remedies, as when two or more unrelated motions are combined in a single document. In a recent example, a motion entitled “Motion to Enforce Settlement Agreement, Motion to Compel, and Motion to Dismiss Counterclaim” was filed that actually contained three separate motions, each relating to a different set of facts and having a different legal foundation. In another example, a “Motion to Extend Time for Service” was combined with a “Motion for Alternative Service,” which asked for service by a tack order—a request under a different rule that requires a different factual basis. In these examples, each motion relates to a different set of facts and has a different legal foundation. If it is filed as a single document, only the first will be picked up in the title in the eCabinet table of contents. The subsequent motions will not be visible and cannot readily be found by the judge, the staff, the attorney, or the public.

Rule 4(g)(3) addresses another common situation that causes the same problems as those addressed in Rule 4(g)(2)—combining a response to a motion with a further motion on the respondent’s behalf. A frequent example is “Opposition to Plaintiff’s Motion for Summary Judgment and Defendant’s Cross-Motion for Summary Judgment.” Without a rule requiring separate documents for each separate response, reply, or sur-reply, it will be impossible for either staff or judge to track all documents related to a particular one of the several motions referenced.

Rule 4(g)(4) provides guidance for when memoranda, affidavits, exhibits, or other supporting matter are filed with a motion or response. When filing supporting matter for a single motion or response, or for multiple motions or responses, the filer has the choice of filing the supporting matter with the motions or responses or filing the supporting matter as a separate document or documents. Supporting matter filed separately, however, must identify the single motion or response, or the multiple motions or responses, to which it relates, and the motions or responses must refer to the supporting matter unless it is filed subsequently. Thus, the filer of multiple motions could file with each motion a supporting matter that is common to each of

the motions, or could file supporting matter as a separate document so long as it identifies that it is in support of “Response to Motion A, Reply to Response to Motion B, and new Motion C.”

A simultaneous amendment of Rule 4(e) makes clear that failure to comply with the requirements of Rule 4(g) will result in nonacceptance of the filing. As a practical matter, if in doubt as to whether “independent” or “alternative” forms of relief are sought by a motion, court staff will presumably seek the advice of the judge before requiring a corrected filing that comports with Rule 4(g).

Rule 5(e) is amended simultaneously with the similar amendment to Rule 4(e) to substitute a uniform time period in which a filer may submit a corrected filing for the provision that the clerk in each case specify the time in which the correction must be made. The seven calendar days provided in the amendment may be extended by the court for good cause. The “actions” that the listed rules provisions require include correct formatting under Rule 6(b), compliance with the signature requirements of Rule 7, payment of required fees under Rule 8, or omission or redaction of personal identifiers as required under Rule 3(c)(3) of the Rules Governing Dissemination of Electronic Case Records.

Rule 12(a) is amended by deleting a reference to the “electronic coversheet,” consistent with the October 20 amendment to Rule 4(b) deleting that term.

Emergency Amendment [December 14, 2010]

[No Reporter’s Notes. Amendment was necessary to reflect new effective date for mandatory electronic filing in Rutland and Windsor.]

Emergency Amendments [October 20, 2010]

The Vermont Rules for Electronic Filing, adopted as emergency rules on August 17, 2010, for reasons set forth in that promulgation order and the Reporter’s Notes to the Rules are continued as emergency rules with the following amendments based on comments received on them as promulgated:

Rule 1 is amended to reflect a new effective date for required use of the Electronic Filing Rules in the Rutland and Windsor units and to clarify, by substituting “commenced” for “filed,” that the rules apply only to new actions filed on or after the stated dates, not to actions already pending on those dates.

Rule 3(e) is amended by deleting the provision that an associated attorney or legal assistant give his or her own name and e-mail address when filing under a registered filer’s user name and password. The eCabinet software is not set up to accept any e-mail addresses beyond those permitted by Rule 3(c).

Rule 4(b) is amended to reflect the correct terminology found on the electronic filing system website and to incorporate the other requirements for a filing to be accepted.

Rule 5(a) is amended to make clear that court staff is not required to scan a document filed nonelectronically when the size, shape or condition of the document would place an unreasonable burden on staff or the system.

Rule 6(a) is amended to provide that a document may be filed in PDF/A format if that software is available to the user. Until PDF/A format is available in the courts, documents will continue to be stored or scanned in PDF format in eCabinet. Rules 6(b) and (c) are amended for clarity and consistency.

Rule 8(a) is amended to correct inadvertent cross-reference errors and to make clear that a filing for which there is no fee (e.g. by a state government agency) will be accepted without fee. The amendments to Rule 8(b) make clear that fees for electronic filings may be paid electronically by credit card or electronic funds transfer (when available to the court system) or may be paid over the counter but only by cash, check, or money order. As experience with the technology evolves, availability of over-the-counter payment for electronic filings will be reconsidered. Over-the-counter payment for nonelectronic filings must be by cash, check, or money order.

Rule 11(d) is amended to make clear that the provision of Rule 5(a) that court staff need not scan unusually lengthy or otherwise inappropriate nonelectronic filings applies to filings of the records on appeal from state and local boards and commissions and the probate courts.

[August 17, 2010 promulgation]

The Vermont Rules for Electronic Filing are adopted as emergency rules to provide a framework for the initiation of the Judiciary's eCabinet electronic filing system in the Superior Court Civil Division for the Rutland and Windsor County Units on October 18, 2010. See Rule 1. Conforming emergency amendments to affected provisions of the Vermont Rules of Civil Procedure and Rules for Dissemination of Electronic Case records are being adopted simultaneously.

Use of eCabinet will be permissive for most Rutland and Windsor civil dockets in all cases filed between October 18 and December 6, 2010. Use of the system will be mandatory, with certain exceptions provided in Rule 2, in all cases on those dockets filed on or after December 6, 2010. It is anticipated that use of the system will be permissive in the remaining county units of the Civil Division in all cases on those dockets filed on or after December 6, 2010, and mandatory in those units in all cases on those dockets filed on or after February 7, 2011.

Because implementation of eCabinet is a work in progress, it is highly probable that these emergency rules will be amended periodically to reflect

experience gained in the early application of the system. Accordingly, the Court's Special Advisory Committee on Rules Governing an Electronic Case File and Electronic Filing, and its Advisory Committees on Rules of Civil Procedure and Rules Governing Public Access to Court Records, are directed by the initial order promulgating these rules and related amendments "to report to the Court not later than November 22, 2010, and on a continuing basis thereafter, concerning any changes to these rules and amendments made necessary by experience in practice under them." In Spring 2012, when all divisions of the Superior Court have been included in eCabinet and full electronic case management capability has been developed, a more sophisticated filing system will be combined with case management functions in VCase, the ultimate version of the system. See J. Dooley, T. Durkin, and T. Corsones, "E-filing Is Coming," 36 *Vt. Bar Jour.*, No. 2 (Summer, 2010). Final electronic filing rules will be adopted at that time.

The Vermont Rules for Electronic Filing establish specific procedures for electronic filing that will, in many respects, be generally familiar to Vermont lawyers who practice in the U.S. District Court for Vermont and its Bankruptcy Court, where electronic filing has been in use for a number of years. The rules are intended to work in concert with the Vermont Rules of Civil Procedure and other Vermont procedural rules, which are frequently incorporated by reference. Every effort has been made to amend those procedural rules to avoid obvious conflicts or inconsistencies. See simultaneous amendments to specific provisions of the Civil Rules.

In summary, the Rules for Electronic Filing cover the following matters:

Rule 1. Proceedings to which the rules apply; effective dates.

Rule 2. Who must file electronically. Exceptions for self-represented litigants and others.

Rule 3. Registration for those required or permitted to file electronically.

Rule 4. Procedures for filing electronically and for acceptance by court staff of electronic filings.

Rule 5. Procedures for filing and scanning documents that may or must be filed nonelectronically and for acceptance of such documents.

Rule 6. Format requirements for electronically and non-electronically filed documents.

Rule 7. Signatures and other formalities for electronically filed documents.

Rule 8. Payment of fees and costs for electronic filings.

Rule 9. Incorporation of Rule 3 of the Rules for Dissemination of Electronic Case Records to cover redaction and other issues concerning nonpublic information. See simultaneous amendments to that rule.

Rule 10. Methods of access to electronically filed documents for registered filers, self-represented parties and other nonregistered filers, and the general public.

Rule 11. Provisions for service by electronic and nonelectronic means.

Rule 12. Definitions of key terms.

Vermont Rules for Dissemination of Electronic Case Records Emergency Amendments to Rule 3

[Amended on August 17, 2010, October 20, 2010, and February 23, 2011]

[Emergency amendments made permanent on August 30, 2011; effective October 31, 2011]

RULE 3. ACCESS TO ELECTRONIC CASE RECORDS

(a) **Public Access.** The public shall have access to electronic case records in individual cases from VTADS2, VCAS, or the electronic case files created by eCabinet, subject to the limitations specified in this rule, and generally subject to the Rules for Public Access to Court Records. The Court Administrator will provide such access in all cases from terminals at court locations and will provide such access to civil cases from VTADS2 or VCAS through Vermont Cases Online from any remote location over the Internet.

(b) **Nonpublic Documents.** The filer of a document that is not publicly accessible under Rule 6 of the Rules for Public Access to Court Records must identify the document as nonpublic at the time of filing. After acceptance of the filing, court staff will place that document, or any other document that they determine to be nonpublic, in the nonpublic section of the electronic file of the case.

(c) **Public Documents.**

(1) *Initial Responsibility of the Filer.* It is the responsibility of the filer of a document that is otherwise publicly accessible under Rule 6 of the Rules for Public Access to Court Records to omit or redact, or partially omit or redact, if the information is material or required by law, the following personal identifiers from all electronically or nonelectronically filed documents and exhibits, unless otherwise provided in the applicable rules of procedure or ordered by the court:

(A) Social Security and Tax Payer Identification numbers; and

(B) Personal identification numbers, such as motor vehicle operators' license numbers, passport numbers, military serial numbers, and medical or financial account or credit or debit card numbers or personal identification

numbers (PIN), codes, or passwords, except the type of account or card and institution and last four digits if material.

(2) *Reference List of Omitted Identifiers.* A filer who is required to include personal identifiers listed in (1) in a document or exhibit, or believes that such an identifier is material, must omit or redact those identifiers from the document or exhibit as filed and may identify as “nonpublic” under (b) and file either a copy of the document or exhibit that contains the omitted or redacted identifiers or a reference list containing the complete identifiers. If correction or supplementation of the nonpublic filing is necessary, the filer must refile the original nonpublic filing with the corrected or supplemented filing attached. References in the case to an omitted or redacted identifier will be construed to be references to the corresponding complete identifier.

(3) *Responsibility of Court Staff When Document is Filed.* When court staff review a document as provided in Rules 4(e) or 5(e) of the Vermont Rules for Electronic Filing, court staff will identify any personal identifiers listed in (1) not omitted or redacted by the filer and will notify the filer that the filing cannot be accepted until specified identifiers have been omitted or redacted. The filer may submit a document corrected or supplemented in accordance with (2) within seven calendar days after receiving the notification unless the court extends the time for good cause. When a document as originally filed, or as corrected or supplemented, is accepted, court staff will place that document in the nonpublic electronic file of the case. Court staff will not review exhibits to determine whether personal identifiers have been redacted.

(d) Court Generated Documents.

(1) Court staff must identify any court-generated document that is not publicly accessible under Rule 6 of the Rules for Public Access to Court Records and must place that document in the nonpublic section of the electronic file of the case.

(2) Court staff must omit or redact from any court-generated document that is otherwise publicly accessible under Rule 6 of the Rules for Public Access to Court Records all personal identifiers required to be omitted or redacted by Rule 3(c)(1) before placing that document in the publicly accessible file of the case.

(e) **Motion by a Party.** A party or nonparty whose personal identifiers have been improperly included in a filed document or exhibit, or who asserts that a nonpublic document involving that person’s interests has been placed in a publicly accessible file, may move under applicable procedural rules to redact the improperly included personal identifiers or to remove the document from the file, and for a temporary order sealing the filing pending disposition of the motion. After hearing, the court may seal the filing and order that a redacted version be placed in the publicly accessible file or that the document be placed in the nonpublic section of the electronic file of the case.

(f) Access to Documents.

(1) The public may have access in accordance with (a) only to electronically filed documents in the publicly accessible case files of individual cases.

(2) Registered filers may have remote access to any reference list that they have filed in accordance with (c) or to the complete text of any documents that they have filed electronically. Registered filers may have access through a terminal in a court location to the nonpublic section of the electronic file of any case in which they have appeared in accordance with the applicable rules of procedure and have submitted a user name and password, unless otherwise ordered by the court.

(3) Any justice, judge, or other authorized court staff member, official, or officer, or any official of any other public entity as authorized by interagency agreement with the Supreme Court, may have remote access to the nonpublic electronic file of any case.

Reporter's Notes

2011 Amendments [August 30, 2011]

See Reporter's Notes to simultaneous amendment making the Vermont Rules for Electronic Filing permanent

2011 Emergency Amendment [February 23, 2011]

Rule 3(c)(3) of the Rules Governing Dissemination of Electronic Case Records, as previously amended effective August 17 and October 20, 2010, is amended to eliminate the provision that the clerk in each case specify the time in which the correction must be made in favor of the uniform time standards adopted by simultaneous amendments of Rules 4(e) and 5(e) of the Vermont Rules for Electronic Filing.

Second 2010 Amendments [October 20, 2010]

Rule 3(c)(2) is amended to substitute "nonpublic" for "under seal," which has a narrower meaning, and to make clear that if the nonpublic filing of an unredacted document or a reference list of redactions must be corrected or supplemented, the system's software requires that the corrected filing be attached to a refiling of the original document.

First 2010 Amendments [August 17, 2010]

Rule 3 is amended to conform to the Vermont Rules for Electronic Filing as adopted by simultaneous emergency amendment. See Reporter's Notes to those rules.

Vermont Rules of Appellate Procedure
Emergency Amendments to Rules 28 and 30

[Amended on March 22, 2011]

[Emergency amendments made permanent on August 30, 2011; effective October 31, 2011]

Amendments to Rules 3(d), 10(a)(3), 13(c), and 45.1(h)

[Amended on February 6, 2013; effective April 8, 2013]

RULE 3. APPEAL AS OF RIGHT - HOW TAKEN

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(d) Content of Notice of Appeal. A notice of appeal must specify the party or parties taking the appeal by naming each appellant in either the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as “all plaintiffs,” “the defendants,” “the plaintiffs A, B, et al.,” or “all defendants except X.” A notice of appeal filed pro se is filed on behalf of the party signing the notice and the signer's spouse and minor children, if they are parties, unless the notice of appeal clearly indicates a contrary intent. In a class action, whether or not the class has been certified, it is sufficient for the notice to name one person qualified to bring the appeal as representative of the class. A notice of appeal must also designate the judgment, order, or part thereof appealed from; must name the court to which the appeal is taken; and must be signed by the appellant or the appellant's attorney. A notice of appeal signed by an attorney shall include the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the Vermont Rules for Electronic Filing. A notice of appeal signed by a self-represented litigant who is required to register an e-mail address pursuant to Rule 3 of the Vermont Rules for Electronic Filing shall include the eCabinet registration number assigned to the party on registration. A notice of appeal from an order in proceedings under Chapters 51 and 53 of Title 33 must indicate that the appeal is from such an order. An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

RULE 10. THE RECORD ON APPEAL

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

* * * * *

(3) a certified copy of the docket entries prepared by the superior court clerk, which shall 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 Rule 3 of the Vermont Rules for Electronic Filing.

**RULE 13. DIRECT APPEALS FROM THE PROBATE COURTS, FAMILY COURT,
ENVIRONMENTAL COURT, AND ADMINISTRATIVE AGENCIES**

* * * * *

(c) **Record; Probate Appeals.** In appeals from a probate court, the record on appeal shall consist of a certified copy of the proceedings appealed from, which shall 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 Rule 3 of the Vermont Rules for Electronic Filing, setting forth the questions of law to be determined by the Supreme Court.

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RULE 45.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

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(h) **Attorney License Number; eCabinet Registration Number.** Any document that constitutes a first appearance of an attorney, in addition to a notice of appeal governed by Rule 3(d), shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the Vermont Rules for Electronic Filing. The requirement to provide a registration number also applies to a self-represented litigant who has elected to, or is required to, receive documents and notices by e-mail. A document filed under Rule 5 or 5.1 shall trigger the obligation to provide attorney license and/or e-filing registration numbers under this subsection.

RULE 28. BRIEFS

* * * * *

(d) **References in Briefs to the Record.** References in the briefs to parts of the record shall be to the pages of the printed case, filed pursuant to Rule 30, at which those parts appear. If the case in the superior court has an electronic case file, as defined in Rule 12(b) of the Vermont Rules for Electronic Filing, then no printed case is required and the brief shall instead directly cite the particular document in the trial court record, identified by document name and file date, as well as the relevant page number(s). Similarly, if the record is reproduced in accordance with the provisions of Rule 30(e), or if references are made in the briefs to parts of the record not reproduced, then the references shall be to the pages of the particular parts of the record involved. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the printed case or of the copy of the transcript furnished to the Court 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.

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RULE 30. PRINTED CASE

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(b) **Electronic Case File.** When the case on appeal contains an electronic case file, as defined in Rule 12(b) of the Vermont Rules for Electronic Filing, the appellant is not required to assemble and file a printed case as described in subdivision (a). The parties' briefs shall instead directly cite the particular document in the trial court record, identified by document name and file date, as well as the relevant page number(s).

* * * * *

Reporter's Notes

2013 Amendment [April 8, 2013]

(Rule 3(d))

Because of the use of e-mail delivery of court-generated documents and notices pursuant to Administrative Order No. 45, it has become important that court staff have the unique identifiers of lawyers appearing in cases to send the notices and documents to the proper e-mail address or addresses. The necessary identifier is the eCabinet registration number assigned when the lawyer registered on the judiciary website to establish notification e-mail addresses. Note that a lawyer who practices from different offices can have more than one registration number. The amendment to this rule, and other filing rules, requires the lawyer to provide the unique identifier in the first filing in the case. The lawyer who appears on appeal may or may not be the same lawyer who appeared in the trial court, and some appeals come from administrative agencies or boards. Thus, the lawyer for appellant must provide the registration number to the Supreme Court. That requirement also applies to self-represented litigants.

Under the amendment to Rule 10(a)(3), the eCabinet registration numbers of lawyers appearing in the case in the superior court for parties to the appeal must be included with the copy of the docket entries. The requirement applies to self-represented litigants who have registered and are receiving e-mail notification and documents in the superior court.

Under the amendment to Rule 13(c), the eCabinet registration numbers of lawyers appearing in the case in the probate division must be included with the copy of the proceedings appealed from. The requirement applies to self-represented litigants who have registered and are receiving e-mail notification and documents in the probate division.

(Rule 45.1)

Because of the use of e-mail delivery of court-generated documents and notices pursuant to Administrative Order No. 45, it has become important that court staff have the unique identifiers of lawyers appearing in cases to send the notices and documents to the proper e-mail address or addresses. The necessary identifier is the eCabinet registration number assigned when the lawyer

registered on the judiciary website to establish notification e-mail addresses. Note that a lawyer who practices from different offices can have more than one registration number. The amendment to this rule, and other filing rules, requires the lawyer to provide the unique identifier in the first filing in the case.

The lawyer who appears on appeal may or may not be the same lawyer who appeared in the trial court, and some appeals come from administrative agencies or boards. Thus, the lawyer appearing in the Supreme Court must provide the eCabinet registration number to the Supreme Court on any document that serves as a first appearance. A lawyer for appellant who has provided this information on a notice of appeal need not do so again. That requirement also applies to self-represented litigants.

2011 Emergency Amendment [March 22, 2011]

Rule 28(d) is amended to accommodate appeals from electronically filed cases by eliminating the printed case in an appeal from such a case.

Rule 30(b) is amended to clarify that for appeals with an electronic case record no printed case is required.

Vermont Rules of Civil Procedure

Emergency Amendments to Rules 4, 5, 6, 10, 11, 26, 40, 45, 77, 79, and 79.1

[Amended on August 17, 2010]

[Emergency amendments made permanent on August 30, 2011; effective October 31, 2011]

[Additional Amendments made on May 30, 2012; effective July 30, 2012]

[Additional Amendment to 79.1 on February 6, 2013; effective April 8, 2013]

RULE 4. PROCESS

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(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 e-mail 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 applicable format provisions of the Vermont Rules for Electronic Filing.

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

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(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.

* * * * *

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

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(b) **Same: How Made.** Whenever under Rule 5(a) or 77(d) service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney

or party at the attorney or party's last known address or, if no address is known, by leaving it with the clerk of the court.

(1) *Delivery.* Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(2) *Mailing.* Mailing of a copy within this rule means: sending by ordinary first-class mail; sending by third-party commercial carrier; and, if required or permitted by the Vermont Rules for Electronic Filing, transmission by electronic means. Service by mail or by commercial carrier is complete upon mailing or delivery to the carrier. Service by electronic means is complete upon transmission, provided that such service is not effective if the party making service learns that the attempted service did not reach the party to be served.

(3) *Leaving with the Clerk.* Leaving a copy with the clerk of the court within this rule means delivering or mailing the copy to the clerk by any means permitted or required for the filing of papers with the clerk under subdivision (e) of this rule.

* * * * *

(e) **Filing With the Court Defined.** The filing of documents with the court as required by these rules shall be made by filing them with the clerk of the court, except that a judge may permit them to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Filing may be accomplished by delivery; by sending the papers by ordinary first-class mail or by third-party commercial carrier addressed to the clerk; and, if required or permitted by the Vermont Rules for Electronic Filing, transmission by electronic means. Filing by mail, commercial carrier, or electronic means shall not be timely unless the material filed is received within the time fixed for filing. Filing with a judge may be accomplished by any method permitted by the judge. The clerk shall not refuse to accept for filing any document presented for that purpose solely because it is not presented in proper form as required by these rules.

(f) **Form of Papers and Documents.** All original papers shall be eight and one-half by eleven inches in size, indorsed with the name and docket number of the case, the court and county where pending, the name of the paper, and the name and address of the person or attorney filing it and shall comply with applicable format provisions of the Vermont Rules for Electronic Filing.

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RULE 6. TIME

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which

the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a State or federal legal holiday, or, when the act to be done is the filing of a document in court, a day on which weather or other conditions have made the office of the clerk inaccessible or the court's electronic filing system is unavailable, in which event the period runs until the end of the next day which is not one of the aforementioned days. Intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation, when the period of time prescribed or allowed, not including any calendar days added in accordance with subdivision (e) of this rule, is less than 11 days.

* * * * *

(e) **Additional Time After Service Under Rule 5(b)(2) or (3).** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party under Rule 5(b)(2) or (3), three calendar days shall be added to the prescribed period after that period has been computed pursuant to subdivision (a) of this rule unless the notice or other document is served by the court or unless a document served other than by electronic means is received by the party on the date of service.

RULE 10. FORM OF PLEADINGS

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(d) **Other Requirements of Form.** All pleadings shall comply with applicable format provisions of the Vermont Rules for Electronic Filing.

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

(a) **Signature.** Every pleading, written motion, and other document that requires a signature shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each document shall state the signer's e-mail and postal address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

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RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

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(g) **Signing of Discovery Requests, Responses, and Objections.** Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose e-mail and postal address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's e-mail and postal address. The signature of

the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

* * * * *

RULE 40. CALENDAR; ASSIGNMENT; CONTINUANCES; DISQUALIFICATION

(a) Hearing Calendar; Assignments; Trial List.

(1) Subject to the direction of the court, the clerk shall maintain a hearing calendar, copies of which shall be posted on the court's website and distributed electronically to the attorneys having actions listed thereon 20 days before the commencement of a term. The clerk shall routinely list upon the hearing calendar all actions in which the pleadings are complete or the time for filing the last required pleading has passed. Upon request of a party, the Presiding Judge may at any time advance or specially assign an action for hearing. All actions not advanced or specially assigned will be heard in the sequence in which listed unless previously continued by agreement of the parties or order of court.

(2) During a term, the clerk or the Presiding Judge shall periodically issue and distribute electronically to the attorneys having actions listed thereon a trial list containing a listing of assignments of cases to be ready for trial at a specific date and time. A trial list shall be issued not later than the Tuesday of the week preceding the week in which the first case listed is assigned for trial.

(b) **Progress Calendar.** Twenty days before the commencement of a term, the clerk shall prepare and distribute electronically to the attorneys having cases thereon a progress calendar, listing all actions ripe for dismissal under Rule 41(b)(1).

* * * * *

RULE 45. SUBPOENA

(a) **Form; Issuance.**

- (1) Every subpoena shall
 - (A) state the name of the court from which it is issued; and
 - (B) state the title of the action, the name of the court in which it is pending, and its civil action number; and
 - (C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and
 - (D) set forth the text of subdivisions (c) and (d) of this rule; and
 - (E) comply with applicable format provisions of the Vermont Rules for Electronic Filing.

* * * * *

RULE 77. SUPERIOR COURTS AND CLERKS

* * * * *

(c) **Clerk's Office and Orders by Clerk.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays and shall be open for electronic filing at all times provided in the Vermont Rules for Electronic Filing. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults, and for other proceedings which do not require allowance or order of the court, if accepted for filing pursuant to the Vermont Rules for Electronic Filing, are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) **Notice by the Clerk.**

(1) *Orders or Judgments.* Immediately upon the entry of an order or judgment the clerk shall give notice of the entry upon every party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of documents. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4 of the Rules of Appellate Procedure.

(2) *Method of Giving Notice.* The clerk shall give notice under paragraph (1), and shall give any other notice that these rules require the clerk to give, by a method that the Supreme Court has provided by administrative order or directive. That notice shall be sufficient for all purposes for which notice by the clerk is required under these rules.

* * * * *

RULE 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

(a) Electronic Case Files; Civil Docket.

(1) **Electronic Case Files.** For cases that have been filed under the Vermont Rules for Electronic Filing, the clerk shall maintain all files and records as provided in those rules.

(2) **Civil Docket.** The clerk shall keep the civil docket and shall enter therein each civil action to which these rules are applicable. Actions shall be grouped upon the civil docket as follows: (1) Civil cases. (2) Small Claims cases. Actions shall be assigned consecutive file numbers within each group. The file number of each action shall be noted on the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket. These entries shall be brief but shall show the nature and subject matter of each paper filed, writ issued or order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the docket assigned to that action.

(b) **Civil Judgments and Orders.** The clerk shall record in a book kept for that purpose every final judgment, appealable order, order affecting title to or lien upon real or personal property, and any other order which the court may direct to be recorded, as soon as possible after the rendition of such judgment or order.

(c) **Indices; Calendars.** Suitable indices of the civil docket and of every judgment and order referred to in subdivision (b) of this rule shall be kept by the clerk under the direction of the court. The clerk shall prepare under the direction of the court the hearing and progress calendars required by Rule 40.

(d) **Custody of Records and Papers.** The clerk shall have custody of the records and papers of the court and shall maintain them as provided by law. Papers belonging to the files shall not be allowed to go out of the possession of the clerk except upon receipt duly signed by the attorney to whom they are entrusted.

(e) **Other Books, Dockets and Records.** The clerk shall keep such other books, dockets and records as may be required by law or by order of the Administrative Judge or the Chief Justice of the Supreme Court.

RULE 79.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

* * * * *

(g) **Same: Notification of Party.** When an attorney has been granted leave to withdraw the attorney's appearance, the clerk shall notify the party forthwith, electronically if the party is a registered filer under the Vermont Rules for Electronic Filing, otherwise by mail, of such withdrawal, and inform said party that unless the party appears pro se or by attorney within thirty

days after receipt of such notification, the action will be dismissed or defaulted, as the case may be.

* * * * *

(i) **Attorney License Number; eCabinet Registration Number.** Any document that constitutes a first appearance of an attorney shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the Vermont Rules for Electronic Filing.

Reporter's Notes

2013 Amendment [April 8, 2013]

(79.1(i))

Because of the use of e-mail delivery of court-generated documents and notices pursuant to Administrative Order No. 45, it has become important that court staff have the unique identifiers of lawyers appearing in cases to send the notices and documents to the proper e-mail address or addresses. The necessary identifier is the eCabinet registration number assigned when the lawyer registered on the judiciary website to establish notification e-mail addresses. Note that a lawyer who practices from different offices can have more than one registration number. The amendment to this rule, and other filing rules, requires the lawyer to provide the unique identifier in the first filing in the case.

2012 Amendment [May 30, 2012]

Rule 77(d)(2) as previously amended is returned to its prior form to facilitate the development of a statewide practice of requiring court notices to be sent electronically pursuant to directives issued by the Court Administrator for specific units or divisions of the superior court as they develop the capability for electronic delivery. See simultaneous addition of Administrative Orders Nos. 44 and 45, amendments of Administrative Order No. 41 and V.R.E.F. 3(b) and (c), and Reporter's Notes to those additions or amendments. Rule 77(d)(2) will apply to the Family and Environmental Divisions by virtue of its incorporation in V.R.F.P. 2(a), 4(a), and V.R.E.C.P. 4(a), 5(a). It is now identical to V.R.Cr.P. 56(d), which is incorporated in V.R.F.P. 1(a), and to V.R.P.P. 77(d).

2011 Amendments [August 30, 2011]

See Reporter's Notes to simultaneous amendment making the Vermont Rules for Electronic Filing permanent.

2010 Amendments [October 1, 2010]

Rules 4(b), (l)(3); 5(b), (e), (f); 6(a), (e); 10(d); 11(a), (b); 26(g); 40(a), (b); 45(a)(1)(G); 77(c), (d); 79(a)(1), (2); 79.1(g) of the Vermont Rules of Civil Procedure rules are amended or added to conform to the Vermont Rules for

Electronic Filing as adopted by simultaneous emergency amendment. See Reporter's Notes to those rules.

Vermont Rules of Criminal Procedure
[Amended February 6, 2013; effective April 8, 2013]

RULE 44.2. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

* * * * *

(e) **Attorney License Number; eCabinet Registration Number.** Any document that constitutes a first appearance of an attorney shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the Vermont Rules for Electronic Filing.

Reporter's Notes

2013 Amendment [April 8, 2013]

Because of the use of e-mail delivery of court-generated documents and notices pursuant to Administrative Order No. 45, it has become important that court staff have the unique identifiers of lawyers appearing in cases to send the notices and documents to the proper e-mail address or addresses. The necessary identifier is the eCabinet registration number assigned when the lawyer registered on the judiciary website to establish notification e-mail addresses. Note that a lawyer who practices from different offices can have more than one registration number. The amendment to this rule, and other filing rules, requires the lawyer to provide the unique identifier in the first filing in the case.

Vermont Rules for Environmental Proceedings
[Amended February 6, 2013; effective April 8, 2013]

RULE 5. APPEALS

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(c) **Appearance.** An appellant enters an appearance by filing a notice of appeal as provided in subdivision (b) of this rule. Any other person may enter an appearance within 20 days after the date on which notice of filing of the last notice of appeal to be filed was served, or, if necessary, published pursuant to subparagraph (b)(4)(B) of this rule, by filing a written notice of appearance with the clerk and by serving the notice of appearance in accordance with Rule 5 of the Vermont Rules of Civil Procedure; provided that any person enumerated in 10 V.S.A. § 8504(n)(1)-(3) may file and serve an appearance in a timely fashion. Any other person who

has not previously entered an appearance as provided in this paragraph may enter an appearance by filing a timely motion to intervene. Attorneys shall comply with Civil Rule 79.1(i).

Reporter's Notes

2013 Amendment [April 8, 2013]

See 2013 amendment to V.R.C.P. 79.1.

Vermont Rules for Family Proceedings **[Amended February 6, 2013; effective April 8, 2013]**

RULE 15. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

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(i) Attorney License Number; eCabinet Registration Number. Any document that constitutes a first appearance of an attorney shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the Vermont Rules for Electronic Filing.

Reporter's Notes

2013 Amendment [April 8 2013]

Because of the use of e-mail delivery of court-generated documents and notices pursuant to Administrative Order No. 45, it has become important that court staff have the unique identifiers of lawyers appearing in cases to send the notices and documents to the proper e-mail address or addresses. The necessary identifier is the eCabinet registration number assigned when the lawyer registered on the judiciary website to establish notification e-mail addresses. Note that a lawyer who practices from different offices can have more than one registration number. The amendment to this rule, and other filing rules, requires the lawyer to provide the unique identifier in the first filing in the case.

Vermont Rules of Probate Procedure **[Amended February 6, 2013; effective April 8, 2013]**

RULE 79.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

* * * * *

(i) **Attorney License Number; eCabinet Registration Number.** Any document that constitutes a first appearance of an attorney shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the Vermont Rules for Electronic Filing.

Reporter's Notes

2013 Amendment [April 8, 2013]

Because of the use of e-mail delivery of court-generated documents and notices pursuant to Administrative Order No. 45, it has become important that court staff have the unique identifiers of lawyers appearing in cases to send the notices and documents to the proper e-mail address or addresses. The necessary identifier is the eCabinet registration number assigned when the lawyer registered on the judiciary website to establish notification e-mail addresses. Note that a lawyer who practices from different offices can have more than one registration number. The amendment to this rule, and other filing rules, requires the lawyer to provide the unique identifier in the first filing in the case.

AMENDMENT TO ADMINISTRATIVE ORDER NO. 41, § 7 **[Amended May 30, 2012; effective July 30, 2012]**

LICENSING OF ATTORNEYS

Pursuant to the Vermont Constitution, Chapter II, §§ 30, 31, and 37, Administrative Order No. 41, § 7, is amended as follows:

§ 7. The licensing statement shall include the current office mailing and electronic mail address and the residential mailing address of the attorney, the attorney's pooled interest bearing trust (IOLTA) account number, or indication of exemption, provision to claim inactive status as provided in § 5, supra, a certification that the attorney is in good standing with respect to any and all taxes due to the State of Vermont, a certification that the attorney is not under an obligation to pay child support or is in good standing with respect to any and all child support payable, a certification that the attorney has registered one or more e-mail addresses pursuant to Administrative Order No. 44, and other information which the Court Administrator deems necessary. The attorney shall sign the statement. An attorney shall report to the Court Administrator within thirty days any change of the office mailing or electronic mail address or change of residential address or change of the IOLTA account. The office mail or electronic mail addresses reported to the Court Administrator may be used by any court to send notice to an attorney, if notice by electronic mail is authorized by an applicable procedural rule. Notice sent to a reported address shall be sufficient even if not received by the attorney because of failure to report the proper address or failure of delivery not caused by the court. If a court delivers some or all notices by electronic mail, and the attorney fails to maintain a reported, operable electronic mail address, notice is sufficient if available on inquiry at the courthouse.

Reporter's Notes

2012 Amendment [July 30, 2012]

Section 7 of Administrative Order No. 41 is amended to require that every attorney's licensing statement include a certification that the attorney has registered e-mail addresses as required by V.R.E.F. 3. The purpose of the amendment is to facilitate the requirements of mandatory registration by all attorneys as electronic filers under that rule and the decoupling of the requirement of submitting an e-mail address for bar administrative purposes under A.O. 41 from the requirement of submitting one or more e-mail addresses for electronic filing purposes under V.R.E.F. 3. See Reporter's Notes to simultaneous additions of A.O. 44 and 45 and amendments of V.R.E.F. 3(b) and (c).

ADMINISTRATIVE ORDER NO. 44 **[Promulgated May 30, 2012; effective July 30, 2012]**

REGISTRATION FOR RECEIPT OF DOCUMENTS BY ELECTRONIC MAIL

Pursuant to the Vermont Constitution, Chapter II, §§ 30, 31, and 37, it is hereby ordered

§ 1. All attorneys licensed to practice law under Administrative Order No. 41, including attorneys admitted pro hac vice under § 13 and nonresident attorneys admitted for a government study license under § 13A of the administrative order, shall register one or more e-mail addresses pursuant to Rule 3 of the Vermont Rules for Electronic Filing on or before the effective date of this order. This order does not apply to attorneys who are in inactive status under § 5 of Administrative Order No. 41. Any attorney who, after the effective date of this order, becomes licensed under Administrative Order No. 41 §§ 1, 4, 11, 12, 13 or 13A shall register one or more e-mail addresses pursuant to this order within 24 hours of the receipt of an attorney license number, including the receipt of a reinstated license number held in the past, or before appearance as an attorney in any court proceeding, whichever is earlier. Registration under this order is a condition of attorney licensing and affirmation of registration shall be made on each licensing statement pursuant to § 1 of Administrative Order No. 41.

§ 2. The Court Administrator shall notify each licensed attorney of the effective date of this order by e-mail at the address specified in compliance with § 7 of Administrative Order No. 41. The Court Administrator shall also use other available methods, including the Judiciary website, for publicizing this date.

Reporter's Notes

2012 Amendment [July 30, 2012]

Administrative Order No. 44 is adopted to facilitate the simultaneous adoption of Administrative Order No. 45, which allows the Court Administrator to direct clerks of a unit or division to send e-mail notice of court actions to lawyers under V.R.C.P. 77(d) and comparable provisions of other rules. See Reporter's Notes to A.O. 45. The purpose of the present order is to decouple the requirement of submitting an e-mail address pursuant to A.O. 41 for bar administrative purposes from the requirement that all lawyers required to register as electronic filers under V.R.E.F. 3 submit one or more e-mail addresses to which the court may send required notices under V.R.C.P. 77(d) and similar rules. See Reporter's Notes to simultaneous amendments of V.R.E.F. 3 and V.R.C.P. 77(d). Administrative Order 41, covering the content of the attorney licensing statement, is amended to require certification that the V.R.E.F. 3 addresses have been provided, but still requires an e-mail address to be submitted for bar purposes.

Under § 1 of the order, the attorney must comply with its requirements before its effective date, which the Court Administrator is required to send to each attorney at the e-mail address provided under A.O. 41 and to publicize by other means. Note that although the effective date of this order will ordinarily precede the issuance of specific directives under A.O. 45, § 4 of the latter order allows the Court Administrator to issue a directive in any unit prior to the effective date of A.O. 44 on a finding that all lawyers appearing in cases in that unit have registered.

ADMINISTRATIVE ORDER NO. 45
[Promulgated May 30, 2012; effective July 30, 2012]
[Amended February 6, 2013; effective April 8, 2013]

**DELIVERY OF NOTICES OF HEARING AND OTHER COURT DOCUMENTS
BY E-MAIL**

Pursuant to the Vermont Constitution, Chapter II, §§ 30, 31, and 37, it is hereby ordered:

§ 1. Pursuant to V.R.C.P. 77(d), V.R.Cr.P. 56(d), and V.R.P.P. 77(d), the Court Administrator is authorized to allow the superior court to send designated types of documents to lawyers who are appearing for a client in specified units and divisions of the court, and to persons specified in §§ 5 and 6 of this order, by electronic mail (e-mail). The order applies to the Family and Environmental Divisions by virtue of the incorporation of V.R.Cr.P. 56(d) in V.R.F.P. 1(a) and the incorporation of V.R.C.P. 77(d) in V.R.F.P. 2(a), 4(a), and V.R.E.C.P. 4(a), 5(a). The expectation is that all units in all divisions will send specified documents to lawyers by e-mail where technologically possible by January 1, 2013. E-mail delivery of documents will occur under §§ 2, 5 and 6 of this administrative order.

§ 2. To authorize a unit and division of the superior court to use e-mail delivery of one or more types of documents to lawyers, the Court Administrator shall issue a directive that specifies the court, unit and division of the superior court, the types of documents that will be delivered by

e-mail, and the date range within which e-mail delivery will start. Thereafter, the Court Administrator will give a week's notice by e-mail to all lawyers appearing in open cases within the specified court of the effective date for the start of e-mail delivery within that unit and division.

A. Notice of the directive shall be given in the following manner and to the following effect:

(1) Prior to the first date in the date range specified in the directive, it will be placed on the website of the Vermont Judiciary and a copy of it will be sent to each lawyer who is then appearing in an open case in the unit and division designated.

(2) The notice will be sent to a lawyer registered under V.R.E.F. 3 at the e-mail address or addresses provided under V.R.E.F. 3(b) or (c). The notice will be sent to a Vermont-admitted lawyer not registered under V.R.E.F. 3(b) at the e-mail address of the lawyer as specified in the licensing statement filed pursuant to § 7 of Administrative Order No. 41. The notice will be sent to a lawyer from another jurisdiction appearing pro hac vice and not registered under V.R.E.F. 3(c) at any e-mail or postal address provided in the case by that lawyer.

(3) The notice to any unregistered lawyer then appearing in an open case in the unit and division will include a statement that the lawyer must register under V.R.E.F. 3(b) or (c) as appropriate if he or she wishes to receive further notices from the court in the case. All other lawyers must register under V.R.E.F. 3(b) or (c) before their appearance in a case will be accepted under the applicable procedural rule in the unit and division covered by a directive pursuant to this administrative order.

(4) As of the effective date of the directive, V.R.E.F. 11(b) or any other contrary rule notwithstanding, all documents covered by the directive will be delivered to lawyers solely by e-mail to the address or addresses provided pursuant to V.R.E.F. 3(b) or (c). In the event of failure or unavailability of the electronic filing system or any of its subsystems, documents covered by the directive may be delivered by electronic means other than e-mail or by the most expeditious nonelectronic means permitted under § 3 of this order.

(5) Lawyers are responsible for maintaining one or more registered, effective e-mail addresses at all times to obtain court documents specified in the directive. Failure of the lawyer to receive a document delivered by e-mail shall not render the delivery ineffective unless so ordered by the court based on a showing of good cause. However, if the court or the Court Administrator receives notice by electronic means that a delivery was entirely ineffective, the Court Administrator will so notify the court, and the court or the Court Administrator will attempt to deliver the content of the document by another means.

B. The Court Administrator will include with the copy of the directive sent to each lawyer pursuant to § 2.A(1) and (2) contact information for the judiciary help desk from which lawyers may receive training to assist them in registering and using the electronic filing system.

C. A document delivered in the body of an e-mail, or as an attachment to an e-mail, pursuant to this administrative order shall be presumed to be delivered when the e-

mail is sent from the court. The judiciary shall maintain an electronic record showing the content of any e-mail or attachment delivered pursuant to this administrative order, the time it was sent, and the recipients to whom it was sent.

§ 3. In any unit or division for which a directive has not been issued pursuant to § 2 of this order, notice required under V.R.C.P. 77(d), V.R.Cr.P. 56(d), V.R.P.P. 77(d), or rules incorporating those rules shall be given by the appropriate method provided under V.R.C.P. 5(b)-(c) as incorporated in V.R.Cr.P. 49(b), V.R.F.P. 2(a), 4(a), and V.R.E.C.P. 4(a), 5(a), or under V.R.P.P. 5(b)-(c).

§ 4. The Court Administrator is authorized to issue a directive allowing the Supreme Court and the Judicial Bureau to send designated types of documents to lawyers, and persons specified in §§ 5 and 6 of this order, by electronic mail (e-mail). E-mail delivery of documents will occur under §§ 2, 5, and 6 of this administrative order. In the Supreme Court or the Judicial Bureau, in the absence of a directive, notice shall be given as if this administrative order had not been issued.

§ 5. The Court Administrator may provide in a directive issued under this administrative order that the designated types of documents will be sent by e-mail to specified persons in addition to lawyers appearing for parties. These persons may be interpreters, guardians ad litem, masters, receivers, neutrals, governmental units and/or their employees and others providing a service with respect to a case. Except as inconsistent with this section, § 2 shall apply to these persons as if they are lawyers appearing for a client. Any such persons who are involved with an open case in a court designated in a directive shall register one or more e-mail addresses pursuant to Rule 3 of the Vermont Rules for Electronic Filing within 30 days of the date of the directive and notify the court of the number assigned on registration. Any such persons who are involved with a case that is opened after the date of the directive in a court designated in a directive shall register and provide notice to the court of the registration number before receiving the designated types of documents. Notification is specific to the court, unit or division involved; if the person is involved in a different court, unit or division, the person shall give notice of the registration number to that court, unit or division. The notices specified in § 2 and 2.A.(1) shall be provided by first class mail to such persons and shall explain the requirements of this section. Unless the court orders otherwise based on a determination of good cause, all documents covered by the directive will be delivered to such persons solely by e-mail at the address or addresses provided pursuant to V.R.E.F. 3(b) or (c) for cases opened after the date of the directive, or for preexisting cases, after 30 days after the date of the applicable directive.

§ 6. The Court Administrator may provide in a directive issued under this administrative order that the designated types of documents will be sent by e-mail to self-represented litigants in one or both of the following circumstances: (a) the litigant has agreed to receive the designated documents by e-mail or (b) the case in which the litigant is involved was filed after the date of the directive. In either circumstance, the self-represented litigant shall register one or more e-mail addresses pursuant to Rule 3 of the Vermont Rules for Electronic Filing and notify the court of the number assigned on registration. Notification is case-specific; the self-represented litigant who is involved in one or more additional cases shall notify the applicable court, unit or division of the number assigned at registration for each case. Delivery of designated documents by e-mail may commence as of the date of notification. Except where inconsistent with this section, § 2 shall apply to self-represented litigants as if they are lawyers appearing for a client. For good

cause, the clerk of a court subject to a directive that requires self-represented litigants to receive designated documents by e-mail may exempt a self-represented litigant from this requirement. After the exemption, the litigant shall receive the designated documents as if the directive was not in effect. A litigant who has agreed to receive designated documents by e-mail may revoke the agreement at any time.

Reporter's Notes

2013 Amendment [April 8, 2013]

Administrative Order No. 45 is amended to expand use of e-mail delivery of court-generated notices and documents to the Supreme Court and the Judicial Bureau and to self-represented litigants and case participants other than lawyers representing litigants. Also, some of the procedures specified in the administrative order have been modified in light of the experience in the courts that have initiated e-mail delivery.

2012 Amendment [July 30, 2012]

Administrative Order No. 45 is adopted to allow for the introduction of e-mail transmission of court notices under V.R.C.P. 77(d) and similar provisions of other rules as the capacity for such transmission becomes available. By simultaneous orders, A.O. 44, requiring all attorneys practicing in Vermont to provide e-mail addresses under V.R.E.F. 3(b) and (c), is added; § 7 of A.O. 41 is amended to require a lawyer's licensing statement to include a certification that those addresses have been provided; V.R.C.P. 77(d) is amended, consistent with the existing provisions of other rules, to provide that the clerk is to give notice under Rule 77(d) in a manner provided by administrative order or directive; and V.R.E.F. 3(b) and (c) are amended to require all attorneys practicing in Vermont to register as e-filers under Rule 3 and to submit at least one and up to two additional e-mail addresses with the registration.

Section 1 of the order allows the Court Administrator to issue directives allowing clerks of specific units or divisions of the superior court to send specific types of documents to lawyers by e-mail. Those directives will satisfy the requirements of V.R.C.P. 77(d)(2) and the comparable provisions of V.R.Cr.P. 56(d), which are also incorporated in the Family and Environmental Division rules, and of V.R.P.P. 77(d). The section will allow e-mail notice to be used in particular units and divisions as they develop the capability. The goal is to have the process available in all courts by January 1, 2013.

The remainder of the order spells out the mechanics of issuing directives under § 1. Section 2.A(1), (2) provide that notice of the issuance of a specific directive will be posted on the judiciary website and sent to all

lawyers then appearing in cases covered by the directive at the e-mail address or addresses that they have provided under V.R.E.F. 3(b) or (c) as required by A.O. 44 and those rules. If a lawyer has not yet registered under V.R.E.F. 3, notice of the directive will be sent either to the e-mail address that a Vermont lawyer has provided under A.O. 41 or to any address provided by a nonresident lawyer appearing pro hac vice. Subparagraphs A(3) and (4) require the notice to unregistered lawyers to advise them of the requirement of registration in order to receive further notices in cases in which have appeared or intend to appear in a later case. Subparagraph A(5) excuses a lawyer from failure to receive an e-mailed document under these provisions only on court order for cause, unless the court or Court Administrator is advised by automatic electronic reply that delivery was ineffective.

Section 2.B provides for training in a unit before a directive becomes effective in that unit. Section 2.C provides that delivery of an e-mailed document is presumed to have occurred when it was sent. The court is to maintain an electronic or paper record, as appropriate, showing the content of any document sent and, for an e-mail delivery, the time of transmission and the recipients.

Section 3 makes clear that, in units or divisions for which no directive has been issued, notice must continue to be given by whatever methods are provided for electronic or paper notice under V.R.C.P. 5(b)-(c) and rules applicable in other divisions.

To allow an expeditious roll-out of the new procedure, § 4 allows the Court Administrator to issue a directive prior to the effective date of A.O. 44 if all lawyers appearing in cases in that unit have registered.