

SUPREME COURT OF VERMONT  
OFFICE OF THE COURT ADMINISTRATOR



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TO: Members of the Vermont Bar

FROM: Patricia Gabel, Esq., State Court Administrator

RE: Emergency Promulgated, Promulgated, Proposed Rule Amendments, and Miscellaneous Information

DATE: September 6, 2018

For your information, please find the following information:

- [Emergency Order Promulgating Amendment to Rule 3\(k\) of the Vermont Rules of Criminal Procedure](#)
- [Order Promulgating Amendments to Rule 79.1\(e\) of the Vermont Rules of Civil Procedure, Rule 15\(e\) of the Vermont Rules for Family Proceedings, Rule 79.1\(d\) of the Vermont Rules of Probate Procedure, and Rule 45.1\(d\) of the Vermont Rules of Appellate Procedure](#)
- [Proposed Order Adding Rule 902\(13\) to the Vermont Rules of Evidence](#)
- [Proposed Order Abrogating and Replacing Rule 79.2 of the Vermont Rules of Civil Procedure, Rule 79.2 of the Vermont Rules of Probate Procedure, and Rule 53 of the Vermont Rules of Criminal Procedure](#)
- [Proposed Order Abrogating and Replacing Rule 35 of the Vermont Rules of Appellate Procedure](#)
- [Proposed Order Promulgating Administrative Order No. 46](#)
- Updated Court Forms
- Obligations Under A.O. 41
- eCabinet Registration

## I. PROMULGATED RULE AMENDMENTS

- a. [Emergency Order Promulgating Amendment to Rule 3\(k\) of the Vermont Rules of Criminal Procedure](#)

**This Emergency Order was promulgated September 5, 2018; effective immediately.**

Rule 3(k) was amended per 2017, No. 164, § 2 (Adj. Sess.) (effective July 1, 2018). The revision added provision for a prosecuting attorney, or a law enforcement officer, to contact a judicial officer for determination of temporary release following arrest; formerly, the rule had provided that a law enforcement officer was to make that contact. In addition, the enactment added that either the law enforcement officer or prosecuting attorney “shall provide the judicial officer with the information and affidavit or sworn statement required by Rule 4(a) of these rules.” The amended rule has spawned differences in interpretation over the meaning of “information” in the list of items required to be presented to the judicial officer for purposes of determining of temporary release.

The present emergency amendment provides clarification consistent with the purposes and intent of 2017, No. 164 (Adj. Sess.). The present amendment deletes the reference in the legislatively enacted amendment to “the information” (i.e., a charging document). The amendment maintains the mandate of the legislative enactment that an affidavit or sworn statement, consistent with Rule 4(a), be prepared and provided to the judicial officer, to enable an informed determination as to temporary release pending Rule 5 Initial Appearance. In addition, the amendment requires that the affidavit or sworn statement must include reference to the prosecuting attorney’s assessment of the offense(s) for which the defendant will be charged for purposes of determination of temporary release.

Comments on this emergency amendment should be sent by **November 5, 2018**, to Honorable Thomas Zonay, Chair of the Committee on the Rules of Criminal Procedure, at the following address:

Honorable Thomas A. Zonay, Chair  
Advisory Committee on Rules of Criminal Procedure  
Vermont Superior Court  
Rutland Criminal Family Unit  
9 Merchants Row  
Rutland, VT 05701  
[Thomas.zonay@vermont.gov](mailto:Thomas.zonay@vermont.gov)

The Advisory Committee will review any comments received and advise the Court whether the amendments should be revised or made permanent.

- b. [\*Order Promulgating Amendments to Rule 79.1\(e\) of the Vermont Rules of Civil Procedure, Rule 15\(e\) of the Vermont Rules for Family Proceedings, Rule 79.1\(d\) of the Vermont Rules of Probate Procedure, and Rule 45.1\(d\) of the Vermont Rules of Appellate Procedure\*](#)

**This Order was promulgated September 5, 2018; effective November 5, 2018.**

The amendments conform the rules with general revisions of Administrative Order No. 41, governing Licensing of Attorneys, effective May 15, 2017. In the revision and restyling of A.O. 41, former § 13, Admission Pro Hac Vice, is now designated as § 16 of A.O. 41.

## **II. PROPOSED RULE AMENDMENTS**

(NOTE: THE FOLLOWING AMENDMENTS HAVE BEEN PROPOSED AND HAVE NOT BEEN REVIEWED BY THE SUPREME COURT.)

- a. [\*Proposed Order Adding Rule 902\(13\) to the Vermont Rules of Evidence\*](#)

The proposed addition of Rule 902(13) reflects the enactment of 12 V.S.A. § 1913, a statute pertaining to the admissibility of evidence contained in blockchain records. Proposed Rule 902(13) mirrors the language and conditions set forth in § 1913(b)(1), a section declaring that blockchain records are self-authenticating.

Comments on this proposed amendment should be sent by **November 5, 2018**, to Elizabeth Miller, Chair of the Committee on the Rules of Evidence, at the following address:

Elizabeth Miller, Esq.  
Dunkiel Saunders  
91 College Street  
Burlington, VT 05401  
[emiller@dunkielsaunders.com](mailto:emiller@dunkielsaunders.com)

b. *Proposed Order Abrogating and Replacing Rule 79.2 of the Vermont Rules of Civil Procedure, Rule 79.2 of the Vermont Rules of Probate Procedure, and Rule 53 of the Vermont Rules of Criminal Procedure*

The proposed rule was developed by a special committee composed of judges, court administrators, members of the Supreme Court's procedural rules committees, and representatives of the media. The special committee's draft was previously sent out for public comment, discussed by each of the procedural rules committees, and considered at a public hearing before a final version was recommended to the Supreme Court for promulgation. The Supreme Court made further alterations and is sending the proposal out for comment a second time.

The proposed rule governs both possession and use of recording and transmitting devices. It defines terms that are essential to the operation of the rule. Proposed Rule 79.2(c) broadly provides that a device may be used nondisruptively anywhere in a courthouse.

Proposed Rule 79.2(d) contains limits on use applicable to anyone possessing or using a device in a courtroom. The proposed rule, supplemented by Administrative Order No. 46, lays out a scheme for registration of media and their representatives entitling them to use devices to record and transmit courtroom proceedings. The proposed rule provides that participants may use devices in the courtroom with some restrictions. The proposed rule allows nonparticipants to possess devices in the courtroom, but to use them only in limited circumstances. Devices must be turned off or in silent mode except during nonevidentiary hearings when the jury or jury pool is not present. The proposed rule contains provisions applicable to jurors.

Proposed Rule 79.2(e) sets limits designed both to protect the decorum and the necessary confidentiality of certain proceedings. The proposed rule allows limits on use, but contains a presumption in favor of media access.

Proposed Rule 79.2(f) states that the court may waive any of the limitations imposed by the rule on request for good cause and subject to any necessary or appropriate restrictions.

The proposal also abrogates current rules V.R.Cr.P. 53 and V.R.P.P. 79.2 and replaces those rules with a statement making the civil rule applicable to proceedings in the criminal and probate divisions. No change is proposed for V.R.F.P. 4.0(a)(2) or V.R.E.C.P. 3 so V.R.C.P. 79.2 will continue to apply to public proceedings in the family and environmental divisions.

The proposal abrogates current Administrative Directive No. 28, which concerns use of electronic devices in a courtroom.

Comments on this proposed amendment should be sent by **November 5, 2018**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk  
Vermont Supreme Court  
109 State Street  
Montpelier, VT 05609-0801  
[emily.wetherell@vermont.gov](mailto:emily.wetherell@vermont.gov)

c. *Proposed Order Abrogating and Replacing Rule 35 of the Vermont Rules of Appellate Procedure*

The proposal abrogates and replaces Rule 35 consistent with the simultaneous amendments to V.R.C.P. 79.2. Proposed Rule 35(b) provides definitions for terms used throughout the rule. Under proposed Rule 35(c) any person is authorized to possess any device in a courthouse and use it in a nondisruptive manner. Proposed Rule 35(d) addresses use inside a courtroom. The rule allows registered media, participants, and nonparticipants to possess and use devices in the courtroom, subject to general prohibitions and limits on number and position of devices for video recording and transmission. This is broader than the use allowed in the superior court because there are no witnesses or juries present at the Supreme Court. Proposed Rule 35(e) sets some limits on recording and transmission to ensure confidentiality of communications between members of the Court, between co-counsel, and between attorney and client. Under the proposal, the Court is authorized to prohibit, terminate, limit, or postpone recording or transmitting of a proceeding based on several factors.

Comments on this proposed amendment should be sent by **November 5, 2018**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk  
Vermont Supreme Court  
109 State Street  
Montpelier, VT 05609-0801  
[emily.wetherell@vermont.gov](mailto:emily.wetherell@vermont.gov)

d. *Proposed Order Promulgating Administrative Order No. 46*

The proposed Administrative Order 46 provides for the administrative implementation and performance standards for V.R.A.P. 35, V.R.C.P. 79.2, V.R.Cr.P. 53, and V.R.P.P. 79.2 governing the use of devices in the court. The proposed administrative order contains processes for the media to obtain a permanent registration or a one-time registration and to add an authorized individual to an existing registration. The proposed order sets limits on equipment and personnel.

Comments on this proposed amendment should be sent by **November 5, 2018**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk  
Vermont Supreme Court  
109 State Street  
Montpelier, VT 05609-0801  
[emily.wetherell@vermont.gov](mailto:emily.wetherell@vermont.gov)

### III. MISCELLANEOUS

#### *a. Court Forms*

Court forms are constantly being updated. Please refer to the judiciary website for the most up-to-date forms. <https://www.vermontjudiciary.org/court-forms>

#### *b. Obligation under A.O. 41*

Attorneys are reminded that an “attorney must report to the State Court Administrator within thirty days any change of the office mailing or electronic mail address” and that “[n]otice sent to a reported address is 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.” A.O. 41, § 4(c); see A.O. 44, § 1.

Please email those changes to [JUD.AttyLicensing@vermont.gov](mailto:JUD.AttyLicensing@vermont.gov). Your cooperation is very much appreciated.

To ensure you continue to receive these emails, please add [JUD.AttyLicensing@vermont.gov](mailto:JUD.AttyLicensing@vermont.gov) to your Safe Senders list.

#### *c. eCabinet Registration*

**Administrative Order No. 44** requires attorneys in active status to register up to three email addresses in **eCabinet** for purposes of receiving notices of hearing and other documents. *You may include staff email addresses in the three email addresses that you specify. eCabinet registration is required whether you practice in court or not.*

If you have already registered in **eCabinet**, the email address(es) you provided as part of that process will be used.

If you have not already registered in **eCabinet**, please go to <https://efiling.eservices.crt.state.vt.us/>, click **Register Now**, and follow the simple prompts. Attorneys will need their attorney license numbers to register. Helpful information about the Attorney Email Registration process is also available on the *Electronic Filing* page of the judiciary website at <https://www.vermontjudiciary.org/about-vermont-judiciary/electronic-access/electronic-filing>. Please contact [jud.helpdesk@vermont.gov](mailto:jud.helpdesk@vermont.gov) or call the Helpdesk at 802-828-4357 with any questions in the meantime.

You are also reminded that you are required to update the email address(es) and other contact information you have registered as soon as there are any changes, including changes to staff email addresses you may have included with your registration. To revise the information, please

go to <https://efiling.eservices.crt.state.vt.us/>, log into **eCabinet**, click “**Account**,” choose “**My Profile**,” and make the necessary changes to your contact information.

Notification to [JUD.AttyLicensing@vermont.gov](mailto:JUD.AttyLicensing@vermont.gov) or in **eCabinet** of a change to your contact information does not automatically notify the other. It is your responsibility to notify both. If you are a member of the Vermont Bar Association, you will also need to separately notify the VBA.