

**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: Promulgated and Proposed Rule Amendments, Efiling Appellate Training, Important Notice to All Attorneys Licensed in Vermont, Odyssey File and Serve and Public Portal Information, Filing of Exhibits & Other Miscellaneous Info

DATE: August 3, 2021

To ensure you continue to receive these emails, please add JUD.AttyLicensing@vermont.gov and JUD.CAOMemotoBar@vermont.gov to your Safe Senders list.

For your information, please find:

- [*Order Promulgating Amendments to Administrative Order No. 50*](#)
- [*Proposed Order Adding Rule 11\(a\)\(4\) to the Vermont Rules of Criminal Procedure*](#)
- [*Proposed Order Amending Rule 16.3\(b\)\(3\) of the Vermont Rules of Civil Procedure*](#)
- [*Proposed Order Amending V.R.C.P. 3.1, 4, 56, and 84, Abrogating the Appendix of Forms to those Rules*](#)
- *Efiling Appellate Training*
- *Important Notice to All Attorneys Licensed in Vermont*
- *Odyssey File and Serve and Public Portal Information*
- *Filing of Exhibits*
- *Updated Court Forms*
- *Obligations Under A.O. 41*
- *eCabinet Registration*

I. PROMULGATED RULE AMENDMENTS

[*Order Promulgating Amendments to Administrative Order No. 50*](#)

This Order was promulgated on August 3, 2021, effective immediately.

Administrative Order No. 50, originally promulgated in August 2020, created a pilot project to serve defendants more efficiently in cases where the Office of Child Support (OCS) is providing services under federal law. The pilot project began in Windham and Windsor Units and this amendment expands the pilot to Caledonia and Orange Units.

II. PROPOSED RULE AMENDMENTS

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

a. [Proposed Order Adding Rule 11\(a\)\(4\) to the Vermont Rules of Criminal Procedure](#)

Proposed Rule 11(a)(4) provides an additional procedure whereby a defendant may preserve a post-conviction challenge to a predicate conviction while pleading guilty or no contest to an enhanced offense, where the State has not consented to preservation of the challenge under the terms of Rule 11(a)(3). The proposed amendment provides that, with the approval of the court, a defendant may preserve a PCR challenge to a predicate conviction when entering a plea of guilty or nolo contendere even in cases where there is no plea agreement, or consent to the preservation otherwise given by the State, by stating on the record at the change-of-plea hearing an intent to challenge one or more of the convictions through a PCR petition, specifically identifying the convictions to be challenged, and stating the basis for the challenges.

Comments on this proposed amendment should be sent by **October 4, 2021**, to Hon. Thomas A. Zonay, Chair of the Advisory Committee on Rules of Criminal Procedure, at the following address:

Honorable Thomas A. Zonay, Chair
Advisory Committee on Rules of Criminal Procedure
Thomas.Zonay@vermont.gov

b. [Proposed Order Amending Rule 16.3\(b\)\(3\) of the Vermont Rules of Civil Procedure](#)

The amendment to Rule 16.3(b)(3) is proposed pursuant to the Supreme Court's directive under Administrative Order 49, ¶ 13, that the Civil Rules Advisory Committee "consider whether a permanent change to the rules relating to participation in remote mediation is advisable." The amendment retains the basic structure of Rule 16.3(b) that in-person attendance is the default position, with an option for remote mediation if the parties so stipulate or the court orders it (or excuses a party) for good cause.

Comments on this proposed amendment should be sent by **September 3, 2021**, to Allan Keyes, Esq., Chair of the Advisory Committee on the Rules of Civil Procedure, at the following address:

Allan Keyes, Esq., Chair
Advisory Committee on the Rules of Civil Procedure
ark@rsclaw.com

c. [Proposed Order Amending V.R.C.P. 3.1, 4, 56, and 84, Abrogating the Appendix of Forms to those Rules](#)

The proposed amendment to Rule 3.1(b)(2) substitutes "the applicant's" for "household" to achieve internal consistency of usage throughout Rule 3.1 and to provide clear and consistent guidance to the Court Administrator in the development of forms to implement the rule. The party seeking waiver of fees and payment of costs is denoted "the applicant" elsewhere in the rule. See Rule 3.1(a), (b), (b)(1), (4), (c). The retention of "household" to describe income to be counted in paragraph (b)(2) when the rule was generally amended in 2020 was inconsistent with the general purpose of the 2020 amendments and created a confusing ambiguity in the application of the rule. See Reporter's Notes to 2020 amendments.

The proposed amendments to Rules 4(b) and 4(l)(3)(D) and (H) are for consistency with the

proposed amendment of V.R.C.P. 84 and the proposed abrogation of the Appendix of Forms consistent with the Supreme Court's transfer to the Court Administrator of the authority to amend and adopt forms and publish them on the Judiciary website.

The proposed amendments to Rule 56 clarify the requirements for motions for summary judgment, oppositions to summary judgment motions, and motions in reply to opposition. The purpose is to separate out statements of often immaterial or nonresponsive additional facts and to discourage the not-uncommon practice of obfuscating the terms of a reply by adding a host of such additional facts. No substantive change is intended.

Rule 84 is proposed to be amended concurrently with the abrogation of the Appendix of Forms. Rule 84 and the Appendix of Forms were originally adopted with the Vermont Rules of Civil Procedure in 1971 on the model of the 1938 Federal Rules of Civil Procedure. For at least five years, the Vermont Court Administrator's office has been publishing new and amended forms on the Judiciary website in a "Forms Library," which now contains a great number and wide variety of detailed forms addressing matters beyond the scope of those in the former Appendix and published in a format appropriate for electronic filing. See <https://www.vermontjudiciary.org/forms-library>. The proposed amendment of Rule 84 establishes the Judiciary website as the primary source of forms.

The Appendix of Forms is abrogated to implement the simultaneous amendment of V.R.C.P. 84 establishing the Judiciary website as the location for publication and revision of Civil forms.

Comments on these proposed amendments should be sent by **October 4, 2021**, to Allan Keyes, Esq., Chair of the Advisory Committee on the Rules of Civil Procedure, at the following address:

Allan Keyes, Esq., Chair
Advisory Committee on the Rules of Civil Procedure
ark@rsclaw.com

III. EFILING APPELLATE TRAINING

There will be a remote education session on the changes to the appellate rules and on efilings at the Supreme Court on Tuesday, August 31, 2021, over the lunch hour. More information on how to join will be provided closer to the date.

IV. IMPORTANT NOTICE TO ALL ATTORNEYS LICENSED IN VERMONT

Attorney licensing is implementing a new online [Attorney Portal](#) that went live on **May 17, 2021**. Vermont attorneys will be able to conduct their licensing business, such as requesting certificates of good standing and submitting a certification of completion of a MCLE makeup plan, through this Portal. All attorneys must review the [Attorney Portal User Guide](#) (especially pages 1 through 7) prior to registering and logging in to the Attorney Portal for the first time, as that Guide contains important instructions for the first-time use of the Portal.

Attorneys renewing this year must renew their license through the Attorney Portal. If you are due to renew your license this year but have not, you should have received several reminder emails. You should register with the [Attorney Portal](#), verify your bar number, and submit your attorney licensing statement as soon as possible. If you do not do so by August 17, your license will be subject to administrative suspension.

V. ODYSSEY FILE & SERVE AND PUBLIC PORTAL INFORMATION

As of April 1, 2021, there is a new efilings use fee structure for users of Odyssey File & Serve (OFS). The new per case fee is \$14 per filer or firm, payable upon a party's first filing after April 1, 2021. This replaces the previous \$5.25 fee per envelope model. The Judiciary encourages all practitioners and others interested to learn more at www.vermontjudiciary.org/efiling

Currently, all trial courts, the Environmental Division, and the Judicial Bureau are using Odyssey and accepting electronic filings through Odyssey File & Serve. Please use the following links to access Odyssey electronic filing and portal systems and for more information.

Odyssey File & Serve. Odyssey File & Serve (OFS) is the platform through which you will electronically file with the courts. To access OFS, please visit <https://vermont.tylerhost.net/ofsw eb> You can access user guides through the "User Guides" link in the "Self Help" window. You can also access docket-specific user guides and a new Frequently Asked Questions on the judiciary's website at <https://www.vermontjudiciary.org/about-vermont-judiciary/electronic-access/electronic-filing> For technical support regarding Odyssey File & Serve, please contact Tyler Technologies at 800-297-5377 or efiling.support@tylertech.com

If you have procedural questions about OFS, please email the judiciary at JUD.EFileSupport@vermont.gov

Odyssey Public Portal. The Odyssey Public Portal allows you to view your case files. To access the portal, please visit <https://publicportal.courts.vt.gov/Portal/> Before you can view your case files, you must first register in the portal and then request elevated access. The Public Portal User Guide contains instructions on how to register and request elevated access. You can read the user guide on our website at <https://www.vermontjudiciary.org/about-vermont-judiciary/public-portal>

For technical support regarding the Public Portal, please contact the Vermont Judiciary's HelpDesk at Jud.helpdesk@vermont.gov When emailing, please write "**Public Portal**" in the subject line.

Efiling Training Opportunities

Watch a pre-recorded efilings training webinar from the Vermont Judiciary. The judiciary's NG-CMS project team recorded a demonstration of how to use Odyssey File & Serve that you can view here: https://www.youtube.com/watch?v=ke2ouMDK4VQ&feature=emb_title

Practice setting up your firm and submitting filings. For hands on practice, you can create your firm, register users, and begin filing practice cases in the Vermont "**Stage**" environment. Be sure that the web address includes the word "stage" (<https://vermont-stage.tylerhost.net/ofsw eb>). The Stage environment is available any time. Please note that submissions will only be reviewed periodically, so you may not get a timely response on whether your practice submissions have been accepted. The Stage environment is available now only for familiarity and direct hands-on experience and is not a substitute for registering on the actual efilings site when you are ready.

VI. FILING OF EXHIBITS

Per the 2020 Vermont Rules for Electronic Filing, all electronically filed documents (including exhibit lists and exhibits) must be submitted in PDF format. It is recommended that the exhibit list be filed in Odyssey File & Serve (OFS) as a “Lead Document” and that any PDF exhibits be filed as attachments to that exhibit list.

Multimedia files that cannot be converted to PDF format should be submitted by nonelectronic means on a CD, DVD, or USB flash drive (aka thumb drive) and can be mailed or delivered to the court. It is recommended that filers indicate this on the exhibit list being filed in OFS. Please note that while the courts are equipped to view common multimedia formats (such as .mp3, .mp4, .mpeg, .mov, .wmv files), the filer will have to provide compatible player software if an exhibit is in a proprietary multimedia format.

Finally, please remember that regardless of how an exhibit is filed, it is the filer’s responsibility during a hearing to present the exhibits. During remote hearings, this means the filer must either assure that all witnesses have been provided with the marked exhibits in advance and have them available to view; or be able to share his or her screen to allow all participants to view the exhibit. If the exhibit is a video or audio file, the litigant must be prepared to play it during the hearing.

VII. 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>

Please use the link below to report any form question, concern or issue <http://www.vermontjudiciary.org/website-feedback-form> or you can access our Website Feedback program at the bottom of each web page.

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). To update changes in your contact information, please access your attorney account with the [Attorney Portal](#)

To ensure you continue to receive these emails, please add JUD.AttyLicensing@vermont.gov and JUD.CAOMemotoBar@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.*

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. This website works best with Explorer. 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 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.

Updating information in the [Attorney Portal](#) or in **eCabinet** does not automatically notify the other. It is your responsibility to update both. If you are a member of the Vermont Bar Association, you will also need to separately notify the VBA.