

**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 Rules, E-Filing in the Supreme Court and Related Education Session, Odyssey File and Serve and Public Portal Information, Filing of Exhibits & Other Miscellaneous Info

DATE: October 15, 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:

- [*AO 49 Amendment - Declaration of Judicial Emergency and Changes to Court Procedures 10-14-21*](#)
- [*Proposed Order Amending Rule 66 of the Vermont Rules of Probate Procedure*](#)
- [*Proposed Amendment to V.R.C.P. 50\(b\)*](#)
- *E-filing in the Supreme Court and Related Education Session*
- *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

[*AO 49 Amendment - Declaration of Judicial Emergency and Changes to Court Procedures 10-14-21*](#)

This Order was promulgated on **October 14, 2021, effective immediately.**

Paragraph ¶ 2 is amended to extend the effective date of AO 49 until January 1, 2022, to allow for continued flexibility in court operations to respond to the course of the COVID-19 pandemic.

Paragraph 22 is amended to add pleading provisions regarding foreclosure proceedings affecting one-to-four-unit residential properties filed between August 31, and December 31, 2021. These provisions are required to satisfy amendments of Regulation X promulgated by the Federal Consumer Financial Protection Bureau (CFPB) requiring foreclosure plaintiffs in these cases to attest to compliance with CFPB requirements prior to filing for foreclosure. The CFPB amendments were designed to assist mortgage borrowers affected by the COVID-19 emergency. The final regulation establishes temporary procedural safeguards to help ensure that borrowers

have a meaningful opportunity to be reviewed for loss mitigation before the servicer can make the first notice or filing required for foreclosure on certain mortgages. 12 C.F.R. § 1024.41 (eff. Aug. 31, 2021).

There is a new form, [Appendix C](#), which tracks the language of the amended rule and has boxes to check specifically indicating compliance with, or exemption from, the requirements. Because of the need for uniformity, the required certification must be in the form reflected in Appendix C.

The full Order and other updates regarding COVID-19 and court operations are available at [<https://www.vermontjudiciary.org/about-vermont-judiciary/covid-19-and-court-operations>]

II. PROPOSED RULE AMENDMENTS

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

a. [Proposed Order Amending Rule 66 of the Vermont Rules of Probate Procedure](#)

The proposed amendments to Rule 66 reflect and clarify current practice regarding inventories and accounts.

Proposed Rule 66(b) is new. Rule 66(b)(1) contains a general requirement that an estate inventory must contain a description and value of the decedent's assets and sets forth specific requirements for the content of inventories in the areas of real property, mobile homes, motor vehicles, firearms, and financial institution accounts. Former Rules 66(b) and (c) are redesignated (c) and (d) without change. New Rule 66(e) provides accounting standards consistent with 14 V.S.A. §§ 1055, 1057. Former Rules 66(d)-(f) are redesignated (f)-(h) without change. Rule 66(i) is new. It spells out a process that enables a judge to deal with an inadequately prepared or presented inventory or account or other failure to comply with the provisions of Rule 66(a)-(h) by providing for their preparation "by a licensed professional with experience in fiduciary accounting."

Comments on these proposed amendments should be sent by **December 15, 2021**, to Hon. Jeffrey Kilgore, Chair of the Advisory Committee on the Rules of Probate Procedure, at the following address:

Hon. Jeffrey Kilgore
Advisory Committee on the Rules of Probate Procedure
Jeffrey.Kilgore@vermont.gov

b. [Proposed Amendment to V.R.C.P. 50\(b\)](#)

The proposed amendment to V.R.C.P. 50(b) is in response to the Vermont Supreme Court's request in [Blondin v. Milton Town School District](#), 2021 VT 2, ¶ 26 n. 10, that the Civil Rules Committee consider whether that rule "should be amended to be consistent with the federal rule and potentially to allow consideration of pure questions of law on appeal absent renewal following judgment."

V.R.C.P. 50(b) as originally adopted in 1971 was identical to F.R.C.P. 50(b) as it then stood. In 1988 the Vermont Rule was amended to add a renewal requirement. The Reporter's Notes indicated that this renewal requirement was implicit in Federal Rule 50(b). The U.S. Supreme

Court in Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc., 546 U.S. 394, 407 (2006), held that failure to renew a pre-verdict motion for judgment as a matter of law under Rule 50(b) prevented appellate review of a sufficiency of evidence challenge. The proposed amendment of V.R.C.P. 50(b) adopts an interpretation of Unitherm advanced by several U.S. Courts of Appeals by limiting the requirement to renew the motion to sufficiency-of-the-evidence questions. The effect of the amendment is to allow case-by-case development of the line between sufficiency-of-the-evidence questions and pure questions of law.

Comments on these proposed amendments should be sent by **December 15, 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. E-FILING IN THE SUPREME COURT AND RELATED EDUCATION SESSION

The Supreme Court is live with the Odyssey case management system and electronic filing through Odyssey File & Serve (OFS). There was a remote education session on e-filing at the Supreme Court on Tuesday, August 31, 2021, from 12:00-1:30 p.m. A recording of the session and a link to the power point presentation used during the presentation is available on the judiciary website <https://www.vermontjudiciary.org/news/e-filing-supreme-court-and-related-education-session>

IV. ODYSSEY FILE & SERVE AND PUBLIC PORTAL INFORMATION

As of April 1, 2021, there is a new e-filing 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/ofswab>). 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.

V. 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.

VI. 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.