

## **2020 VERMONT RULES FOR ELECTRONIC FILING**

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## **Introductory Reporter's Note**

These rules replace the 2010 Vermont Rules for Electronic Filing to conform to the new Judiciary case management system (CMS). The CMS will have electronic filing and electronic casefiles and be rolled out over time in the superior courts and the judicial bureau. Additions to these rules will be made when the new CMS is rolled out for the Supreme Court and other judiciary entities. Once the new CMS is rolled out in all the locations and dockets where eCabinet has been employed, the 2010 rules will be repealed.

These rules will be supplemented by extensive instructions that will accompany the CMS system and will often appear on screens for electronic filing and the viewing of electronic case files. The user must follow these instructions for electronic filing, service after commencement, and viewing of files. In addition to the eFiling system, the public and parties will be able to view electronic case files, either by remote access and/or on terminals at court houses, through a public portal. To view nonpublic documents a separate registration and approval of elevated status will be required.

The adoption of these rules is coordinated with the adoption of extensive amendments to the Vermont Rules for Public Access to Court Records to enable, with necessary restrictions, the public and filers to view electronic case files when a filing is accepted. Those rules contain specific directions for filers to comply with requirements making certain records and information inaccessible to the public. Filers should consult the public access rules, as well as these rules, to be sure a filing complies.

### **RULE 1. TITLE; APPLICABILITY; EFFECTIVE DATES**

(a) **Title.** These rules may be known and cited as the 2020 Vermont Rules for Electronic Filing.

(b) **Scope.** These rules apply to all actions and proceedings commenced in the divisions and units of the superior court authorized by the Court Administrator under subdivision (e), except for the actions specified in subdivision (c), and to actions and proceedings in the judicial bureau authorized by the Court Administrator under subdivision (f). These rules also apply to all actions and proceedings commenced in the Supreme Court on or after the date specified pursuant to subdivision (d) and in actions and proceedings existing in the Supreme Court on that date.

(c) **Exception for Existing Electronic Filing.** Electronic filing in effect prior to promulgation of the 2020 Vermont Rules for Electronic Filing will be conducted under the existing 2010 Vermont Rules for Electronic Filing and according to the applicability provisions of Rule 1(a) of

those rules. When the Court Administrator directs that electronic filing be implemented in a division, unit, and type of case in which electronic filing is already occurring, the 2020 Vermont Rules for Electronic Filing will apply to all efilings that occurs after the date specified by the Court Administrator.

(d) **Authorization for Electronic Filing in the Supreme Court.** The Supreme Court by administrative order may direct that electronic filing will go into effect in the Court as of a specified date. The Court Administrator must send notice by email to all members of the Vermont Bar of the directive at least 30 days before the specified date and provide instructions on how to efile under these rules.

(e) **Authorization for Electronic Filing in the Superior Court.** The Court Administrator may direct a unit and/or division of the superior court to implement electronic filing in some or all types of cases as of a specific date. The Court Administrator must send notice by email to all members of the Vermont Bar of the directive at least 30 days before the implementation date and provide instructions on how to efile under these rules.

(f) **Judicial Bureau.** The Court Administrator may direct the judicial bureau to implement electronic filing as of a specific date. The directive must be issued at least 30 days before the implementation date. Electronic filing will apply to all cases commenced after the specified date unless otherwise directed by the Court Administrator. Rule 3 notwithstanding, the directive must specify those required and permitted to electronically file.

(g) **Authorization of Alternate Form of Electronic Transmission.** The Court Administrator may authorize some or all filings of a specified type of filer in a specified type of case to be transmitted electronically to the electronic case file.

### **Reporter's Notes—2020**

The new case management system, called Odyssey, will be implemented in the superior court by rollout in location-by-location over time. The rule gives the Court Administrator the authority to determine when units and divisions of the superior court will implement electronic filing and in what case types. The Court Administrator must provide at least 30 days' notice of each implementation directive to all licensed lawyers in the state and provide instructions by whatever means deemed appropriate on how to efile.

These rules apply to filings made on or after the date specified in the directive of the Court Administrator, whether in existing cases or in new cases. Cases in the following categories will continue to use the eCabinet electronic filing system and be governed by the 2010 rules until the new CMS is rolled out in these courts: the superior court (a) in the civil division for Rutland and Windsor

units commenced on or after January 26, 2011, excluding stalking and sexual assault actions and small claims actions filed before January 25, 2016; (b) the civil division of Rutland, Windsor, Orange, and Addison units with respect to small claims actions commenced on or after January 25, 2016; (c) the civil division of Windsor and Rutland counties with respect to small claims appeals commenced on or after January 25, 2016; and (d) cases in the Environmental Division, commenced on after January 4, 2016.

Subdivision (e) authorizes the Court Administrator to specify the date of the implementation of efilings in the judicial bureau and specify who is required and who is permitted to efile. As with efilings in the superior court, the directive must be issued at least 30 days before implementation will commence. The method of notice of the directive is left up to the Court Administrator. The directive applies both to existing cases and to new cases. These rules will apply to judicial bureau cases to the extent an issue or requirement is not covered in a separate rule specifically created for the judicial bureau or in the Court Administrator's directive.

Subdivision (f) allows the Court Administrator to authorize electronic transmission of certain filings into the electronic casefile by a method other than efilings. This might occur where a filer in many cases, for example a prosecutor, desires to make bulk filings of certain documents for many cases and can transmit these filings in a manner that will be accepted by the judiciary's electronic casefile and appear for access as if they were filed through the efilings system.

Note that the electronic transmission into the judiciary system is still subject to the requirements of these rules. Thus, each document filed by this method must: meet the requirements of Rules 5(b) and 7(a), except the size-limit restriction contained in Rule 7(a)(2); conform to the signature requirements in Rule 9(a)-(c); include payment of any required fee that would have been applicable if the filing had been made through the electronic filing system; and be served pursuant to Rule 11 if applicable.

### **Reporter's Notes—2021 Amendment**

Rule 1(b) is amended to make the efilings rules applicable to the Supreme Court. New subdivision (d) establishes the procedure for instituting electronic filing in the Supreme Court and actions needed to instigate efilings. Efilings commence pursuant to these rules when the Court issues an administrative order. The order must be made with

enough time for the Court Administrator to give at least 30 days' notice to the Vermont Bar of the Court order and provide instructions on how to efile. Efiling pursuant to these rules will commence on that date in all cases open in the Court, including those initiated in the Court prior to that date, and all cases commenced in the Court thereafter. This will include cases in which the Supreme Court is acting under Administrative Order 9, related to lawyer discipline, disability, or competency, even though it is reviewing action by a Professional Responsibility Board hearing panel where efilings have not been implemented. As in the trial courts, efilings will be mandatory pursuant to Rule 3(a) unless an exception applies pursuant to Rule 3(b)-(d).

## **RULE 2. DEFINITIONS**

(a) **Court-Generated Document** means documents generated by judicial officers or other court personnel under the applicable statutes or rules of procedure in all actions and proceedings entered in the Supreme Court, the Superior Court, or the Judicial Bureau. It includes documents submitted for approval to judicial officers or court personnel and approved by officers or personnel with or without modification.

(b) **Document** means 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.

(c) **Electronic Case File** means an assemblage of the items pertaining to a single case maintained by the judiciary in electronic form, whether electronically filed or transmitted or scanned from a physical record. The electronic case file is part of a case file with a single case number that contains records that are in electronic case form and items that are not in electronic form.

(d) **Electronic Filer** or "efiler" means an attorney, who is required to electronically file, and any other person who is permitted or required to file electronically in a case.

(e) **Electronic Filing** or "efiling" means the process of transmitting a document from an electronic filer, using the Judiciary's electronic filing system, to the Judiciary's electronic case file.

(f) **Electronic Filing System** or "efiling system" means the Judiciary's Internet-accessible efilings and service system.

(g) **Guide and File** is part of the electronic filing system that enables a person to prepare a document by responding to a guided interview and to print the document for filing or to file it electronically.

(h) **Judicial Officer** means a justice, judge, assistant judge, magistrate, judicial bureau hearing officer, and a person specially assigned as a judge pursuant to 4 V.S.A. § 22.

(i) **Nonelectronic Filing** means any method of filing a paper document with the court.

(j) **Personal Service** means actual delivery of a nonelectronic copy of the notice or process to the person to whom it is directed.

(k) **Service Contact** means a person for whom an email address and other identifying information has been entered into the efilings system as a designated recipient of service on case filings from other parties through the efilings system.

(1) *Firm Service Contact*. A Firm Service Contact is a Service Contact associated in the efilings system with an attorney, organization, or law firm and is available only to users within the firm to add to a case for service.

(2) *Public Contact*. A Public Contact is a Service Contact listed on the Public List for purposes of electronic service that other electronic filers must use for service.

(3) *Public List*. The Public List is a directory of service contacts for system users that those users have created and made publicly available for other users to select for service.

(l) **Submission Agreement** is how an efiler certifies compliance with provisions of the efilings rules including, but not limited to, Rules 5(b)(5) and (6) (compliance with Rules for Public Access to Court Records) and Rule 11(g)(3) (Service). The submission agreement is part of the efilings process and efilers indicate compliance using a checkbox.

### **Reporter's Notes—2020**

Rule 2 provides definitions for terms used throughout the rules. The definitions in Rule 2(a), (b), (c), and (e) and are taken in whole or in part from Rule 2 of the Vermont Rules for Public Access to Court Records and are intended to be consistent with the meaning in those rules. See Vermont Rules for Public Access to Court Records 2(f), (g), (h), and (I). Rule 2(h) defines “judicial officer” for purposes of Rule 2(b) and is intended to be broad. The derivation of the definition in Rule 2(j) for “personal service” is explained in the Reporter's Notes to Rule 11. The remaining definitions are taken from instructions for the new case management system.

### **Reporter's Notes—2021 Amendment**

The definition of “service contact” is amended to clarify, and provide a better understanding of, the types of service contacts that are used to make electronic service, and the source of the “public list,” which is the primary reference for securing and using another party's email address for service and other case-related

communications. The “public list” consists of a directory housed within the electronic filing system, of attorneys and other users who are registered efilers, and their email addresses created and made publicly available by the user as a service contact, and updated, in accordance with Rule 4(b)(3) and 5(b)(7).

A definition of “submission agreement” is added. A submission agreement is how efilers certify compliance with the electronic filing rules when a document is filed. These certifications include, but are not limited to, those of Rule 5(b)(5) and (6) (to certify compliance with V.R.P.A.C.R. 7(a)(1) as to protection of nonpublic records) and amended Rule 11(g)(3) (certifying compliance with service requirements). The submission agreement appears on the system page for each e filing, employing certification “boxes” that must be checked by the e filer to comply with certification. The submission agreement certification does not supplant the e filer’s obligation to complete additional actions, if any, that are prescribed by the applicable rules. See, e.g., Rule 5(b)(5) and (6) (incorporating obligation to take, and describe, specific actions to protect against disclosure of nonpublic information in the filing per V.R.P.A.C.R. 7(a)(1)), and Rule 11(g)(2) (circumstances requiring additional filing of a certificate of service complying with V.R.C.P. 5(h) or V.R.P.P. 5(e)).

### **RULE 3. REQUIRED ELECTRONIC FILINGS; EXCEPTIONS**

(a) **Electronic Filing Required.** Except as provided in (b) and (c), and other provisions of these rules, all documents filed in a case in the Supreme Court, superior court, or the judicial bureau must be electronically filed as of the effective date specified by Rule 1.

(b) **Nonelectronic Filing Permitted.** A document may be nonelectronically filed when:

(1) the filer, who is not filing on behalf of a government agency, is a self-represented litigant who has not elected to file electronically consistent with subdivision 3(d) in the specific case;

(2) the filer is a guardian ad litem, is filing pursuant to the duties of that position, and has not filed electronically in the specific case;

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

(4) the document is a nonelectronic stipulation, agreement, or other case document created or finalized while the parties and/or counsel are present at court premises, in or related to proceedings, and nonelectronic filing is permitted by the court;

(5) a filer in a particular case is excused from electronic filing in that case by the court when exceptional circumstances make electronic filing not feasible;

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

(7) an item cannot reasonably be scanned and filed electronically because of its size, shape, or condition; or

(8) the electronic filing system is unavailable when the filer seeks to make an electronic filing, despite reasonable efforts to make a filing or in the case of a preannounced system outage.

(c) **Nonelectronic Filing Required.** A document must be nonelectronically filed when:

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

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

(d) **Self-Represented Litigants.**

(1) *Electing to Efile.* Unless ordered otherwise, a self-represented litigant may elect to electronically file and serve but is not required to do so.

(2) *Duration of Electronic Filing in the Superior Court.* A self-represented litigant who commences efilings in a case must continue to efile throughout the duration of the case. The self-represented litigant may discontinue efilings only after obtaining a court order of discontinuance issued for good cause shown and after notifying all other parties that the litigant will not be efilings in the future. Efilings by a self-represented litigant does not create an obligation to efile in another case.

(3) *Efilings in the Supreme Court.* A self-represented litigant who has efiled in a case in the superior court is presumed to continue to efile on appeal in the Supreme Court. The self-represented litigant may discontinue efilings after giving efiled notice to the Court and serving the notice on all other parties to the appeal.

(4) *Guide and File.* A self-represented litigant who prepares and efiles a document through Guide and File is not required to continue to file electronically in that case as a result of that filing.

### **Reporter's Notes—2020**

Rule 3 provides the specific rules governing when electronic filing is required and permitted and when nonelectronic filing is required. Subdivision (a) states the general policy that on or after the effective date of efilings, everyone must efile unless a specific authorization or requirement applies and specifies otherwise.

Subdivision (b) recognizes only two categories of filers as exempt from the general policy. The first, in Rule 3(b)(1), is a self-represented litigant, who has not registered to efile or has chosen not to efile in a specific case. Persons who do not fit within this category—for example, a nonlawyer who is authorized by the court to represent a nonprofit corporation because of the lack of money to hire a lawyer—must efile unless excused by court order under another part of subdivision (b).



Also not fitting within the exemption are persons who have specified functions in court proceedings by law or court rules. These include masters, receivers, parent coordinators, and neutrals required to file a report. These are not self-represented litigants and thus must efile under Rule 3(a).

Rule 3(b)(2) provides that guardians ad litem are exempt from efilings when filing pursuant to the duties of their position. See, e.g., V.R.C.P. 17(b); V.R.F.P. 6.1(e). As with self-represented litigants, guardians ad litem may choose not to register to efile at all or may choose not to efile in a particular case.

The remaining parts of subdivision (b) provide authorizations not to efile for particular cases or documents where the circumstances are such that the general policy should not apply. A motion to allow nonelectronic filing under (b)(3) and (4) can be made nonelectronically. The court may decide there is good cause not to require efilings of all or part of the documents being filed for good cause—for example, for nonlawyers representing a business. Although the rule indicates that nonelectronic filing may be permitted by the court to protect confidentiality, efilers can file confidential documents using the efilings system. The court may decide that in a case where a lawyer has a disability that “exceptional circumstances make electronic filing not feasible.” Rule 3(b)(4).

Paragraphs (b)(5) and (6) provide two categorical exceptions based on the circumstances of the filing or case: nonelectronic filing is authorized by another rule in these rules, Rule 3(b)(5); and where electronic filing through scanning of an item is not reasonably possible because of the size, shape or condition of the item, Rule 3(b)(6). An example of the latter might be a CD containing a video of a shooting or an audio capture of testimony.

Finally, Rule 3(b)(7) allows a filer to nonelectronically file if the electronic filing system is unavailable when the filer seeks to use it despite reasonable efforts to make an electronic filing or in case of a preannounced outage. This exception does not require specific court approval, but the filer should explain the circumstances that caused unavailability. Note that Rule 5(c)(3) authorizes the court to extend a filing deadline in the case of system unavailability but only if the filer cannot with reasonable efforts file nonelectronically under Rule 3(b)(7).

Subdivision (c) specifies the circumstances where nonelectronic filing is required. These are where nonelectronic filing is expressly required by rule or where the court finds that the filer has abused the electronic filing system.

Subdivision (d) further explains the exemption for self-represented litigants. A self-represented litigant may register to efile but choose not to efile in a particular case. If a self-represented litigant commences efilings in a case, that litigant must continue to efile in that case unless relieved of that responsibility by the court.

The electronic filing system contains a component called guide and file which allows a self-represented litigant to prepare a document for filing by responding to a guided interview. See Rule 2(g) (definition of “Guide and File”). The system then puts the filer responses into the proper form for filing. The filer can electronically or nonelectronically file the document. Rule 3(d)(3) provides that efilings such a document without more does not create an obligation to efile thereafter in the case.

### **Reporter’s Notes—2020 Amendments**

Rule 3(b)(1) is amended to clarify that government agencies, which are required to submit reports and other case documents such as Department of Corrections (presentence investigation reports) and Department for Children and Families (disposition reports) and law enforcement entities must efile and are not excepted from efilings as self-represented litigants. The concluding phrase of paragraph 3(b)(1) is modified slightly to clarify that the provisions of subdivision 3(d) are applicable to responsibilities and rights of self-represented litigants who elect to efile in a specific case.

New paragraph 3(b)(4) is added to clarify that nonelectronic filing may be permitted by the court for documents such as a handwritten or edited stipulations, agreements, or other case documents that are created or finalized by parties and/or counsel who are present at court premises for related proceedings, including proceedings such as scheduled case-manager conferences. Such nonelectronic filings (which are then scanned into the electronic case record per V.R.E.F. 12) often provide the basis for court orders in final resolution of a case, or a significant issue therein, and immediate filing of the “paper” document is highly advisable to render the case outcome operative without delay. This amendment specifically authorizes such filings, subject

to court approval, as in effect a variant of the “good cause” exception of the existing paragraph (b)(4). Existing paragraphs (4)-(7) are renumbered as (5)-(8).

### **Reporter’s Notes—2021 Amendment**

This amendment is made in connection with the introduction of efilings in the Supreme Court. Accordingly, the Supreme Court is added to Rule 3(a).

As in the superior courts, a self-represented litigant has the option to efile in the Supreme Court but is not required to do so. Under paragraph (d)(3), if the self-represented litigant is appealing from a superior court case where the self-represented litigant is efilings, it is presumed that the self-represented litigant will continue to efile in the Supreme Court. The self-represented litigant who is presumed to continue efilings in the Supreme Court or has elected to efile in the Supreme Court may discontinue efilings by giving notice to the Court and serving that notice on all other parties. In contrast to the procedure prescribed for self-represented efilers to discontinue efilings in superior court proceedings under paragraph (d)(2) of these rules (requiring a court order of discontinuance issued for good cause shown), an order of the Supreme Court is not required for a self-represented litigant to discontinue efilings. Because the litigant is under an obligation to efile when the notice is given, the notice itself must be efiled.

### **Reporter’s Notes—2020**

Paragraph 3(c) is amended to add statutes as among those sources of law that could require filing a document nonelectronically.

## **RULE 4. REGISTERING PROCESS; RESPONSIBILITIES**

(a) **Registration Process.** A person must register to electronically file and serve documents through the electronic filing system, and choose the appropriate type of registration— independent user, or user with an existing firm.

(b) **Obligations and Responsibilities.**

(1) Registering to electronically file and efilings a document in a case constitutes consent to receive electronic service by notice that a filing has been made.

(2) An efiler is responsible for all documents filed or served under the efiler’s account.

(3) An efiler must create a service contact after registering, must check the “Make This Contact Public” box, and must immediately update the efiler’s service contact information when changes occur.

(4) An attorney may permit an associated attorney or other person authorized by the attorney to file and view documents on the attorney’s behalf. The attorney is responsible for all such filings and for any misuse of documents that are viewed or downloaded.

(c) **Registration To View Documents That Are Not Publicly Accessible.** To view nonpublicly accessible portions of the electronic case file or documents not accessible over the internet, persons—including those with specific rights of access pursuant to Rule 5 of the Rules for Public Access to Court Records—must separately register with the public-access portal, providing verification of their specific right of access.

### **Reporter’s Notes—2020**

Subdivision (a) requires that a person must register to file and serve documents through the electronic filing system.

Subdivision (b) establishes the obligations and responsibilities of persons who register to file and serve documents through the electronic filing system. Subdivision (b)(1) provides that registration constitutes consent to receive electronic service by notice that a filing has been made. Subdivisions (b)(2) and (3) establish that an efiler is responsible for all documents filed or served under the efiler’s account, and that an efiler is responsible for updating registration information, including service contacts, to assure proper service upon the efiler by others. Finally, subdivision (b)(4), applicable to attorneys, permits an attorney to authorize an associate attorney or other person to file and view documents under the attorney’s efilings account. However, the attorney is responsible for all such filings and for any misuse of documents that are viewed or downloaded.

Subdivisions (a) and (b) establish a requirement of registration to file and serve documents through the electronic filing system, and the obligations and responsibilities of efilers, but they do not address the issue of remote access for viewing of electronic case files that are not publicly accessible. Subject to certain statutory exceptions, a person need not be an electronic filer to access electronic records for viewing only. See, e.g., 12 V.S.A. § 5.

Subdivision (c) explains that persons seeking remote access to nonpublicly accessible electronic documents must separately register to use the public access portal. To view records that are not publicly accessible or are publicly accessible only at courthouse terminals, and for those persons with specific rights of access

under Rule 5 of the Rules for Public Access to Court Records, the system will require specific registration requirements, including verification procedures, to authorize “elevated” access status to view such records. The prescribed registration to view in this rule has no connection to a person’s ability to view existing paper case files maintained by clerks of court.

### **Reporter’s Notes—2020 Amendments**

Subdivision (a) is amended to conform the text of the rule to actual practice in the Odyssey efilng system. In Odyssey, in contrast to an Independent (self-represented) User, a “Firm” registers, which includes solo practitioners, as well as government agencies. The Firm Administrator authorizes access for all user accounts in that firm. More information on how to register is provided in judiciary and vendor manuals.

The amended language in paragraph (b)(4) addresses how others inside a firm may be authorized to file and view on an attorney’s behalf.

Subdivision (c) is amended to further clarify the process to secure elevated access to case documents not publicly accessible via the internet. Registration in the efilng system provides access to documents filed by the efiler. To view other documents in the case, including those filed by another party, the filer must register with the public access portal, and receive authorization. This is a one-time process for each portal user, which provides ongoing access for all subsequent cases in which the user is involved. See also V.R.P.A.C.R. 5 (governing specific rights of access by attorneys, parties, and others, to case records that are not otherwise publicly accessible).

### **Reporter’s Note—2021 Amendment**

Rule 4(b)(3) is amended to clarify that an efiler must enter a current service contact email address as a condition of registration, and to further require immediate updating of a changed service contact address. This assures effective service via the efilng system File and Serve function.

## **RULE 5. PROCEDURE FOR ELECTRONIC FILING**

(a) **In General.** An electronic filer may initiate a new action or proceeding, or efile documents in an action or proceeding that is in the electronic filing system, when required or permitted under Rule 3, by logging in, and complying with the instructions in the electronic filing system.

(b) **Electronic Filing Requirements.** The efiler must submit each electronic filing in accordance with the instructions in the electronic filing system and must:

- (1) prepare and format the efilings in accordance with Rule 5(f) and (g), and Rule 7;
- (2) sign the efilings as provided in Rule 9;
- (3) provide a mailing address and email address on the documents electronically filed;
- (4) satisfy payment requirements of Rule 10, except that failure to pay a Supreme Court entry fee to the Vermont Judiciary in connection with the filing of a notice of appeal, or to seek a waiver of that fee, is not grounds for rejecting a filing;
- (5) take any actions required under Rule 7(a)(1) of the Rules for Public Access to Court Records;
- (6) certify that each document filed complies with the Rules for Public Access to Court Records; and
- (7) for initial filings, provide service contacts that will enable post-commencement service on the efiler and maintain updated contacts.

(c) **Electronic Filing Time.** An electronic filing may be submitted on any day, including holidays and weekends, and at any time.

(1) *Filing Date.* An efilings is considered submitted on a date if it is submitted prior to midnight on that date;

(2) *Technology Failure of Filer.* Failure of the efiler's system or internet unavailability will not excuse a failure to comply with a filing deadline, unless the court specifically authorizes an extension of the deadline;

(3) *System Unavailability.* A deadline will be extended for unavailability of the electronic filing system, if the efiler could not reasonably file nonelectronically pursuant to Rule 3(b)(8).

(d) **Court Staff Processing in the Superior Court.**

(1) *Court Staff Review.* Court staff will review all electronic filings for compliance with these rules and Rule 7(a)(1) of the Rules for Public Access to Court Records in the manner prescribed by Rule 7(a)(3) and (4).

(A) Except as designated in (B), court staff review will occur prior to entry into the electronic case management system.

(B) Initial civil complaints made in commencement of an action pursuant to Vermont Rule of Civil Procedure 3 will be reviewed after entry into the electronic case management system, subject to the corrective and remedial actions of Rule 7(a)(3) and (4) of the Rules for Public Access to Court Records. Electronic filers remain obligated under Rule 5(b) to comply with filing requirements. Complaints initiating the following civil actions will continue to be reviewed prior to entry:

- (i) Actions for Orders Against Stalking or Sexual Assault (12 V.S.A. Ch. 178),
- (ii) Small Claims Actions (12 V.S.A. Ch. 187), and

- (iii) Any civil action that is within the original jurisdiction of the Supreme Court, or within the jurisdiction of criminal division, family division, environmental division, probate division, or the judicial bureau.

(2) *Accepting or Rejecting a Filing.* Court staff will electronically notify the efiler either that the efilings have been accepted or rejected. A rejection will provide the reason for the rejection. Court staff may reject a filing that does not comply with these rules or Rule 7(a)(1) of the Rules for Public Access to Court Records. Court staff may also reject a filing that contains an error that cannot be corrected by court staff. The Court Administrator will delineate the permissible reasons for rejecting a filing and provide the list in a prominent place on the Judiciary website.

(3) *Failed Submission.* A filing that does not comply with the instructions in the efilings system or the formatting requirements in Rule 7 may not be processed by the electronic filings system and may result in a failed submission. A failed submission does not reach the clerk queue and may not be appealed.

(4) *Correcting an eFiling.* An efiler may submit a corrected efilings within 7 days after receiving the notification that a filing resulted in a failed submission or was rejected if the efiler follows the instructions for efilings a correction on the electronic filings system. It is the efiler's responsibility to demonstrate the date of rejection or failed submission. The court may extend the time for correction for good cause. Court staff will accept a corrected efilings if all requirements of those rules and the instructions for correction have been met.

(5) *Filing Date.* When an efilings has been accepted, the date and time of efilings for all purposes under the applicable rules of procedure are the date and time that the initial efilings was submitted if the corrected filing complied with the time limits in (d)(4).

(6) *Assigning Case Number.* The electronic filings system will provide a case number for a new case filing that has been accepted in the acceptance notification. The assigned case number must appear on all subsequent efilings pertaining to the case.

(7) *Appeal of Rejected Filing.* In the event an efiler and court staff are unable to resolve a dispute regarding an electronic filing, the efiler may appeal the basis for a rejected filing to the Court Administrator. The appeal must be filed within 7 days from the date of the rejection. The time period in (d)(4) for correcting an efilings is tolled until the appeal is decided.

**(e) Court Staff Processing in the Supreme Court.**

(1) *Court Staff Review.* Court staff will review all electronic filings for compliance with these rules, the Vermont Rules of Appellate Procedure, and Rule 7(a)(1) of the Rules for Public Access to Court Records.

(2) *Accepting or Rejecting a Filing.* Court staff will electronically notify the efiler that the efilings have been accepted or rejected. A rejection will provide the reason for the rejection. Court staff may reject an efilings for noncompliance with Rule 7(a)(1) of the Vermont Rules for Public Access to Court Records, the applicable limit on the number of words in the brief as contained in V.R.A.P. 32(a)(4), the failure to include a word count in a brief as required by V.R.A.P. 32(a)(4)(D), or the failure to sign a document as required by these rules or the Vermont Rules of Appellate Procedure. Court staff may also reject a filing that contains an error that cannot be corrected by court staff.

(3) *Failed Submission*. A filing that does not comply with the instructions in the eFiling system or the formatting requirements in Rule 7 may not be processed by the electronic filing system and may result in a failed submission. A failed submission does not reach the clerk queue and may not be appealed.

(4) *Correcting an eFiling*. If court staff rejects an eFiling pursuant to this subdivision, the efiler may correct the eFiling as set forth in (d)(4), and (d)(5) will apply to determine the filing date.

(5) *Limit of Review*. This rule does not limit the actions the Supreme Court may take for violation of these rules, the Vermont Rules of Appellate Procedure, or the Vermont Rules for Public Access to Court Records.

(6) *Assigning Case Number*. The electronic filing system will provide a case number for a new case filing that has been accepted in the acceptance notification. The assigned case number must appear on all subsequent efilings pertaining to the case.

(7) *Appeal of Rejected Filing*. In the event an efiler and court staff are unable to resolve a dispute regarding an electronic filing, the efiler may appeal the basis for a rejected filing to the Court Administrator. The appeal must be filed within 7 days from the date of the rejection. The time period in (e)(4) for correcting an eFiling is tolled until the appeal is decided.

(f) **Serving Notice of Electronic Filing**. The efiler must complete service as required in Rule 11.

(g) **Motions**. Efilers must submit motions, responses, and supporting materials in a manner consistent with any other applicable rules of procedure and the following:

(1) *Separating Individual Motions and Responses to Motions*.

(A) *Motions; Separate Filing*. All motions must be filed as separate lead documents.

(B) *Separating Motions and Responses*. An efiler may not respond to a motion and file a new motion in the same document.

(2) *Memoranda and Supporting Material*.

(A) *Memoranda of Law*. A memorandum of law may be included as part of a motion or response or may be filed as a separate document. The same memorandum may be filed in support of multiple motions or responses but must identify the motions or responses to which it relates and be referenced in the motions or responses.

(B) *Supporting Material*. Any supporting material, including affidavits, exhibits, or other supporting or required attachments, must be separated from the motion. The supporting material may be filed either as individual documents or compiled into a single document. Supporting material must identify the motions or responses to which it relates.

(C) *Format of Compiled Supporting Material Filed as a Single Document*. If all supporting material for a motion or response is filed as a single, compiled document, it must:

- (i) be numbered sequentially with numbers that match the electronic page counter; and
- (ii) contain a table of contents listing the separate parts of the supporting material included, with electronic page references for each item.



(h) **Criminal History Information.** Criminal history information, filed in connection with a criminal case, must be separately efiled in the following parts for which there is information:

- (1) Misdemeanor or felony convictions in Vermont courts and resulting sentences;
- (2) Misdemeanor or felony convictions in courts of other jurisdictions, including in federal court and resulting sentences;
- (3) Any other criminal history information.

### **Reporter's Notes—2020**

Rule 5(a) refers generally to the steps for efilings. The efiler must log into the electronic filing system and follow the instructions found there. The rule requires certain contact information to be included in each efilings. The rule does not require a telephone number to be included on each efilings but this information may be requested by the court when a party enters a notice of appearance so that the court has another means to contact the party.

Rule 5(b) generally cross-references the rules that contain efilings requirements in the remainder of these rules and in the Vermont Rules for Public Access to Court Records (V.R.P.A.C.R.).

The public access rules have been extensively amended to address the challenge of providing public and special access to electronic court records and at the same time protecting privacy where necessary. The efiler responsibility requirements are set out in V.R.P.A.C.R. 7(a)(1). The Rule requires electronic filers (and nonelectronic filers) to be familiar with the substantive provisions of the public access rules “to determine whether all or part of the record being filed is not publicly accessible.” V.R.P.A.C.R. 7(a)(1)(A). If the whole record is not publicly accessible, the efiler must so designate it at the time of filing. V.R.P.A.C.R. 7(a)(1)(D). This occurs in two ways. For an efiler who is initiating a new case, the efiler must designate the type of case in which the efilings is being made. If proceedings in that type of case are not publicly accessible, that efilings and future ones will be inaccessible to the public. Second, for types of cases that are generally open to the public, the efiler will be required to answer whether the efilings is confidential or open to the public.

If the record is not publicly accessible in part, the efiler must separate the part that is publicly accessible from the part that is not publicly accessible, redacting or using another method to prevent public access to the part that is not publicly accessible. The efiler can then efile the unredacted record, designating it as not publicly accessible, and the redacted version, designating it as publicly accessible. V.R.P.A.C.R. 7(a)(1)(C). The efiler must certify that

the filer has reviewed the efilings and the efilings comply with V.R.P.A.C.R. 7(a)(1). If the record being efiled is wholly or partly not publicly accessible, the filer must specify what actions were taken to comply with the public access rules and why the actions were necessary. V.R.P.A.C.R. 7(a)(1)(B).

Note that if a document is efiled in a type of proceeding that is not publicly accessible or the whole document is either publicly accessible or not, the duty to act and certify compliance can be fulfilled on the electronic filing screen. The filer who properly categorizes the type of proceeding and type of document will be able to check a box that the filer has fully complied with the public access rules and thus comply with Rule 5(b)(6). In the more complicated case where the record being efiled is wholly or partly not publicly accessible, the filer must also efile a separate compliance statement of what actions were taken to comply and why the actions were necessary. That statement plus the checked box constitute the certification required by Rule 5(b)(6).

The last requirement is stated in Rule 5(b)(7). When an filer first enters a case, whether to initiate the case or to respond and participate in a case, the filer must separately enter service contacts as specified by the system so others can serve the filer through the electronic filing site. Note that an filer can add multiple contacts for purposes of the case. For example, a lawyer who is entering case on behalf of a client may have multiple email addresses at which the lawyer wants to receive notices of filings in the case. The lawyer may have a co-counsel the lawyer wants notified of filings in a case or practice in a firm where filings in cases go through a firm administrator who can assign work in the firm. At first appearance in the case, the filer should think carefully about who should get notice of efilings and add those persons as service contacts. An filer can change service contacts in a case but must keep them updated—for example, where there is a change of email address.

As specified in Rule 5(c), an efilings can be made at any time of any day. Under Rule 5(c)(1), an efilings made before midnight is considered made on that date. This does not mean that the efilings will be accepted or rejected at the time it is efiled. Staff who work normal business hours will make that decision.

Rule 5(c)(2) and (3) address situations where an filer is unable to make an efilings because the electronic filing system is unavailable, and the filer will be prejudiced by inability to meet a time deadline. Under Rule 5(c)(2), the technological failure is at

the efiler's end and prevents access to the internet or to the electronic filing system. In general, such a technological failure is not grounds to allow the efiler to claim the initial attempted filing time and date once the reason for the technological failure is repaired and a new successful efilings is made. The rule, however, allows the court to extend the deadline for good cause in situations of extreme prejudice. An important factor in determining whether the deadline should be extended is whether the efiler could have filed nonelectronically and sought permission to do so under Rule 3(b)(3) to avoid the prejudice.

Rule 5(c)(3) deals with the situation where the technological failure is at the electronic filing system end. In such a situation, the efiler must first make a reasonable effort to file nonelectronically under Rule 3(b)(7). If nonelectronic filing is unavailable, to eliminate the prejudice, any filing deadline is automatically extended to when use of electronic filing system is restored.

Rule 5(d) sets out the processes for staff review of an efilings, acceptance or rejection of the efilings, notice to the efiler, correction of noncompliant efilings, and case number assignment. The more-detailed process for review and acceptance or rejection of an efilings with respect to public-access compliance is set out in V.R.P.A.C.R. Rule 7(a)(3) and (4) and controls for that review. For example, Rule 5(d)(3) gives the efiler 7 days to correct an efilings that is noncompliant with these rules. V.R.P.A.C.R. 7(a)(4)(ii) provides that if review requires an efiler correction, the time limit for such correction is set by the reviewer. The reviewer-determined correction time limit for public-access compliance controls with respect to that correction.

Essentially, staff review covers each of the items listed in Rule 5(b). Note that if correction is required, the efiler must follow the instructions on the electronic filing site for making a corrected efilings, so the reviewer knows that the initial filing was rejected and the reason for the rejection in making the new review decision. When a filing has been accepted, the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the initial filing was submitted and scanned into the electronic system as long as the correction was made within the allotted time.

Another issue is presented under Rule 5(d)(5), in cases where service has preceded filing to commence the action, as provided in V.R.C.P. 3. In such cases, a responsive pleading may be filed prior to filing of the summons and complaint. Such pleadings will be

retained by the system administratively in a “holding” file, pending filing of the summons and complaint, upon which, the case will be opened, and a case number assigned.

Under Rule 5(e), the efiler must also make service by the method or methods specified in Rule 11, in addition to meeting the requirements for efilings in Rule 5(b). There is a distinction between the date of filing and the date of service when documents are efiled and notice of the filing is sent through the efilings system as required by Rule 11(d). As noted in Rule 5(c)(1), the date of filing is the date the filing is submitted to the efilings system. The date of service may be later because the system will not serve a document until it has been reviewed and accepted. See Reporter’s Notes to Rule 11(b).

Rule 5(f) continues the substance of 2010 V.R.E.F. 4(g) with respect to how motions and supporting materials must be efiled. Rule 5(f)(1), (2), and (3) contains provisions similar to 2010 V.R.E.F. 4(g)(1), (2), and (3). Rule 5(f)(4)(A), (B), and (C) is consistent with 2010 V.R.E.F. 4(g)(4), but is displayed in separate subdivisions for clarity.

The intent and meaning of alternative and independent forms of relief is the same as under the 2010 rules. “Alternative forms of relief” 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 single motions based on the same facts and legal requirement; only the relief sought is different.

“Independent forms of relief,” conversely, address independent issues and provide different and independent remedies, as when two or more unrelated motions are combined in a single document. For example, a motion entitled “Motion to Enforce Settlement Agreement, Motion to Compel, and Motion to Dismiss Counterclaim” contains 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” and a

“Motion for Alternative Service,” which asks for service by a tack order, are requests under different rules that requires a different factual basis. In these examples, each motion relates to a different set of facts and has a different legal foundation.

Rule 5(f)(4)(D) is added to cover a situation where supporting materials are efiled to support multiple memoranda of law. In such a situation, the pages of the supporting materials must be numbered, and there must be a table of contents.

Rule 5(g) is a placeholder for future action with respect to criminal history information, which is filed in criminal cases by the prosecution for consideration in establishing conditions of release of a charged defendant. Typically, the source of the criminal history information is the Federal Bureau of Investigation which in turn gathers it from state and local law enforcement sources, including from those in Vermont. It includes arrest, prosecution, and conviction information and may contain law enforcement investigatory information. In response to a request from the Vermont Criminal Information Center, the Supreme Court through its rules committees is considering what part or parts of the criminal history information provided for conditions of release of a charged defendant should be considered not publicly accessible under federal and state law. The answer to the question is likely to depend on the nature of the information provided so this rule separates the criminal history information into parts that are relevant to the public access issue.

### **Reporters Notes—2021 Amendment**

Rule 5 is amended in three respects in connection with the introduction of efilings in the Supreme Court.

First, subdivision (b)(4) is amended to make clear that an efilings of a notice of appeal cannot be rejected for failure to pay a required *entry* fee to the judiciary at the time the notice of appeal is filed, or for failure to file a request to waive the fee. See V.R.A.P. 3(b)(1)(a); 32 V.S.A. § 1431. Although V.R.A.P. 3(b)(1)(A) requires paying the filing fee with the filing of the notice of appeal, subparagraph (b)(1)(D) states that an appellant’s “failure to take any step other than a timely filing of a notice of appeal does not affect the appeal’s validity, but is ground for the Supreme Court to take any appropriate action, including dismissal.” Thus, the validity of the notice of appeal cannot be affected by the failure to pay the entry fee. Note that the amendment relates to the filing of the appeal entry fee and not to any required payment to the efilings vendor.

New subdivision (e) is added to specify that court staff will perform clerk review for filings in the Supreme Court, to specify the permissible grounds for rejecting an efile in the Supreme Court, and to provide for corrections of rejected efilings in the Supreme Court. The grounds for rejecting an efile in the Supreme Court are limited and the decision whether to reject an efile is committed to the discretion of the staff reviewer. The process for correcting a filing is the same as for filings to the superior court. The rule does not apply to filings that are rejected by the efile system for failure to comply with system requirements. In addition, the rule does not limit any remedy the Supreme Court may impose for violation of procedural requirements.

Former subdivision (e) is renumbered (f) and is divided into two parts, one applicable to motion efilings in both the Supreme and superior court and the other applicable only to superior court efile. The requirements with respect to motions seeking multiple forms of relief are applicable in both the Supreme Court and the superior court. The terminology is explained in the original Reporter's Notes to 2020 V.R.E.F. 5(f)(1) & (2). The requirements enable the efiler to choose a proper description of the filing in the efile system, supplementing it if necessary with an additional description of what is being filed. Note that V.R.A.P. 27(d)(2), as amended simultaneously with this rule, imposes the same requirements for motions seeking separate forms of relief in the Supreme Court, irrespective of whether filed electronically or on paper. In both the superior courts and Supreme Court efilers must separate responses from new motions. Also V.R.A.P. 27 and 32(g) impose additional content and formatting requirements for motions filed in the Supreme Court.

Other motion filing requirements related to supporting material in former subdivision (f), now (g), remain applicable only in the superior court. Motion practice in the Supreme Court is typically less complex than in the superior court, making it unnecessary to apply the additional requirements in the Supreme Court.

Third, the requirement in former subdivision (g), now (h), for separation of criminal history information that is efiled in a criminal case is made applicable only in the superior court. As the original Reporter's Notes to Rule 5(g) explain, the requirement is a placeholder for differential treatment of criminal history information with respect to public access. Since the separation, and public access classification, occur in the superior court, it is already part of the record if the case reaches the Supreme Court.

## **Reporter's Note—2021 Emergency Amendment**

Under the prior language of Rule 5, all electronic filings were reviewed prior to entry into the Judiciary's electronic case management system in accordance with the rule's requirements and Rule 7 of the Vermont Rules for Public Access to Court Records. Rule 5(d) is amended following entry of the decision and order of the U.S. District Court for the District of Vermont in *Courthouse News Service, et. al. v. Patricia Gabel, et. al.*, Case No. 2:21-cv-00132 on November 19, 2021. The amendments comport with new procedures for the processing of the initial civil complaint, essentially providing for public access to the same, prior to clerk review and acceptance pursuant to Rule 5(d). The amendments do not alter an electronic filer's obligations under Rule 5(b), including compliance with Rule 5(b)(5) and (6). The amendments also do not alter the process of clerk review of new civil complaint filings otherwise prescribed by Rule 5(d).

Beginning on Friday, December 10, 2021, initial civil complaints submitted using the Odyssey File and Serve code "initial filing" were automatically entered in the Judiciary's electronic case management system without a prior staff review and acceptance. Previously, all electronic filings, including initial complaints and associated documents in such cases, were reviewed by staff before being entered into the electronic case management system. Some initial civil complaints are excepted from the automatic entry, including those in small claims actions, stalking/sexual assault actions, and those within the original jurisdiction of the Supreme Court, or within the jurisdiction of criminal division, family division, environmental division, probate division, or the judicial bureau.

Once initial filings are automatically entered into the case management system, documents and information designated by the electronic filer as public will be viewable to the public on courthouse public access terminals and on the Public Portal website for users with elevated access roles.

Documents submitted under other filing codes in the same envelope or in other envelopes will continue to be reviewed and manually accepted by staff prior to being entered into the case management system.

Pursuant to Rules 7(a)(3) and (4) of the Vermont Rules for Public Access to Court Records, court staff will review all initial complaints after they are entered into the system for the presence of nonpublic information that should not be publicly viewable. As with all cases

under the present rules in which this screening reveals that nonpublic documents or information are part of the initial filing, court staff will take corrective or remedial actions authorized by Rules 7(a)(3) and (4) to protect such information from public view and will send notice to the efiler along with a specification of what corrective actions are needed to fix defects in the filing.

Note that Rule 6 is not amended so procedures for review of complaints filed non-electronically remain the same as they have been

### **Reporter's Note—2024 Amendment**

Rule 5(d) and (e) are amended to clarify the provisions regarding accepting and rejecting filings. In addition to rejections made by court staff, the amended rule addresses failed submissions, which are done automatically by the efilings system. The amendments also clarify the bases for rejection. Court staff and user experience demonstrate that a number of rejected efilings result from efiler noncompliance with requirements that are not articulated specifically in existing rules. These include, but are not limited to, such errors as efilings into the wrong case, filing by someone not a party or attorney in a case, filing in the wrong county, duplicate filings, initiating a new case instead of filing into an existing one, and filing by someone not authorized to submit the filing type. Some rejections stem from rule-based requirements, such as failure to sign a document and failure to comply with V.R.P.A.C.R. 7(a)(1) by publicly filing nonpublic documents or content.

Rule 5(b) continues to prescribe the requirements for any efilings, with reference to other Rules for Electronic Filing, including Rules 5 and 7 (formatting); Rule 9 (signature); Rule 10 (payment of necessary fees, or a request for waiver of them); and certification of compliance with V.R.P.A.C.R. 7(a)(1) (public documents containing nonpublic information; redacted and original versions required). For successful submission and acceptance, the existing rule also requires that efilers comply with the instructions in the efilings system and provide correct mailing and emailing addresses and service contact information.

Rule 5(d)(2) is amended to clarify the bases for rejecting a filing. The amended language provides that a filing may be accepted or rejected and that a rejection will provide the reason for the rejection. To supplement the general provision of 5(d)(1) that all electronic filings are reviewed “for compliance with these rules, and Rule 7(a)(1) of the Rules for Public Access to Court Records,” amended 5(d)(2) states that staff may reject a filing that contains an error that cannot be corrected by court staff. Rule 5(b) requires efilers to comply with the



instructions in the efilings system. Some errors by efilers cannot be corrected by court staff after acceptance and therefore must be rejected. This includes errors such as filing 6 into the wrong case, filing an initial filing as a subsequent filing or vice versa, or filing a criminal case with the wrong date or incorrect charge. The rule indicates that the Court Administrator will provide a list of permissible reasons for rejecting filings and make it available on the Judiciary website. This will provide transparency to efilers regarding the reasons for rejection and greater consistency across the state in how filings are handled.

New paragraph 5(d)(3) addresses failed submissions. In limited situations, efilings that do not comply with the efilings instructions or the system's formatting requirements may result in a submission failure. This means the document cannot be fully processed by the efilings system and it will not reach the queue for clerk review. In these situations, the efiler will receive an automated email notice from the electronic filing system that there was a failed submission.

Former (d)(3) regarding correcting an efilings is renumbered (d)(4) and amended to allow an efiler the benefit of the date of initial submission of a failed submission if corrected within 7 days. Because a failed submission does not appear in the clerk review queue, it is the efiler's responsibility to demonstrate the date a filing was initially submitted. During the efilings process, efilers sometimes experience an "internal error," which indicates that the information is nonresponsive—for example, when unusable credit card information is entered to pay for a filing—incorrect or incomplete and therefore cannot be processed. These internal errors do not result in a submission and therefore are not subject to the correction period. Instructions on how to resubmit a rejected filing or a failed submission are provided on the Judiciary website.  
<https://www.vermontjudiciary.org/about-vermont-judiciary/electronic-access/electronic-filing/faqs>

Former paragraphs (d)(4) and (5) are renumbered (5) and (6) without amendment.

New paragraph (d)(7) is added to provide a process for appealing a rejected efilings. The new provision indicates that the Court Administrator will provide an administrative process for reviewing the basis for a rejected efilings and delineate that process on the Judiciary website. It is expected that this process will be required in very few cases, only after an efiler and court staff are unable to resolve rejection disputes otherwise. The appeal must be initiated within 7 days from the date of rejection and the time for correcting 7 the filing is tolled

until the appeal is decided. There is no further appeal from this administrative appeal process.

Rule 5(e) regarding court staff processing in the Supreme Court is revised similarly to 5(d). Amended 5(e)(2) requires that a reason for rejection be provided and that court staff may reject a filing that contains an error which cannot be corrected by court staff, including filing into the wrong case or filing a subsequent filing as an initial filing. New 5(e)(3) addresses failed submissions. Former paragraphs (e)(3)-(5) are renumbered (e)(4)-(6). New (e)(7) contains a provision similar to (d)(7) on appealing a rejected efile.

Rule 5(g)(1) is amended to delete former subparagraphs (g)(1)(A) and (B), which allowed motions requesting alternative forms of relief to be filed in a single document but required motions requesting independent forms of relief to be filed separately. This rule has been difficult to implement in practice because the distinction between alternative and independent forms of relief was not easily ascertainable by court staff reviewing filings. Thus, the requirement was implemented nonuniformly. To achieve more clarity, new (g)(1)(A) requires that all motions be filed as separate lead documents. Submitting these motions as individual lead documents with the correct efile code will provide clarity for court staff, judges, and parties and ensure that the requests are each identified, tracked, responded to, and resolved. Former (g)(1)(C) is relabeled (g)(1)(B) and continues to require motions and responses to be filed separately.

Rule 5(g) is amended regarding supporting material for motions. New 5(g)(2)(A) allows a memorandum of law in support of a motion to be filed as part of the motion document itself or as a separate document. One memorandum may be filed in support of multiple motions or responses as long as the memorandum identifies the motions or responses to which it relates.

Under revised (g)(2) efilers must file supporting material, including affidavits or exhibits, separately from the motion or memorandum. The separate document must identify the motion(s) or response(s) to which it relates. Supporting material may be submitted either as individual files or as a single compiled document. Under (g)(2)(C), supporting material that is compiled into a single document must be numbered sequentially with numbers that match the electronic page counter. In other words, the first page (including the table of contents) should begin with page one. The references in the party's motion to the supporting material should use this numbering to allow other parties and the court to easily locate the referenced material. Under (g)(2)(C)(ii), the compiled document must begin with table of contents

that lists the page reference for each item. In deciding whether to submit supporting material as individual files or as a single, compiled document, the filer should consider the accessibility for the court and the parties. It may be difficult for the court to easily locate and view different types of supporting material at the same time if it is compiled into a single document.

## **RULE 6. NONELECTRONIC FILINGS**

(a) **In General.** If nonelectronic filing of a document is permitted or required by these rules court staff will scan the document in PDF format, or other format specified by the Court Administrator, and include it in the electronic file.

(b) **Impermissible Nonelectronic Filing.** If a document that is required to be filed electronically is filed nonelectronically, it will not be accepted or scanned.

(c) **Court Staff Processing in the Superior Court.**

(1) *Court Staff Review.* After scanning, court staff will review filings for compliance with these rules and Rule 7(a)(1) of the Rules for Public Access to Court Records.

(2) *Accepting or Rejecting a Filing.* If a filing is rejected because it does not comply with these rules or the Rules for Public Access to Court Records, court staff will provide the filer with notice and the reason for rejection.

(3) *Correcting a Filing.* If a filing is rejected, the filer may submit a corrected filing within 7 days after receiving notice of the rejection. The filer must indicate it is a corrected filing. The court may extend the time for correction for good cause. If the filing is rejected for noncompliance with V.R.P.A.C.R. 7(a)(1), the procedure and time limits for correction will be determined in accordance with V.R.P.A.C.R. 7(a)(3) and (4).

(4) *Filing Date.* When a filing has been accepted, the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the initial filing was submitted if the corrected filing complied with the time limits in (c)(3).

(5) *Assigning a Case Number.* Court staff will provide a case number for a new filing that has been accepted. The assigned case number must appear on all subsequent filings pertaining to the case.

(d) **Court Staff Processing in the Supreme Court.**

(1) *Court Staff Review.* Court staff will review all nonelectronic filings for compliance with these rules, the Vermont Rules of Appellate Procedure, and Rule 7(a)(1) of the Rules for Public Access to Court Records.

(2) *Accepting or Rejecting a Filing.* If a filing is rejected, court staff will provide the filer with notice and the reason for rejection. Court staff may reject a filing for noncompliance with Rule 7(a)(1) of the Vermont Rules for Public Access to Court Records, the applicable limit on the number of words in the brief as contained in V.R.A.P. 32(a)(4), the failure to include a word count in a brief as required by V.R.A.P. 32(a)(4)(D) or the failure to sign a document as required by these rules or the Vermont Rules of Appellate Procedure.

(3) *Correcting a Filing*. If court staff reject a filing pursuant to this subdivision, the filer may correct the filing as set forth in (c)(3), and (c)(4) will apply to determine the filing date.

(4) *Limit of Review*. This rule does not limit the actions the Supreme Court may take for violation of these rules, the Vermont Rules of Appellate Procedure, or the Vermont Rules for Public Access to Court Records.

(5) *Assigning a Case Number*. Court staff will provide a case number for a new filing that has been accepted. The assigned case number must appear on all subsequent filings pertaining to the case.

(e) **Existing Nonelectronic Filings**. When electronic filing is commenced under Rule 1, the Court Administrator may direct that court staff scan all or part of existing paper filings into the electronic case file.

### **Reporter's Notes—2020**

Rule 6 sets forth the way nonelectronic documents will be received by the Court generally and treated in relation to the electronic filing system. Subdivision 6(a) establishes that if a nonelectronic filing is either permitted or required by the rules for electronic filing, it will be scanned in PDF or other format designated by the Court Administrator and included in the electronic case file.

Rule 6(b) is addressed to circumstances in which a filer seeks to file a nonelectronic document which is required to be filed electronically. For example, a self-represented person, who has already electronically filed in a case, may appear at the court seeking to have nonelectronic documents received and filed, either as a matter of convenience, or perceived necessity. Subdivision 6(b) generally provides that a nonelectronic filing that is required to be electronically filed will not be scanned or accepted. Rule 3(b)(3) and (4) allow nonelectronic filing of particular documents or for particular cases for good cause or exceptional circumstances. Of course, an electronic filer's routine disregard of the requirements for electronic filing may result in appropriate court orders or sanctions, including but not limited to, a requirement that the person must engage exclusively in nonelectronic filing, in a manner consistent with the provisions of Rule 3(c).

Rule 6(c) outlines the procedures for court staff processing of nonelectronic filings. Under paragraph 6(c)(1), court staff scan and then review filings for compliance with the electronic filing rules and V.R.P.A.C.R. 7(a)(1). Under paragraph 6(c)(2), if the filing does not comply, the court will provide the filer with notice and

the reasons for the rejection. For nonelectronic filers, this notice will necessarily be sent by nonelectronic means. The scanned filing will be retained electronically pending correction.

Under paragraph 6(c)(3), the filer may submit a corrected filing within 7 days of receiving notice of the rejection. The filer must indicate that it is a corrected filing. The court may extend the time for good cause. Because the filer's time to correct is triggered by service of the notice of rejection, under V.R.C.P. 6(e), V.R.P.P. 6(d), and V.R.Cr.P. 45(e), an additional 3 days are added to the time a party must act if service is made by specified means, including by mail. The civil rule is incorporated by reference in V.R.F.P. 4.0(a)(2)(A) and V.R.E.C.P. 3, 4(a)(2), and 5(a)(2). If service is made by mailing, then it is complete upon filing under V.R.C.P. 5(b)(2) and V.R.P.P. 5(b). The civil rule is incorporated by reference in V.R.Cr.P. 49(b), V.R.F.P. 4.0(a)(2)(A), and V.R.E.C.P. 3, 4(a)(2), and 5(a)(2). Note that as to corrections for noncompliance with V.R.P.A.C.R. 7(a)(1), the provisions of V.R.P.A.C.R. 7(a)(3) and (4) control (the Court Administrator/reviewer determines date for correction as to public access compliance). The acceptance-and-correction provision relates solely to the electronic filing requirements. A filing that does not comply with other rule requirements may be subject to different time provisions. For example, the allowance of thirty days to submit an entry fee when a motion to proceed in forma pauperis is denied under V.R.C.P. 3.1(d).

Paragraph (c)(4) provides that when a filing has been accepted, the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the initial filing was submitted and scanned into the electronic system as long as the correction was made within the allotted time. Finally, paragraph 6(c)(5) establishes that court staff will assign a case number for a new filing that has been accepted, and that the assigned case number must appear on all subsequent filings pertaining to the case. Where an action may be commenced either by filing, or by service, such as is provided by V.R.C.P. 3, a responsive pleading may be filed prior to filing of the summons and complaint. In this and in like cases, the pleading will be scanned and retained electronically until the corresponding summons and complaint are filed, and the clerk will then open the case and assign a case number.

Rule 6(d) clarifies the status of existing nonelectronic filings when electronic filing begins. The rule contemplates that while conversion of all existing nonelectronic case files to electronic

format is not required, the Court Administrator may direct that court staff scan all or part of existing paper filings into the electronic case file. It is anticipated that the decision as to such scanning would consider such factors as the age, volume, and complexities of a given existing paper case file.

### **Reporter's Notes—2021 Amendment**

This rule is amended in connection with the introduction of efilings in the Supreme Court.

New subdivision (d) addresses staff review of filings in the Supreme Court. In all relevant aspects the new subdivision (d) is identical to Rule 5(e) as added at the same time as the addition to this rule. See Reporter's Notes to 2021 Amendment to Rule 5.

Subdivision (d) is amended to authorize the Court Administrator to direct scanning into the electronic case file, or not, of preexisting paper filings in cases active in the Supreme Court on the date efilings are implemented. This authorization is identical to that for preexisting trial court records.

## **RULE 7. FORMAT OF DOCUMENTS**

- (a) **Format Requirements for Electronic Documents.** An electronically filed document must:
- (1) be created, saved as, or converted to, PDF format as specified in (b), unless the court orders that it be filed in a different format;
  - (2) comply with the size limit specified in the efilings instructions;
  - (3) not contain a virus detected by the electronic filing system;
  - (4) be consistent with Rule 5(g) and (h), if applicable;
  - (5) be accompanied by a certification of compliance with the Rules for Public Access to Court Records by the method specified in these rules;
  - (6) not contain any password protection or other security device, and
  - (7) Not contain an embedded hyperlink or internal bookmark.
- (b) **Required PDF format.** To comply with subdivision (a)(1):
- (1) a document, other than those excluded in paragraph (2) of this subdivision, that is efiled or submitted pursuant to Rule 1(g) must be in the form of a text-searchable Portable Document Format (PDF) or a text searchable Portable Document Format/A (PDF/A) file and be directly converted to PDF rather than scanned if possible.
  - (2) a document that is an attachment or exhibit that is a scanned image of its original form may be in standard PDF format and need not be text searchable.

(c) **Format Requirements for Nonelectronic Documents.** A nonelectronically filed document must:

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

(2) contain a certification that it complies with Rule 7(a)(1) of the Vermont Rules for Public Access to Court Records.

(d) **Relation to Form and Formatting Requirements in Other Procedural Rules.** The formatting requirements in this rule are in addition to, and do not supplant, form and formatting requirements imposed by other procedural rules.

### **Reporter's Notes—2020**

Rule 7 provides the formatting requirements for electronically and nonelectronically filed documents. The requirements are mandatory and are largely self-explanatory. Failure to follow them can result in the rejection of a filed document.

The general requirement is that a document be filed in PDF format, but the court can order a different format. The court may order the filing of a specific document in another format—for example, the court could order a proposed order or findings of fact to be filed in MS Word so that the content can be more easily edited and used by the court. A filer who is filing a document in a different format pursuant to this exception must also file the court order authorizing use of this format so the staff reviewing the filing is aware of the court authorization.

Subdivision (b) states that the PDF format be text-searchable so the text can be captured for different purposes. For instructions on creating or converting a document to text searchable PDF see U.S. Ct. of App. for the Second Circuit, Making a PDF Text-Searchable, [http://www.ca2.uscourts.gov/clerk/case\\_filing/electronic\\_filing/how\\_to\\_use\\_cmecf/text\\_searchable\\_pdfs.html](http://www.ca2.uscourts.gov/clerk/case_filing/electronic_filing/how_to_use_cmecf/text_searchable_pdfs.html) [<https://perma.cc/6L6B-LY73>].

The requirement that the document be text-searchable does not apply to attachments and exhibits as they are not documents created for litigation.

Rule 7(c) provides formatting requirements for nonelectronically filed documents. The rule provides that generally documents should be legible with text visible. Because court staff will scan these documents, it is highly recommended that filers do not use staples to secure pages or exhibit separator pages.

### **Reporter's Notes—2021 Amendments**

This rule is amended in connection with the introduction of efilings in the Vermont Supreme Court. Subdivision (a) is amended to modify the cross-reference to Rule 5 to reflect the relettering of the applicable sections and to make clear that the cross-reference to Rule 5 is only to subdivisions that apply to the efiler. It is also amended to reflect another system requirement that the document not contain an embedded or live hyperlink or internal document. The document may contain an internet path that is not live but can be used by copying it into an internet browser.

Subdivision (d) is added to make clear that the formatting requirements of this rule are additional to any form or formatting requirements imposed by other procedural rules. An example of such rules are the formatting requirements contained in the 2021 amendments to V.R.A.P. 32.

### **RULE 8. EXHIBITS.**

(a) **Filing of Proposed Exhibits.** All documents and photographs which are offered into evidence as exhibits will be added to the electronic casefile unless the offer is withdrawn.

(b) **Admitted Exhibits.** If a document or photograph is admitted into evidence, court staff must tag the electronic case record to reflect the admission.

(c) **Physical Exhibits.** Physical exhibits that cannot be added directly to the electronic casefile will be added to the nonelectronic file and the court may order that they also be scanned or photographed, and the image added to the electronic casefile. Admitted exhibits must be tagged and the electronic case record must reflect the admission.

### **Reporter's Notes—2020**

Rule 8 reflects the policy that exhibits offered into evidence (and not later withdrawn) should be made part of the electronic casefile. If the court rules that an exhibit is inadmissible, it is important for the proffered exhibit to be made part of the electronic case file for purposes of any appellate review. The court has flexibility to determine how the policy will be implemented in the particular case. If a proposed exhibit is a photograph or document and the proponent of admission is an electronic filer, the judge may order that the proponent of admission efile the exhibit prior to the hearing or trial. Alternatively, the judge may direct that court staff scan and place proposed exhibits into the electronic casefile at the time of the hearing or trial. However, the proposed exhibit enters



the electronic casefile, the file must reflect its admission if that occurs.

Some proposed exhibits cannot be scanned and are not preexisting photographs—for example, a weapon alleged to be used to commit a crime. In such a situation, the court can allow the exhibit to be added to the nonelectronic case file under Rule 8(c). The court may also require that an image of the proposed exhibit be made by scanning or photographing, and that the image be included in the electronic casefile. Whether or not the image of the proposed exhibit is reflected in the electronic casefile, that file must show if the exhibit was admitted under Rule 8(b).

## **RULE 9. SIGNATURES**

### **(a) Signing Form and Effect.**

(1) *Representations.* The electronic filing of a document, created by or on behalf of the electronic filer, constitutes the efiler'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.P.P. 11, V.R.Cr.P. 49(d), and V.R.A.P. 25(d).

(2) *Signing Electronic Document.* An electronically filed pleading, motion, or other submission of an electronic filer, 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, mailing address, and the email address used to register under Rule 4.

(3) *Signing Nonelectronic Document.* A pleading or motion or other submission of the filer, nonelectronically filed, when permitted under Rule 3(b) or otherwise required by these rules, must be signed as provided in the applicable rules of procedure.

(4) *Stipulations and Signed Documents Related to Merits.* If a stipulation or other signed document relevant to the merits of any issue in an action or proceeding is electronically filed 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 nonelectronically filed as permitted under Rule 2(b), the original or a legible copy must be filed, unless otherwise provided in the applicable rules of procedure or other provisions of law.

### **(b) Multiple Signatures.**

(1) A submission of the type specified in (a)(2) or (a)(3), filed jointly by an electronic filer and other parties or counsel aligned in interest with the filer, must contain the signature of the efiler and the other parties or counsel in the form provided in (a)(2) or (3). If such a document is filed electronically, the efiler'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 efiler must be filed and signed as provided in (a)(4).

(3) The filer of any document containing the signatures of one or more persons other than the filer 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 Requiring a Notary.**

(1) *Electronically Filed.* Electronically filed documents that would otherwise require the approval or verification of a notary must be filed by one of the following methods:

(A) in accordance with 4 V.S.A. § 27b; or

(B) The original—signed and attested as provided in the applicable rules of procedure or other provisions of law—must be scanned and efiled by the efiler. The efiler 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 efilings or final disposition of the action, including the disposition of all appeals or the running of the time for appeal.

(2) *Nonelectronically Filed.* To nonelectronically file a document that requires the approval or verification of a notary, the filer must sign the document and have it notarized as provided in the applicable rules of procedure or other provisions of law. The filer is not required, however, to submit the original. If the original is not filed, the filer must retain the original of the document available for inspection by the signers or the court in the manner and for the duration specified in subparagraph (c)(1)(B). The filer may either:

(A) At any court location, present the original to be scanned into electronic format by court staff and retain the original; or

(B) Make a paper copy of the original, send the copy to the court for filing, and retain the original.

**(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) Judicial officers must create, through the Office of the Court Administrator, and maintain an electronic facsimile of their signature.

(B) Judicial officers may sign any court-generated document created and to be sent or filed in electronic form with their electronic facsimile signature followed by a signature block containing the signer's typed name and title. That signature has the same effect as a handwritten signature on a nonelectronic document.

(C) When judicial officers use an electronic facsimile signature on a document sent from their official state email address or from another email address registered with the Court Administrator, or file it in the electronic filing system, the signature is presumed valid.

(D) Judicial officers may delegate use of their electronic facsimile signature to an authorized designee. Whenever a designee uses the facsimile signature, the designation must be disclosed on the document.

(E) Unauthorized use of an electronic facsimile signature renders invalid the document that was issued with the unauthorized signature unless the judicial officer ratifies 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, parent coordinators, and neutrals required to file

a report, are deemed signed by senders if transmitted from their official state or professional email address or filed by them in the electronic filing system accompanied by a signature block containing the signer's typed name and title.

### **Reporter's Notes—2020**

Rule 9 addresses signatures on two types of documents, those created by or on behalf of the filer for the litigation—labeled “procedural documents” in the 2010 version of the rule, and those documents that are evidence with respect to issues in the litigation—called documents “relevant to the merits” in the 2010 version of the rule. Rule 9 generally follows the organization and content of Rule 7 of the 2010 Vermont Rules for Electronic Filing.

This rule first addresses signatures on litigation documents created by the filer. The rules of procedure governing each of the divisions of the superior court require all, or virtually all, documents created by the filer to be signed by the filer. See V.R.C.P. 11(a) (“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 a party is not represented by an attorney, shall be signed by the party”) (governs civil, family, and environmental proceedings); V.R.Cr.P. 7(b) (the indictment or information “shall be signed by the prosecuting officer on his oath of office”), V.R.Cr.P. 49(d) (“Every written motion, written notice or similar paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney’s original name, whose address shall be stated. A defendant who is not represented by an attorney shall sign the motion, notice or similar paper and state his address”); V.R.P.P. 11(a) (“The petition shall be signed by each petitioner. Every other pleading, written motion, and other paper 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.”).

In general practice most documents prepared for the litigation are signed. Typically, paper filings have been accompanied by a signed transmittal letter addressed to the court clerk. Such a letter is unnecessary for electronic filings that are filed into statewide electronic casefiles. Attachments to a pleading or motion are not required to be signed.

The signing requirements are not changed by this rule either for electronic or nonelectronic signing. The method for signing for electronic filing is simplified. The filing alone constitutes the

filer's signature for all purposes. Multiple options of displaying a signature are authorized by Rule 9(a)(2).

Litigation documents of the type described above may be signed by one or more parties or their attorneys. In such a case, Rule 9(b)(1) requires that the document contain a display of each signature as provided in Rule 9(a)(2) or (3). The filing of the document is the equivalent of the filer's signature and additionally is a representation of the filer that parties and attorneys have consented to their signature as displayed. Under Rule 9(b)(3), the filer must retain the original or an electronic copy of the filing for the duration of the litigation or a period of two years, whichever is longer, in case a dispute arises over whether the signature of a nonfiler was authorized.

Where a litigation document is filed nonelectronically, a signature that complies with the applicable rule of procedure is required under Rule 9(a)(3).

Signatures for the second type of document, that is documents that are evidence with respect to the merits of the litigation, are addressed in Rule 9(a)(4). The electronic filer must scan the document, including the signature or signatures, and file a PDF version of the document. The nonelectronic filer can file the original or a legible copy, unless a rule or provision of law dictates otherwise.

The procedure for filing a document signed under oath is provided in Rule 9(c). There are two methods for efilng. An efiler may follow the procedure set out in 4 V.S.A. § 27b that states the efiler may file "the document with the following language inserted above the signature and date: 'I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury.' " 4 V.S.A. § 27b(a). Alternatively, an efiler may efile a copy and retain the original or electronic copy of the filing for the duration of the litigation or a period of two years, whichever is longer, in case a dispute arises.

A nonelectronic filer must have the original document signed and notarized but is not required to submit the original for filing. The filer may either bring the document to any court location for court staff to scan into electronic form or make a photocopy of the original and send it to the court for filing, such as by mailing. If the original is not filed, the nonelectronic filer must retain the document in the manner and for the duration specified in

subparagraph (c)(1)(B) herein. Caution should be used in nonelectronic filing of the original of any signed and notarized document because under Rule 12(b), the court is not required to maintain a nonelectronically filed paper document after it has been converted to electronic form. This may not be of concern for paper documents routinely submitted in proceedings on court forms such as applications to proceed in forma pauperis, or for assignment of counsel, or affidavits of income and assets in the family division. However, this may present particular concerns as to preservation of an original signed and notarized document that is of use and value outside of a case in which it may be filed. See Reporters Notes to Rule 12(b).

Subdivision (d) continues Rule 7(d) of the 2010 Vermont Rules for Electronic Filing with minor wording changes. The system for judicial and court personnel electronic signatures is in place and has worked since its adoption.

## **RULE 10. PAYMENT OF COURT FEES AND EFILING FEES**

### **(a) Paying Court Fee; Correcting Failure to Pay.**

(1) *Electronic Filing.* If an electronic filing requires payment of a court fee, an efile fee, or both, the efiler must either pay the fee(s) on filing or file an application to waive filing fees and service costs. Court staff will reject an efile that does not comply with this rule as set out in Rule 5(d) and (e). The procedures in Rule 5(d) for correcting a noncompliant efile and determining the filing date apply. No advance deposit on account of future fees will be accepted.

(2) *Nonelectronic Filing.* If a nonelectronic filing requires payment of a court fee, the filer must either pay the fee on filing or file an application to waive filing fees and service costs. The consequences for noncompliance are as specified in the applicable rule of procedure.

(b) **Payment Manner.** Court fees for electronically and nonelectronically filed documents must be paid in a manner approved by the Court Administrator.

(c) **Applying to Waive Court Fees.** A party who wishes to waive court filing fees and service costs must comply with the provisions of the applicable rules of procedure.

(d) **Exemption from EFiling Fee.** Efile fees will not be applied in the following circumstances:

(1) Court staff and other persons who participate in court proceedings in an official judicial position are exempt from fees when they file pursuant to their judicial responsibilities.

(2) Whenever a statute exempts a particular filer from paying a court filing fee, that filer will also not be required to pay an efile fee.

## **Reporter's Notes—2020**

This rule addresses payment of court fees and efilings fees. Court filing fees are as generally prescribed in 32 V.S.A. chapter 17. Pursuant to 32 V.S.A. § 1433, the state is not required to pay filing fees. Except as provided in 32 V.S.A. § 1431(e), there are no filing fees in criminal division proceedings. No filing fees are required in proceedings for relief from abuse, 15 V.S.A. § 1103(f), abuse prevention for a vulnerable adult, 33 V.S.A. § 6933(b), or for orders against stalking or sexual assault, 12 V.S.A. § 5133(f). Waiver of court fees is for persons found to be unable to pay a filing fee under 32 V.S.A. §§ 1431(h) and 1434(b), and V.R.C.P. 3.1 and V.R.P.P. 3.1.

The failure to pay a required court fee at time of efilings or to seek an authorization to waive filing fees or service costs if such an authorization is not in place will result in rejection of the attempted filing. As specified in Rule 5(d)(3), the efiler then has 7 days to correct the deficiency. If the deficiency is corrected in time, the efilings will be accepted, and the filing date will be the date of the initial attempt.

Note that subdivision (a) applies only in the normal situation where the filer must pay the required fee to make the efilings effective. There is at least one situation where paying the required fee is not required to make the filing effective. Vermont Rule of Appellate Procedure 3 provides that “an appellant’s failure to take any step other than the timely filing of a notice of appeal does not affect the appeal’s validity but is ground for the Supreme Court to take any appropriate action, including dismissal.”

Filing a request for a waiver crosses only the first hurdle of avoiding a dismissal. For proceedings governed by the Vermont Rules of Civil Procedure, if the request is denied by the clerk, the efiler has 7 days to appeal to the presiding judge. See V.R.C.P. 3.1(b)(5). If the judge denies the appeal, the efiler has 30 days to pay the fee or the action is dismissed. V.R.C.P. 3.1(d). In probate court, the initial decision is by the judge so rejection by the judge creates the obligation to pay within 30 days or face dismissal. See V.R.P.P. 3.1(d).

The authorized methods of paying costs and fees are not stated in the rule. They are determined by the Court Administrator and stated on the Vermont Judiciary website.

Subdivision (d) addresses the second type of fee—a fee to make an electronic filing or to effect service through the electronic filing system imposed by the electronic filing system vendor. Under Rule 10(d)(2) if an efiler would be obligated to pay a court fee for the efilings, but the efiler is exempt from payment of the fee or payment of the fee is waived, the efiler is not required to pay an efilings fee for filing or service. Further, court staff and persons acting in an official capacity on behalf of the court—for example, masters, parent coordinators, guardians ad litem, and court-ordered forensic evaluators—are exempt from paying an efilings fee.

### **Reporter’s Notes—2021 Amendments**

Paragraph (a)(1) is amended to modify the cross-reference to Rule 5(d) and (e) to refer to both review in the superior courts and the Supreme Court.

## **RULE 11. SERVICE**

### **(a) Personal Service.**

(1) *Nonelectronic Service.* Whenever personal service is required by rule or statute, or a specific nonelectronic method is authorized for commencement of an action, the person making service must do so nonelectronically.

(2) *Return of Nonelectronic Service.* Any required return of nonelectronic service must be filed electronically in accordance with Rule 3(a) unless otherwise provided in Rule 3(b) or by the applicable rules of procedure. A party’s waiver or acceptance of service of original process, given in accordance with the applicable rules of procedure, must be electronically filed if Rule 3(a) applies.

(b) **Service in General.** When Rule 11(a)(1) does not apply, the person making service must do so in accordance with this rule.

(c) **Discovery.** An efiler must serve discovery requests or responses, which are not required to be filed with the court, on an efiler using the electronic filing system unless the parties agree on an alternative method of service.

### **(d) Service of Electronic Filings Between eFilers.**

(1) *Service Through Efilings System.* Service of electronic filings between efilers must be effected using the electronic filing system by choosing File and Serve and selecting the party from the Public List at the time of filing, unless there is an agreement under paragraph (2).

(2) *Exception to Service Through Efilings System by Agreement.* Electronic filers may agree on an alternative method of service for a particular document or case if:

(A) the agreement is in writing, is signed by the parties to the agreement, and is clearly labeled as an agreement for an alternative method of service;

(B) the agreement provides the email addresses for service of each party to the agreement where service is by email;

(C) the agreement has been filed and served in the electronic filing system using the service contact of each of the parties to the agreement; and

(D) each filing served pursuant to the agreement is accompanied by a certificate of service that complies with paragraph (g)(2) of this rule.

(e) **Service of Nonelectronic Filings or Service on Nonfiler.** Service of a nonelectronically filed document or on a party who is either not an efiler in the case or has failed to provide service contacts must be made by the means specified in the applicable rules of procedure.

(f) **Notice of Court Orders and Documents.** The court will transmit any notice, order, or other document issued by the court to electronic filers by electronic means. Notice to parties who are not electronic filers will be provided by the means specified in the applicable rules of procedure for circumstances where these rules specify no alternative means.

**(g) Certifying Compliance with Service Requirements.**

(1) *Certifying Service Using Submission Agreement.* All efilers must certify compliance with service requirements by completing the submission agreement described in paragraph (g)(3) and contained within the efilings screens. Failure to certify compliance accordingly will prevent completion of the efilings process.

(2) *When Additional Filing of a Certificate of Service Is Required.* An efiler must file a certificate of service complying with V.R.C.P. 5(h) or V.R.P.P. 5(e), as applicable, describing and certifying service on any of the following persons:

(A) a party who is not required and has not elected to efile in the case;

(B) a party who has failed to provide a service contact; or

(C) a party with whom the efiler has an agreement for an alternative method of service under paragraph (d)(2).

(3) *Content of Submission Agreement for Service.* Completion of the submission agreement is subject to the obligations of V.R.C.P. 11. The submission agreement must provide that for any filing that must be served, the efiler has either:

(A) completed service by using “File and Serve” and choosing the service contact from the Public List; or

(B) filed a certificate of service complying with paragraph (2) of this subdivision.

**Reporter’s Notes—2020**

Rule 11 provides the specifications for service of process and other documents in a case. Rule 11(a) addresses service where a rule or statute requires personal service or authorizes a specific method of service for commencement of an action. Personal service is defined in Rule 2 and is generally the type of service required for commencement of an action although it may be required in other contexts. See Green Mountain Junior Coll. v. Levine, 120 Vt. 332, 334, 139 A.2d 822, 824 (1958); Personal Service, Black’s Law Dictionary (10th ed. 2014); see, e.g.,



V.R.C.P. 45(b) (service of a subpoena). As Rule 11(a) of the 2010 Vermont Rules for Electronic Filing itemizes, appeals to the superior court from administrative agencies or the probate court commence an action. In specific circumstances, other methods of service may be authorized for commencement of an action. See, e.g., V.R.C.P. 4(f), (g), (k). The actions taken to make personal service or to commence an action generally occur outside the court and without court involvement until service is completed. At that point, the party that is commencing the action must file a return of service or a waiver of a requirement of service. Unless Rule 3(b) applies, this filing must be electronic.

Discovery requests and responses are generally required to be served but not to be filed in the court. See, e.g., V.R.C.P. 5(d). In such a circumstance, Rule 11(c) authorizes the person making the request or transmitting the response to use the electronic filing system to make service even though no filing will occur. This is an authorization, and not a requirement, so any other method of service authorized by statute or court rule may be used. Rule 11(c) does not apply where the filer files and serves a document even if it is related to discovery—for example a certification that discovery has occurred.

Rule 11(d) provides that the primary method of service of an electronically filed document between efilers is through the electronic filing system. Under this method, an efiler submits a document to the efilings system and then the system transmits to the other parties a notice that a filing has been made and the method of viewing that filing. Service by the electronic filing system will occur only after clerk review and acceptance of the filing. This means that the date of filing a document may differ from the date a document is served. The filer has the benefit of the date the document is submitted to the efilings system under Rule 5(c)(1) but the receipt of the efilings for purposes of service will not occur until after the efilings has been accepted by court staff and a notification sent to the other parties. For paper filings, the date of receipt is the date of transmission and not the date that the notice is actually opened by a party. See Coles v. Coles, 2013 VT 36, 193 Vt. 605, 73 A.3d 681 (holding that receipt of filing means time of its arrival in mailbox, and not when recipient opens mail). Similarly, for an efiled document, the date of receipt is the date the recipient is notified that the document is available and not the date the recipient first views the document.

The requirement to use the electronic filing system to make service does not prevent service by email or another method if

agreed to by the parties. Service by the electronic filing system will occur only after clerk review and acceptance of the filing; at times due to the delay of acceptance because of the volume of filing, alternative methods will be more timely, but the document served may need modification as a result of the review. The alternative method is effective until the system provides notice that the document is available for viewing. At that time, the required method of service is complete and controls over the alternative method. Note that a person may use a supplementary method of service—for example, service by email—even without agreement to give immediate actual notice. The service done in this way is not a substitute for service required by the rule but may supplement such service.

Under Rule 11(e), service of a nonelectronically filed document or service on a party who is not an efiler or has not provided service contacts or service by a person who is not an efiler, must be done by traditional means as specified in the applicable procedural rules. Note that Rule 5(b)(7) requires efilers to provide service contacts at commencement of an action or first appearance and Rule 4(b)(3) requires efilers to keep service contacts current. It is possible, however, that an efiler will fail to comply with the obligation to provide service contacts making it impossible to serve that efiler through the system. In that case, the efiler must be served through traditional means. If service contacts are provided, an efiler may serve to those contacts even if it turns out the contacts are not current and fail to provide notice.

Although the specific means may be different in the case management system, the method of service of court notices, orders or other documents will be essentially the same as the method of service of party filings. The efilers will receive notice of the court filing with directions on how to view the filing. Parties who are not efilers will receive notice by traditional means specified in the applicable rules of service. Rule 11(f).

Rule 11(g) creates a more streamlined method of certifying completion of service on parties served through the electronic filing system, while maintaining the certificate of service requirement established by the applicable rules of procedure if subdivision (e) applies and one or more parties must be served by traditional means. If all parties are served through the electronic filing system, no separate certificate of service is required under Rule 11(g)(1). If at least one party must be served nonelectronically, a certificate of service complying with the applicable rule of procedure must be filed. Rule 11(g)(2);

V.R.C.P. 5(h) (applicable in family, environmental and criminal cases by cross-reference in the applicable rules); V.R.P.P. 5(e); V.R.F.P. 2(a)(1), (2) (incorporating V.R.C.P. 5 in CHINS proceedings), 4.0(a)(2) (divorce and other family proceedings); V.R.E.C.P. 3(a), 4(a)(2), 4(a)(3); V.R.E.C.P. 5(a)(2); V.R.Cr.P. 49(b), (c).

In either case, the filer must check a box in the electronic filing system certifying compliance with the rule as required by Rule 11(g)(3). The substance of the certification is also described in Rule 11(g)(3), although the exact words are not prescribed.

Failure to certify by checking the applicable box will prevent efilings of the document. Rule 11(g) provides that a filer who certifies improperly under Rule 3(g)(3) can be subject to sanction under V.R.C.P. 11(c) in any type of case, even where that sanction rule would not otherwise apply. This is to ensure that the sanction regime is common to all types of efilings.

This streamlined system is possible because, with respect to service on efilers with service contacts, the information necessary to determine who was served and how service was accomplished resides in the electronic filing system and can be retrieved. The availability of this information from a dependable source has caused the federal judiciary and some state courts to eliminate the need for any certificate of service in that instance. See F.R.C.P. 5(d)(1)(B); Minn. Gen. R. Prac. 14.05. This rule continues the certification requirement, albeit in a simplified manner, to make the filer aware of the service responsibility.

Self-represented litigants must comply with the service requirements of Rule 11 to the extent they have efiled in a particular case and triggered the obligations of an efiler.

### **Reporter's Notes—2021 Amendment**

Rule 11(d) is amended regarding how to serve parties who are efilers and how to employ any alternate method of service among efilers. Amended paragraph 11(d)(1) clarifies that service of electronic filings between efilers must be made using the electronic filing system by choosing the “File and Serve” function at the time of filing and selecting the party from the Public List, unless there is an efiled, written agreement among the parties for alternative methods of service, consistent with the requirements of amended paragraph 11(d)(2). Election of the “File and Serve” function

specified in the rule, as necessary to enable the system to complete the service transmission. Selecting only “File” or using the “courtesy copy” field to enter opposing party’s email address is not considered service; courtesy copies are not tracked, and receipt is not verifiable.

Amended paragraph 11(d)(2) continues to allow agreements among efilers for alternative methods of service, and further prescribes the conditions of such agreements. Subparagraph (A) requires that the agreement must be in writing, signed by the parties, and clearly labeled as a separate agreement for an alternative method of service. Under subparagraph (B), the agreement must provide the email addresses for service of each party to the agreement where the alternate service method is by email. Under subparagraph (C), the agreement must be filed and served in the electronic filing system using the service contact of each of the parties to the agreement, prior to any service by the agreed alternative means. And, under subparagraph (D), each filing served pursuant to the agreement must be accompanied by a certificate of service that complies with Rule 11(g)(2).

The reference to agreements for a “supplemental” method of service in the former subparagraph (d)(2) is deleted. Parties are not precluded from separately providing copies of documents to be served by other means as a matter of courtesy, or to provide actual notice of a filing; however, as indicated above, such supplemental transmission does not comply with required service obligations or trigger the reply date otherwise available to the responding party under any applicable rule.

Consistent with existing subdivision (c), service via the electronic filing system of discovery requests or responses (which are not required to be filed with the court per V.R.C.P. 5(d)) remains within the election of the serving party, who may choose to employ alternative means instead consistent with V.R.C.P. 5(b).

Subdivision (g) is amended to clarify certification of compliance with service requirements in efilings via a submission agreement, as well as to detail circumstances in which a separate certificate of service, complying with either V.R.C.P. 5(h) or V.R.P.P. 5(e), is required. Amended paragraph (g)(1) requires that all efilers must certify compliance with service requirements in a submission

agreement, as set forth in paragraph (g)(3) and contained in the efilings process. Where all parties are efilers who are served via the system File and Serve function, the (g)(3) submission agreement contemplates the filer's certification that all parties are efilers with service contacts, and served through File and Serve, by checking the indicated submission agreement box. Where not all parties are efilers, the additional requirement of a certificate of service per subparagraph (g)(2) applies. A failure to make the certification will prevent the efilings from occurring, since the efiler will be precluded from advancing beyond this step.

Amended paragraph (g)(2) addresses the efiler's obligation to file an additional certificate of service, apart from the required submission agreement certification. An additional certificate of service, complying with V.R.C.P. 5(h) or V.R.P.P. 5(e) as applicable, is required when serving: (A) a party who is not required to efile and has not elected to efile; (B) a party who has failed to provide a service contact; or (C) a party with whom the efiler has an agreement for an alternative method of service under subparagraph (d)(2).

Where multiple documents are simultaneously filed and served and subparagraph (g)(2) is applicable, one certificate of service referencing them all may be filed as an attachment, in the same efilings "envelope," in the manner authorized by V.R.C.P. 5(h) and V.R.P.P. 5(e).

Revised paragraph (g)(3) prescribes the content of the required submission agreement certification as to service. The certification details that, for any filing that must be served, the efiler has included a certificate of service complying with paragraph (g)(2), and that any remaining parties have service contacts and have been served through the system File and Serve function. The certification of the submission agreement is subject to the obligations of V.R.C.P. 11 (as was the case with the service certification requirement of the former paragraph (g)(3)).

The amended paragraph (g)(3) refers to "any filing that must be served," meaning that authorized ex parte filings are not subject to the service certification requirement (although post-filing service requirements may be governed by the specific requirements of an

applicable procedural rule, then invoking the service and certification requirements of Rule 11).

### **Reporter's Notes—2022 Amendment**

Rule 11(c) is amended to conform to simultaneous amendment of Rule 5(b)(2)(D) of the Vermont Rules of Civil Procedure, which requires efilers to serve discovery using the electronic filing system, unless the parties agree on an alternative method of service. Alternatives and agreements authorized for such service are as stated in the latter rule as amended and accompanying Reporter's Notes.

## **RULE 12. OFFICIAL RECORD; CERTIFIED COPIES**

(a) **Official Record.** If an electronic version of a document exists in the electronic case management system, it is the official record regardless of whether the document was electronically filed or nonelectronically filed and converted to electronic form.

(b) **Maintaining Nonelectronic Document.** Unless otherwise provided, the court is not required to maintain a nonelectronically filed paper document after it has been converted to electronic form.

(c) **Exception for Nonelectronic Documents Which Must be Retained by Law.** Notwithstanding 12(b), where required by statute or other provision of law, the court must retain the paper document, even if the document has also been converted to electronic form.

(d) **Certified Copies.** Certified copies may be issued in the conventional manner or in any manner authorized by law.

### **Reporter's Notes—2020**

Under Rule 12(a), irrespective of whether a paper version of a document exists, the electronic version, whether efiled or scanned from a paper version, is the official record. This enables the court to destroy the paper version of records. While some documents are created and filed solely for purposes of the pending case, filers—particularly those who are filing on paper—should not file the original version of an important document that is of extrinsic use or value apart from the case in which filed, for any reason, including as an attachment or exhibit. For example, the original paper rental lease that is the subject of litigation should not be filed. Similar documents would be a will, trust document, power of attorney, deeds of conveyance of interests in realty, sworn

financial statements prepared for commercial use, and the like. The paper document may be scanned and destroyed and, thus, become unavailable to the filer in the future. Paper filers may file a copy of the document or present the original in person at a court facility for scanning and return.

#### **Reporter's Notes—2023 Amendment**

New subdivision (c) expressly mandates retention of a paper document by the court when required by statute or other provision of law. Contemporaneous amendment of V.R.P.P 5(e) and addition of V.R.P.P 78 delineate testamentary documents and vital records as those that must be provided on paper subject to retention and ultimate disposition in the Probate Division. When paper documents are submitted under V.R.P.P. 78, the filer should notify the court that the paper version must be retained for the duration of the case as provided in V.R.P.P. 8(c)(2). Former subdivision (c), regarding certified copies is relabeled as (d).