

SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR



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TO: Members of the Vermont Bar
FROM: Patricia Gabel, Esq., State Court Administrator
RE: Promulgated, Proposed Rule Amendments, and Miscellaneous Information
DATE: November 8, 2018

For your information, please find the following information:

- [Order Promulgating Amendments to Rule 4\(a\) of the Vermont Rules of Admission to the Bar of the Vermont Supreme Court](#)
- [Order Adding Rule 3\(e\) and Amending Rule 5\(f\) of the Vermont Rules of Probate Procedure](#)
- [Proposed Amendment to Rule 77\(e\) of the Vermont Rules of Probate Procedure](#)
- [Proposed Amendment to Rule 18\(d\) of the Vermont Rules for Family Proceedings](#)
- [Proposed Order Abrogating and Replacing Rule 79.2 of the Vermont Rules of Civil Procedure, Rule 79.2 of the Vermont Rules of Probate Procedure, and Rule 53 of the Vermont Rules of Criminal Procedure](#)
- [Proposed Order Abrogating and Replacing Rule 35 of the Vermont Rules of Appellate Procedure](#)
- [Proposed Order Promulgating Administrative Order No. 46](#)
- Updated Court Forms
- Obligations Under A.O. 41
- eCabinet Registration

I. PROMULGATED RULE AMENDMENTS

- a. [Order Promulgating Amendments to Rule 4\(a\) of the Vermont Rules of Admission to the Bar of the Vermont Supreme Court](#)

This Order was promulgated November 5, 2018; effective January 7, 2019.

Rule 4(a) is revised to add two members to the Character and Fitness Committee, one attorney and one nonattorney. This change is being made to allow for more efficient processing of character and fitness report reviews during high-need times and for more members to be available for three-member panels. Because the overall size of the Board is increased from four to six, Rule 4(a)(7) is revised to increase the quorum requirement from three to four.

- b. [Order Adding Rule 3\(e\) and Amending Rule 5\(f\) of the Vermont Rules of Probate Procedure](#)

This Order was promulgated November 5, 2018; effective January 7, 2019.

Rule 3(e) is added to provide a “prisoner’s mailbox” procedure for the filing of a petition in a probate proceeding by an inmate confined in an institution. The amended rule is virtually identical to

V.R.A.P. 4(f), adopted effective March 13, 2017, and V.R.C.P. 3(b), adopted effective August 13, 2018.

Rule 5(f) is redesignated as Rule 5(f)(1) and Rule 5(f)(2) is added to provide a “prisoner’s mailbox” procedure for the filing of documents after the petition in a probate proceeding by an inmate confined in an institution. The provision is virtually identical to the simultaneously added V.R.P.P. 3(e) providing the procedure for inmate filing of a petition. It is also substantially identical to V.R.C.P. 5(e)(4) and V.R.A.P. 25(a)(2)(C), promulgated effective August 13, 2018.

II. PROPOSED RULE AMENDMENTS

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

a. [Proposed Amendment to Rule 77\(e\) of the Vermont Rules of Probate Procedure](#)

The proposed amendment conforms Rule 77(e)(1) to the provisions of 14 V.S.A. § 2(c) as amended by Act 195 of 2017 (Adj. Sess.), §1. The proposed amendment conforms Rule 77(e)(2) to a change in 14 V.S.A. §2 (e) also enacted by Act 195 of 2017 (Adj. Sess.), § 1, which provided that the prohibition of public inspection of the index of wills, like the prohibition of public inspection of wills, applies “during the life of the testator.” The proposed amended rule is intended to make clear that the death of a testator does not open the index to public inspection but authorizes the register to make the limited disclosure of information in it concerning a particular testator permitted by Rule 80.4(b).

Comments on this proposed amendment should be sent by **January 7, 2019**, to Hon. Jeffrey Kilgore, Chair of Advisory Committee on the Vermont Rules of Probate Procedure, at the following address:

Hon. Jeffrey Kilgore
Washington Probate Division
65 State Street
Montpelier, VT 05602
Jeffrey.Kilgore@vermont.gov

b. [Proposed Amendment to Rule 18\(d\) of the Vermont Rules for Family Proceedings](#)

The proposed amendment to Rule 18(d)(1) clarifies the process for appointment of a mediator when appointment has been ordered under subdivision (b). Under subparagraph (A), represented parties may choose the mediator. Under subparagraph (B), if the parties do not agree on a choice, or one or more of them is self-represented, the parties and the court may agree on a mediator from the Family Division Mediation Program’s list of mediators. If the parties cannot agree on an individual, the court may appoint a mediator from the list. If no mediator from the list is available, the court may appoint a mediator whose credentials are at least comparable to those for inclusion on the list. Those credentials include domestic-violence training.

Comments on this proposed amendment should be sent by **January 7, 2019**, to Hon. Michael Kainen, Chair of the Advisory Committee on the Vermont Rules for Family Proceedings, at the following address:

Hon. Michael Kainen, Chair
Windsor Civil Division
12 The Green
Woodstock, VT 05091
Michael.kainen@vermont.gov

- c. [Proposed Order Abrogating and Replacing Rule 79.2 of the Vermont Rules of Civil Procedure, Rule 79.2 of the Vermont Rules of Probate Procedure, and Rule 53 of the Vermont Rules of Criminal Procedure](#)

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

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

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

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

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

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

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

The comment period for this proposed amendment has been extended. Comments on this proposed amendment should be sent by **January 14, 2019**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
emily.wetherell@vermont.gov

d. [Proposed Order Abrogating and Replacing Rule 35 of the Vermont Rules of Appellate Procedure](#)

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

The comment period for this proposed amendment has been extended. Comments on this proposed amendment should be sent by **January 14, 2019**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
emily.wetherell@vermont.gov

e. [Proposed Order Promulgating Administrative Order No. 46](#)

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

The comment period for this proposed order has been extended. Comments on this proposed order should be sent by **January 14, 2019**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
emily.wetherell@vermont.gov

III. MISCELLANEOUS

a. Court Forms

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

b. Obligation under A.O. 41

Attorneys are reminded that an “attorney must report to the State Court Administrator within thirty days any change of the office mailing or electronic mail address” and that “[n]otice sent to a reported address is sufficient even if not received by the attorney because of failure to report the proper address or failure of delivery not caused by the court.” A.O. 41, § 4(c); see A.O. 44, § 1.

Please email those changes to JUD.AttyLicensing@vermont.gov. Your cooperation is very much appreciated.

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

c. eCabinet Registration

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

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

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

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

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

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