

SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR



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TO: Members of the Vermont Bar
FROM: Patricia Gabel, State Court Administrator
RE: Promulgated and Proposed Rule Amendments and Miscellaneous Information
DATE: June 14, 2018

For your information, please find the following information:

- [Order Promulgating Amendments to Rules 7\(c\), 9\(b\)\(1\), 11, 12\(a\), and 13\(b\) and \(e\) of the Vermont Rules of Admission to the Bar of the Vermont Supreme Court](#)
- [Order Promulgating Amendments to Rule 17\(a\) of the Vermont Rules of Criminal Procedure](#)
- [Order Promulgating Amendments to Rule 23\(d\) of the Vermont Rules of Criminal Procedure](#)
- [Order Promulgating Amendments to Rule 42 of the Vermont Rules of Criminal Procedure](#)
- [Order Promulgating Amendments to Rule 44.2\(b\) of the Vermont Rules of Criminal Procedure](#)
- [Order Promulgating Amendments to Rule 45 of the Vermont Rules of Civil Procedure](#)
- [Order Promulgating Amendments to Rules 3 and 5\(e\) of the Vermont Rules of Civil Procedure and Rule 25\(a\)\(2\)\(C\) of the Vermont Rules of Appellate Procedure](#)
- [Proposed Order Promulgating Conforming Amendments to V.R.C.P. 79.1\(e\), V.R.F.P. 15\(e\), V.R.P.P. 79.1\(d\), and V.R.A.P. 45.1\(e\)](#)
- [Proposed Order Promulgating Amendments to Rule 4\(a\) of the Vermont Rules of Admission to the Bar of the Vermont Supreme Court](#)
- Updated Court Forms
- Obligations Under A.O. 41
- eCabinet Registration

I. PROMULGATED RULE AMENDMENTS

- a. [Order Promulgating Amendments to Rules 7\(c\), 9\(b\)\(1\), 11, 12\(a\), and 13\(b\) and \(e\) of the Vermont Rules of Admission to the Bar of the Vermont Supreme Court](#)

This Order was promulgated June 13, 2018; August 13, 2018.

The amendment to Rule 7(c) allows for all institutions of higher education whose accreditor has been approved by the U.S. Department of Education (DOE) to satisfy the law office study (LOS) educational requirement. The amendment to Rule 7(c) also allows an applicant with an undergraduate degree from a foreign jurisdiction to satisfy the education requirement, provided the applicant can establish that such degree is equivalent to a bachelor's degree from a DOE-approved institution.

The amendments to Rules 9(b)(1), 11, and 13(e) ensure consistency and clarity with regards to the permitted age of UBE and MPRE scores. The amendment to Rule 9(b)(1) clarifies that applicants must be active attorneys to waive the five-year limitation and that Board approval is not necessary for such a waiver. Also, the amendment to Rule 9(b)(1) allows for an extension to the time limitation for good cause.

The amendment to Rule 11 clarifies that the triggering date for the time limit for the age of the MPRE score is the date the applicant achieves a passing UBE score, consistent with the prior Board's Notes. Also, the amendment to Rule 11 allows for an extension to the time limitation for good cause.

The amendment to Rule 12(a)(1) makes the time period to take the first-year CLE courses for admittees by examination consistent with the corresponding time period for admittees without examination in Rule 15. The amendment to Rule 12(a)(2) clarifies that for good cause the Board can grant an extension to the time limit for satisfying the first-year mentorship requirement.

The amendment to Rule 13(e) imposes a one-year outer limit for the MPRE score, consistent with the outer limit in Rule 11, and allows for an extension to the time limitation for good cause. The amendment to Rule 13(b) specifically permits concurrent applications for admission by transferred UBE score, meaning that an applicant can apply to sit for the UBE in a UBE jurisdiction other than Vermont and at the same time apply for admission by transferred UBE score to the Vermont bar, although the UBE score has not yet been earned.

b. [Order Promulgating Amendments to Rule 17\(a\) of the Vermont Rules of Criminal Procedure](#)

This Order was promulgated June 13, 2018; effective August 13, 2018.

The amendment Rule 17(a) expands the categories of persons who are authorized to issue subpoenas in criminal proceedings, either for attendance of witnesses or for production of documentary evidence and objects. This subdivision was amended effective February 20, 2017 to clarify that a subpoena is provided by the clerk, but actually issued by a judicial officer, subject to certain notice of rights on the part of persons subject to subpoena to object thereto, and the procedures for doing so. The amendment provides that subpoenas in criminal cases may now be issued either by a judicial officer, a court clerk, or a member of the Vermont bar. The amendment is intended to facilitate issuance of subpoenas in criminal cases, consistent with a defendant's Compulsory Process guarantees, subject to the existing provisions of the rule establishing protections for persons and records that are the subject of subpoenas. The amendment is also intended to establish greater conformity with V.R.C.P. 45(a)(3), which has long provided that subpoenas in civil proceedings may be issued by either a judicial officer, a court clerk, or an attorney.

c. [Order Promulgating Amendments to Rule 23\(d\) of the Vermont Rules of Criminal Procedure](#)

This Order was promulgated June 13, 2018; effective August 13, 2018. The amendment to Rule 23(d) is in response to the Supreme Court's decision in State v. Breed, where the Court outlined the better practice when there may be a delay after the jury has been chosen but before

trial. The rule is divided into three paragraphs. Paragraph (d)(1) requires that consent to a delay of commencement of trial must be by a signed writing filed with the court or in open court. Paragraph (d)(2) requires that after a delay of more than 24 hours, the court must provide an appropriate instruction. Paragraph (d)(3) clarifies that parties are entitled to supplemental voir dire on issues arising from the separation but must initiate a request.

d. [Order Promulgating Amendments to Rule 42 of the Vermont Rules of Criminal Procedure](#)

This Order was promulgated June 13, 2018; effective August 13, 2018. The amendments to Rule 42, governing contempt process, reorganize and substantively amend the rule in three instances. A provision is added for notice to the defendant of the maximum penalty that may be imposed upon conviction. To facilitate appearance of counsel and assignment of counsel to represent the indigent defendant, a requirement is added to provide notice of the right to be represented by counsel and to make application for assignment of counsel. Specific provision is also made for the mode of appointment of a prosecuting attorney.

e. [Order Promulgating Amendments to Rule 44.2\(b\) of the Vermont Rules of Criminal Procedure](#)

This Order was promulgated June 13, 2018; effective August 13, 2018. The amendment to Rule 44.2(b) revises the rule in response to general revisions of Administrative Order No. 41, governing Licensing of Attorneys, effective May 15, 2017. Rule 44.2(b)(2), which formerly governed admission and practice of nonresident attorneys pending completion of law office study, or after such completion pending admission to the bar, is deleted as no longer necessary in view of A.O. 41's abolition of the requirement of law office study as a condition of admission of attorneys to the Vermont bar.

f. [Order Promulgating Amendments to Rule 45 of the Vermont Rules of Civil Procedure](#)

This Order was promulgated June 13, 2018; effective August 13, 2018. The amendments to Rule 45 were made at the request of the Civil Division Oversight Committee to conform the rule to current practice and to assure uniformity among the clerks' offices.

The amendment to Rule 45(a)(3) deletes "notary public" from the list of those empowered to issue a subpoena. Notaries do not have express power to issue subpoenas. See 24 V.S.A. § 445.

The amendment to Rule 45(a)(4) simplifies language and provides for prior or simultaneous service on the parties to avoid warning the witness before the parties can act. The amendment to Rule 45(b)(1) adds the requirement that witness fees be tendered with the subpoena to avoid issues of enforcement that might arise in the event of later nonpayment.

The amendment to Rule 45(f)(3)(A) clarifies the application of the interstate deposition and discovery provisions of the rule to attorneys not admitted in Vermont and unrepresented litigants.

The amendment to Rule 45(f)(3)(B) incorporates the provisions of former Rule 45(f)(6), substituting "motion" for "application" for consistency with the general provisions of the rules and adding the requirement that the practice on such motions is limited to Vermont-admitted attorneys because they are adversary proceedings.

The amendment to Rule 45(f)(3)(C) (formerly (B)) states that when a party submits a foreign subpoena judicial approval is now required before the clerk signs it. This provision and the amendment to paragraph Rule 45(f)(4) spell out that the clerk is to deliver the signed subpoena to the requesting party, who is responsible for service and payment of the witness fee. Former subparagraph (C) is redesignated (D).

Former Rule 45(f)(6) is deleted because it is now incorporated in Rule 45(f)(3)(B).

- g. [Order Promulgating Amendments to Rules 3 and 5\(e\) of the Vermont Rules of Civil Procedure and Rule 25\(a\)\(2\)\(C\) of the Vermont Rules of Appellate Procedure](#)

This Order was promulgated June 13, 2018; effective August 13, 2018.

The amendment redesignates the present Rule 3 as Rule 3(a) and adds Rule 3(b) to provide a “prisoner mailbox” procedure for the filing of a complaint in a civil action by an inmate confined in an institution. The amendment is virtually identical to V.R.A.P. 4(f), adopted effective March 13, 2017.

Simultaneous amendments adding V.R.C.P. 5(e)(4) and V.R.A.P. 25(a)(2)(C) establish an identical procedure for inmate filing of documents after the complaint that are required to be filed by V.R.C.P. 5 and papers after the notice of appeal required to be filed by V.R.A.P. 25.

II. PROPOSED RULE AMENDMENTS

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

- a. [Proposed Order Promulgating Conforming Amendments to V.R.C.P. 79.1\(e\), V.R.F.P. 15\(e\), V.R.P.P. 79.1\(d\), and V.R.A.P. 45.1\(e\)](#)

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

Comments on this proposed amendment should be sent by **August 13, 2018**, to Emily Wetherell, Deputy Clerk, at the Vermont Supreme Court, at the following address:

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

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

The proposed amendments to Rule 4(a) add two members to the Character and Fitness Committee. This change is being proposed 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.

Comments on this proposed amendment should be sent by **August 13, 2018**, to Andrew Strauss, Licensing Counsel of the Office of Attorney Licensing, at the following address:

Andrew Strauss, Licensing Counsel
Office of Attorney Licensing
Costello Courthouse
32 Cherry Street, Suite 213
Burlington, VT 05401
Andrew.Strauss@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.