STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2015

Order Promulgating Amendments to the Vermont Rules for Electronic Filing and the Vermont Rules for Environmental Court Proceedings

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is here by ordered:

1. That Rule 1(a) of the Vermont Rules for Electronic Filing be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 1. APPLICABILITY; EFFECTIVE DATES; TITLE

(a) These rules apply to all ~~civil~~ actions and proceedings commenced in the divisions and units of the Superior Court~~, Civil Division, Rutland and Windsor county units, after the dates indicated, except small claims actions, small claims appeals, and stalking and sexual assault actions~~ specified below:

~~(1) Electronic filing in accordance with these rules is permitted in all cases commenced between October 18, 2010, and January 25, 2011.~~

~~(2)~~ (1) Electronic filing in accordance with these rules is required in all cases commenced in the Civil Division, Rutland and Windsor Units, on and after January 26, 2011, except small claims actions, small claims appeals, and stalking and sexual assault actions.

(2) Electronic filing in accordance with these rules is required in all cases commenced in the Environmental Division on and after September 1, 2015.

(b) These rules may be known and cited as the Vermont Rules for Electronic Filing.

Reporter's Notes—2015 Amendment

Rule 1(a) is amended to reflect the extension of electronic filing to the Environmental Division, effective September 1, 2015. Conforming changes have been made as necessary in other provisions of these rules and in provisions of the Vermont Rules for Environmental Court Proceedings.

2. That Rule 2 of the Vermont Rules for Electronic Filing be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 2. WHO MUST FILE ELECTRONICALLY; EXCEPTIONS

(a) Except as provided in (b), (c), and (d), and other provisions of these rules, all parties, and others required or permitted to file, in all ~~civil~~ actions and proceedings, including appeals from the probate courts and any state or municipal governmental agency, entered in the Superior Court, Civil or Environmental Division, on or after the filing dates provided by Rule 1(a), must electronically file all documents required or permitted by the applicable rules of procedure to be filed in court. All documents generated by the court, and by masters, receivers, guardians ad litem, and neutrals required to file a report, under the applicable rules of procedure in all actions and proceedings entered in the Superior Court, Civil or Environmental Division, on or after the required filing dates provided by Rule 1(a) will be filed electronically, or scanned by court staff.

(b) A document may be filed by nonelectronic means when

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(6) it is filed in a case commenced in the Civil Division on or before January 25, 2011, or in the Environmental Division before September 1, 2015, in which documents were filed by nonelectronic means, unless the court orders that documents filed ~~on or after January 26, 2011,~~ after those dates in such a case be filed electronically.

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Reporter's Notes – 2015 Amendment

Rules 2(a) and (b)(6) are amended to reflect the extension of these rules to the Environmental Division. See Reporter's Notes to simultaneous amendment of Rule 1(a).

3. That Rule 11 of the Vermont Rules for Electronic Filing be amended to read as follows (deleted matter stuck through; new matter underlined):

RULE 11. SERVICE

(a) Service upon a party of the original notice of an action or proceeding (including a notice of appeal to the ~~Superior Court,~~ Civil Division~~, from a probate court~~ under V.R.C.P. 72 or ~~a governmental agency under V.R.C.P.~~ 74, or a notice or notice of appeal to the Environmental Division under V.R.E.C.P. 4 or 5), other original process, or a writ of execution or possession, or service upon a nonparty of a subpoena or other original or final process, and any documents accompanying any such notice or process must be made by nonelectronic means. Any required return of service must be filed electronically in accordance with these rules unless otherwise provided in Rule 2(b) or by the applicable rules of procedure.

(b) Notice (other than original notice), documents, and exhibits required or permitted by applicable rules of procedure to be served on an attorney or party must be served by e-mail

attachment on a registered filer unless otherwise agreed in writing by the parties, or by nonelectronic means on any other attorney, party, or person unless that attorney, party, or person agrees in writing to service by electronic means.

(c) Any original notice, process, or writ required to be issued to an attorney or served on a party or nonparty by the clerk in an action or proceeding in the ~~Superior Court,~~ Civil or Environmental Division, by applicable rules of procedure, may be issued or served by nonelectronic means.

(d) **Record.**

(1) In an appeal to the ~~Superior Court,~~ Civil Division~~,~~ from a probate court or a governmental agency, the register of probate, or clerk or other officer of the agency, must transmit the record on appeal to the clerk of the Civil Division by nonelectronic means as provided in V.R.C.P. 72 or 74. The court staff of the Civil Division will scan and electronically file the record, or file it nonelectronically, as provided in Rule 5(a). The certificate of decision of the Civil Division, required to be certified to a probate court or governmental agency, and the record on appeal, required to be returned by the clerk of the Civil Division, must be transmitted in accordance with V.R.C.P. 72 or 74 by nonelectronic means.

(2) In an appeal to the Environmental Division on the record under V.R.E.C.P. 5(h), the clerk or other appropriate officer must transmit the record on appeal to the clerk of the Environmental Division by nonelectronic means as provided in V.R.E.C.P. 5(h)(1) or (2) unless the court has granted a motion to allow filing of the electronic recording of the transcript as provided in V.R.E.C.P. 5(h)(1)(C) . The court staff of the Environmental Division will scan and electronically file the record, or file it nonelectronically, as provided in Rule 5(a) of these rules.

Reporter's Notes – 2015 Amendment

Rule 11 is amended to reflect the extension of these rules to the Environmental Division. See Reporter's Notes to simultaneous amendment of Rule 1(a).

4. That Rule 3 of the Vermont Rules for Environmental Court Proceedings be amended to read as follows (new matter underlined):

RULE 3. CIVIL ACTIONS

The following actions within the original jurisdiction of the Environmental Court shall be commenced and conducted as civil actions under the Vermont Rules of Civil Procedure, the Vermont Rules for Electronic Filing, and the Vermont Rules of Appellate Procedure, so far as those rules are applicable and except as they may be modified by subdivisions (b)-(e) of Rule 2:

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Reporter's Notes – 2015 Amendment

Rule 3 is amended to reflect the extension of the Vermont Rules for Electronic Filing to the Environmental Division. See Reporter's Notes to simultaneous amendment of V.R.E.F. 1(a).

5. That Rule 4 of the Vermont Rules for Environmental Court Proceedings is amended to read as follows (deleted matter stuck through; new matter underlined):

RULE 4. REVIEW OF ENVIRONMENTAL ENFORCEMENT ORDERS

(a) Applicability of Rules.

(1) This rule applies to review of environmental enforcement orders in the Environmental Court under 10 V.S.A. §§ 8001-8013 and 24 V.S.A. § 2297b and to appeals from the Environmental Court to the Supreme Court in those proceedings.

(2) The Vermont Rules of Civil Procedure~~,~~ as modified by Rules 2(b)-(e), the Vermont Rules for Electronic Filing, and the Vermont Rules of Appellate Procedure apply to all proceedings under this rule except as otherwise provided in paragraph (3) of this subdivision and except where another procedure is expressly provided by subdivisions (b)-(e) of this rule.

(3) The following provisions of the Vermont Rules of Civil Procedure shall not apply to proceedings under this rule: Rules 3 (Commencement of Action), 4 (Process), 4.1 (Attachment), 4.2 (Trustee Process), 7(a) and (c) (Pleadings Allowed), 8(a)-(f) (General Rules of Pleading), 9 (Pleading Special Matters), 10 (Form of Pleadings), 12 (Defenses and Objections), 13 (Counterclaim and Cross-Claim), 14 (Third-Party Practice), 18 (Joinder of Claims and Remedies), 22 (Interpleader), 23 (Class Actions), 23.1 (Derivative Actions), 24(a)(2) (Nonstatutory Intervention as of Right), 24(b)(2) (Nonstatutory Intervention by Permission), 38-39 (Jury Trials), 40(b) (Progress Calendar), 47-49 (Jurors and Juries), 51 (Argument of Counsel; Instructions to Jury), 53 (Masters), 56 (Summary Judgment), 57 (Declaratory Judgments), 64 (Replevin), 68 (Offer of Judgment), 72 (Appeals from Probate Courts), 74 (Appeals from Decisions of Governmental Agencies), 75 (Review of Governmental Action), the last sentence of Rule 77(d) (Lack of Notice of Entry), 80.1 (Foreclosure of Mortgages and Judgment Liens), 80.2 (Naturalization of Aliens), 80.4 (Habeas Corpus), 80.5 (District Court Procedures for Civil License Suspensions and Penalties for DWI), 80.6 (Judicial Bureau Procedures), 80.7 (Procedures for Immobilization or Forfeiture Hearings Pursuant to 23 V.S.A. § 1213c), and 80.8 (Transfer from District to Superior Court).

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(d) Procedure for Review of Administrative Orders.

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(6) *Appeal to Supreme Court; Stay Pending Appeal.*

(A) A final judgment under this rule shall be appealable as of right to the Supreme Court pursuant to 10 V.S.A. § 8013(c). The notice of appeal shall be filed within ten days of the date of receipt of the judgment appealed from in accordance with Vermont Rule for Electronic Filing 5(f).

(B) Notwithstanding Rule 62 of the Vermont Rules of Civil Procedure and Rule 8 of the Vermont Rules of Appellate Procedure, an appeal to the Supreme Court by the Secretary shall stay the dissolution of an emergency judicial order. An appeal by the respondent or the Attorney General shall not stay the operation of an emergency or other order but shall stay payment of a penalty. A respondent may seek a stay in the Supreme Court pursuant to Rule 8 of the Vermont Rules of Appellate Procedure.

(e) Procedure for Review of Final Municipal Solid Waste Orders.

(1) *Generally.* This subdivision shall govern requests for review under 24 V.S.A. § 2297b of a final solid waste order issued by the legislative body of a municipality pursuant to 24 V.S.A. §§ 2297a.

(2) *Notice of Request; Stay.* Review of a municipal solid waste order shall be taken by filing a notice of the request with the clerk of the Environmental Court and with the municipal clerk within ten days of receipt of the final order. The notice operates as a stay of any order issued, and payment of any penalty imposed, pending the hearing.

(3) *Hearing.* Review shall be de novo and shall be governed by paragraph (d)(5) of this rule, substituting "legislative body" for "Secretary."

(4) *Judgment.* The court may reverse, affirm, modify, or vacate the order in accordance with 24 V.S.A. § 2297b(c), (d). In making its determination, the court shall consider the factors set forth in 24 V.S.A. § 2297a(a).

(5) *Appeals; Stay on Appeal.* Appeals from Environmental Court decisions under this rule are governed by the Vermont Rules for Electronic Filing and the Vermont Rules of Appellate Procedure. On an appeal of a final judgment under this rule, Rule 62 of the Vermont Rules of Civil Procedure and Rule 8 of the Vermont Rules of Appellate Procedure shall govern stays, and the decision of the Environmental Court on all matters other than penalties shall be deemed to be judgments in an action for an injunction for purposes of those rules.

Reporter's Notes – 2015 Amendment

Rule 4 is amended to reflect the extension of the Vermont Rules for Electronic Filing to the Environmental Division. See Reporter's Notes to simultaneous amendment of V.R.E.F. 1(a).

6. That Rule 5 of the Vermont Rules for Environmental Court Proceedings be amended to read as follows (new matter underlined):

RULE 5. APPEALS

(a) Applicability of Rules.

(1) This rule governs appeals to the Environmental Court from an act or decision of an appropriate municipal panel pursuant to 24 V.S.A. §§ 4471, 4472; from an act or decision of the secretary of the agency of natural resources, or a commissioner or department of the agency, under the provisions of law listed in 10 V.S.A. § 8503(a); from a district commission, or from a district coordinator jurisdictional opinion, under 10 V.S.A., ch. 151; and from decisions of the secretary of the agency of agriculture, food and markets pursuant to 6 V.S.A. §§ 4855, 4861.

(2) Except as modified by this rule and by subdivisions (b)-(e) of Rule 2, the Vermont Rules of Civil and Appellate Procedure, and the Vermont Rules for Electronic Filing, so far as applicable, govern all proceedings under this rule.

(b) Notice of Appeal.

(1) *Filing the Notice of Appeal.* An appeal under this rule shall be taken by filing with the clerk of the Environmental Court by certified mail or other means, including electronic filing in accordance with the Vermont Rules for Electronic Filing, a notice of appeal containing the items required in paragraph (3) of this subdivision within 30 days of the date of the act, decision, or jurisdictional opinion appealed from, unless the court extends the time as provided in Rule 4 of the Vermont Rules of Appellate Procedure. The appellant shall pay to the clerk with the notice of appeal any required entry fee. If a notice of appeal is mistakenly filed with the tribunal appealed from, or the Natural Resources Board, or either of its panels or its predecessor boards, the appropriate officer of the tribunal, board, or panel shall note thereon the date on which it was received and shall promptly transmit it to the clerk of the Environmental Court, and it shall be deemed filed with the Environmental Court on the date so noted. Failure of an appellant to take any step other than the timely filing of the notice of appeal does not affect the validity of the appeal but is ground only for such action as the court deems appropriate, which may include dismissal of the appeal.

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(c) Appearance. An appellant enters an appearance by filing a notice of appeal as provided in subdivision (b) of this rule. Any other person may enter an appearance within 20 days after the date on which notice of filing of the last notice of appeal to be filed was served, or, if necessary, published pursuant to subparagraph (b)(4)(B) of this rule, by filing a written notice of appearance with the clerk and by serving the notice of appearance in accordance with Rule 5 of the Vermont Rules of Civil Procedure and the Vermont Rules for Electronic Filing; provided that any person enumerated in 10 V.S.A. § 8504(n)(l)-(3) may file and serve an appearance in a timely fashion. Any other person who has not previously entered an appearance as provided in this paragraph may enter an appearance by filing a timely motion to intervene. Attorneys shall comply with Civil Rule 79.l(i).

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(f) Statement of Questions. Within 20 days after the filing of the notice of appeal, the appellant shall file with the clerk of the Environmental Court a statement of the questions that the appellant desires to have determined. The statement shall be served in accordance with Rule 5 of the Vermont Rules of Civil Procedure and the Vermont Rules for Electronic Filing. No response to the statement of questions shall be filed. The appellant may not raise any question on the appeal not presented in the statement as filed, unless otherwise ordered by the court in a pretrial order entered pursuant to subdivision (d) of Rule 2. The statement is subject to a motion to clarify or dismiss some or all of the questions.

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(h) Appeals to the Environmental Court on the Record.

(1) *From an Appropriate Municipal Panel.*

(A) An appeal from an appropriate municipal panel from which appeals may be on the record pursuant to 24 V.S.A. §§ 4471 and 4472 shall be governed by the Vermont Rules of Appellate Procedure and the Vermont Rules for Electronic Filing so far as applicable and except as modified by this rule. The record on appeal shall consist of the original papers filed with the municipal panel; any writings or exhibits considered by the panel in reaching the decision appealed from; and a written transcript of the proceedings, whether recorded electronically or stenographically, certified by the presiding officer of the municipal panel as the full, true and correct record of the proceedings. Within 30 days after the filing of the notice of appeal, the clerk or other appropriate officer of the municipal panel shall transmit the papers and exhibits filed to the clerk of the Environmental Court in the manner provided in Rule 11(b) of the Rules of Appellate Procedure.

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(k) Appeals to the Supreme Court.

(1) *Rules Applicable*. Except as modified by this subdivision, the Vermont Rules of Appellate Procedure and the Vermont Rules for Electronic Filing, so far as applicable, shall govern all proceedings under this subdivision.

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Reporter's Notes – 2015 Amendment

Rule 5 is amended to reflect the extension of the Vermont Rules for Electronic Filing to the Environmental Division. See Reporter's Notes to simultaneous amendment of V.R.E.F. 1(a).

7. That these rules, as amended, are prescribed and promulgated to become effective on September 1, 2015. The Reporter's Notes are advisory.

8. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 1st day of July, 2015.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice