

**STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_TERM, 2018**

**Order Adding Rule 3(e) and Amending Rule 5(f) of the Vermont Rules of Probate Procedure**

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

1. That Rule 3(e) of the Vermont Rules of Probate Procedure be added to read as follows:

**RULE 3. COMMENCEMENT AND DURATION OF PROCEEDINGS**

**(e) Petition filed by an inmate confined in an institution.**

(1) A petition filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement accompanying the petition stating the date the petition was deposited in the institution's internal mailing system. The notarized statement establishes a presumption that the petition was deposited in the institution's internal mailing system on the date shown in the statement. The presumption may be rebutted by documentary or other evidence.

(2) Nothing in this rule precludes other evidence of timely filing such as a postmark or an official date stamp showing the filing date of the document.

**Reporter's Notes—2018 Amendment**

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. As stated in the Reporter's Notes to V.R.A.P. 4(f), which is similar, but not identical to, F.R.A.P. 4(c)(1), the rule

provides that deposit of a [petition] in the internal prison mailing system can constitute timely filing and requires use of a prison "legal mail" system if available. The rule also explicitly creates a rebuttable presumption that the filing is timely if accompanied by a notarized statement showing deposit in the institution's internal mailing system on or before the last day for filing. Paragraph

[(2)] follows the federal [appellate] rule in allowing evidence of timely filing other than the notarized statement. Unlike the federal rule, the rule does not require a statement that postage has been or “is being” prepaid, nor does it give the Court discretion to allow later filing of the notarized statement.

Although most prisoner filings are not petitions, a rule governing petitions is desirable, particularly in view of issues raised by the housing of prisoners in out-of-state prisons with differing systems. A simultaneous amendment adding V.R.P.P. 5(f)(2) establishes an identical procedure for inmate filing of documents after the petition that are required to be filed by V.R.P.P. 5.

2. That Rule 5(f) of the Vermont Rules of Probate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

## **RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

### **(f) Filing with the court defined.**

(1) *In General.* The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the register or the judge. Filing may be accomplished by delivery; by sending the papers by ordinary first-class mail or by third-party commercial carrier addressed to the register; and, if required or permitted by the Vermont Rules for Electronic Filing, transmission by electronic means. Filing by mail, commercial carrier, or electronic means shall not be timely unless the material filed is received within the time fixed for filing. Filing with a judge may be accomplished by any method permitted by the judge. The register shall not refuse to accept for filing any document presented for that purpose solely because it is not presented in proper form as required by these rules.

(2) *Document Filed by an Inmate.* A document filed by an inmate confined in an institution is timely if deposited in the institution’s internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement accompanying the document stating the date the document was deposited in the institution’s internal mailing system. The notarized statement establishes a presumption that the document was deposited in the institution’s internal mailing system on the date shown in the statement. The presumption may be rebutted by documentary or other evidence. Nothing in this rule precludes other evidence of timely filing such as a postmark or an official date stamp showing the filing date of the document.

### Reporter's Notes—2018 Amendment

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. See Reporter’s Notes to that rule.

3. That these rules as added or amended are prescribed and promulgated effective \_\_\_\_\_, 2018. The Reporter’s Notes are advisory.

4. 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 \_\_\_\_ day of \_\_\_\_\_, 2018.

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice