

**STATE OF VERMONT  
VERMONT SUPREME COURT**

**DECEMBER TERM, 2019**

**Order Promulgating the 2020 Vermont Rules for Electronic Filing**

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

1. That the Vermont Rules for Electronic Filing, originally adopted as emergency rules on August 17, 2010, and subsequently amended, be referred to as the 2010 Vermont Rules for Electronic Filing.
2. That the 2020 Vermont Rules for Electronic Filing, as set out in the appendix attached to this order, are prescribed and promulgated, effective on March 2, 2020. The Reporter's Notes are advisory.
3. 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 10<sup>th</sup> day of December, 2019.



Signed by the Vermont Supreme Court

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Paul L. Reiber, Chief 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

## 2020 VERMONT RULES FOR ELECTRONIC FILING

### 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the new CMS is rolled out in all the locations and dockets where eCabinet has been employed, the 2010 rules will be repealed.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 (d), except for the actions specified in subdivision (c), and to actions and proceedings in the judicial bureau authorized by the Court Administrator under subdivision (e).

(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 efileing that occurs after the date specified by the Court Administrator.

(d) **Authorization for Electronic Filing.** 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.

(e) **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.

(f) **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.

## **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 efiling 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 an efiler-designated case-specific email address at which the electronic filing system will notify an efiler-designated recipient that an electronic filing has occurred in the case to meet the responsibility of the efiler to serve other parties.

### **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 (l). 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.

### **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 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 is self-represented and has not filed electronically 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) 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;
- (5) nonelectronic filing is expressly permitted by these rules or an applicable rule of procedure;
- (6) an item cannot reasonably be scanned and filed electronically because of its size, shape, or condition; or
- (7) 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 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 efile 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.* A self-represented litigant who commences efile in a case must continue to efile throughout the duration of the case. The self-represented litigant may discontinue efile 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 efile in the future. Efile by a self-represented litigant does not create an obligation to efile in another case.
- (3) *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 efile, 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(h) (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.

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

(a) **Registration Process.** A person must register to electronically file and serve documents through the electronic filing system.

(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 is responsible for updating registration information, including service contacts.

(4) An attorney may permit an associated attorney or other person authorized by the attorney to file and view documents under the attorney’s efilings account. 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, 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.

## 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 efile in accordance with Rule 5(f) and (g), and Rule 7;
- (2) sign the efile 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;
- (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 efile 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)(7).

(d) **Court Staff Processing.**

(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.

(2) *Accepting or Rejecting a Filing.* Court staff will electronically notify the efiler either that the efile has been accepted or that it cannot be accepted until specified actions required under these rules have been taken.

(3) *Correcting an eFiling.* An efiler may submit a corrected efile within 7 days after receiving the notification if the efiler follows the instructions for efile a correction on the electronic filing system. The court may extend the time for correction for good cause. Court staff will accept a corrected efile if all requirements of those rules and the instructions for correction have been met.

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

(5) *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.

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

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

(1) *Motions Requesting Alternative Forms of Relief.* An filer may file motions, or responses, requesting alternative forms of relief as a single document.

(2) *Motions Requesting Independent Forms of Relief.* An filer must file motions, or responses, requesting independent forms of relief as separate documents.

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

(4) *Supporting Material.*

(A) **Single Motion or Response.** A memorandum of law, affidavit, exhibit, or other supporting material or required attachment to a single motion or response may be efiled with the single motion or single response or may be filed as a separate document.

(B) **Multiple Motions or Responses.** A memorandum of law, affidavit, exhibit, or other supporting matter or required attachment for multiple motions or responses must be efiled as a separate document.

(C) **Separate Document.** If supporting material is efiled as a separate document, it must identify the motions or responses to which it relates and must be referenced in the motions or responses unless it is efiled after them.

(D) **Format of Supporting Material.** If supporting material relates to more than a single memorandum of law, it must:

(i) be numbered sequentially so that the electronic and paper page references are consistent; and

(ii) contain a table of contents listing the separate parts of the supporting material included, with references to the page of the document at which each part begins.

(g) **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 efilng. The filer must log into the electronic filing system and follow the instructions found there. The rule requires certain contact information to be included in each efilng. The rule does not require a telephone number to be included on each efilng 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 e-filing 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 e-filer 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 e-filer 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 e-filer who is initiating a new case, the e-filer must designate the type of case in which the e-filing is being made. If proceedings in that type of case are not publicly accessible, that e-filing and future ones will be inaccessible to the public. Second, for types of cases that are generally open to the public, the e-filer will be required to answer whether the e-filing is confidential or open to the public.

If the record is not publicly accessible in part, the e-filer 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 e-filer can then e-file 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 e-filer must certify that the e-filer has reviewed the e-filing and the e-filing complies with V.R.P.A.C.R. 7(a)(1). If the record being e-filed is wholly or partly not publicly accessible, the e-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 e-filed 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 e-filer who properly categorizes the type of proceeding and type of document will be able to check a box that the e-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 e-filed is wholly or partly not publicly accessible, the e-filer must also e-file 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 efiler first enters a case, whether to initiate the case or to respond and participate in a case, the efiler must separately enter service contacts as specified by the system so others can serve the efiler through the electronic filing site. Note that an efiler 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 efiler should think carefully about who should get notice of efilings and add those persons as service contacts. An efiler 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 efiler is unable to make an efilings because the electronic filing system is unavailable, and the efiler 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 e filing, acceptance or rejection of the e filing, notice to the e filer, correction of noncompliant e filings, and case number assignment. The more-detailed process for review and acceptance or rejection of an e filing 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 e filer 7 days to correct an e filing that is noncompliant with these rules. V.R.P.A.C.R. 7(a)(4)(ii) provides that if review requires an e filer 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 e filer must follow the instructions on the electronic filing site for making a corrected e filing, 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 e filer must also make service by the method or methods specified in Rule 11, in addition to meeting the requirements for e filing in Rule 5(b). There is a distinction between the date of filing and the date of service when documents are e filed and notice of the filing is sent through the e filing 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 e filing 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.

## **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.**

(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) **Existing Nonelectronic Filings.** When electronic filing is commenced in accordance with a Court Administrator's directive 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.

## **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(f) and (g);

- (5) be accompanied by a certification of compliance with the Rules for Public Access to Court Records by the method specified in these rules; and
- (6) not contain any password protection or other security device.

(b) **Required PDF format.** To comply with subdivision (a)(1):

(1) a document, other than those excluded in paragraphs (2) or (3) of this subdivision, that is efiled or submitted pursuant to Rule 1(f) 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;

(2) be formatted as required by the applicable rules of procedure; and

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

### **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.

## **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 efilng 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). 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 EFile 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 efile 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 e-filing 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 e-filer then has 7 days to correct the deficiency. If the deficiency is corrected in time, the e-filing 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 e-filing 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 e-filer 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 e-filer 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 e-filer would be obligated to pay a court fee for the e-filing, but the e-filer is exempt from payment of the fee or payment of the fee is waived, the e-filer is not required to pay an e-filing 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 e-filing fee.

## **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(a)(1) does not apply, the person making service must do so in accordance with this rule.

(c) **Discovery.** An efiler may, but is not required to, serve discovery requests or responses, which are not required to be filed with the court, on an efiler using the electronic filing system.

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

(1) Absent an agreement under paragraph (2), service of electronic filings between efilers must be effected using the electronic filing system.

(2) Electronic filers may agree on an alternative or supplementary method of service for a particular document or case if the agreement is filed and served in the electronic filing system.

(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 and Certificate of Service.**

(1) *Certificate of Service Not Required.* When service is made exclusively through the electronic filing system, the efiler need not file a certificate of service.

(2) *Certificate of Service Required.* When one or more persons must be served nonelectronically pursuant to subdivision (e), the efiler must submit a certificate of service complying with V.R.C.P. 5(h) or V.R.P.P. 5(e), as applicable.

(3) *Certifying Compliance in eFiling System.* To complete electronic filing of a document the efiler must certify, subject to sanctions under V.R.C.P. 11(b), that:

(A) the efiler is not required to serve the document;

(B) the efiler has served all electronic filers with service contacts through the electronic filing system; or

(C) the filer has served all persons not served through the electronic filing system as provided in subdivision (e) and has submitted a certificate of service compliant with V.R.C.P. 5(h) or V.R.P.P. 5(e).

### **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 filer 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 efilers 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.

## **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) **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.