PROPOSED

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM 2021

Order Amending Rules 1, 3, 4, 5, 5.1, 6, 9, 10, 11, 12, 13, 14, 21, 24, 25, 26, 27, 28, 30, 30.1, 31, 32, 34, 39, 44, 45, 45.1 of the Vermont Rules of Appellate Procedure

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

1. That Rule 1 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 1. SCOPE OF RULES, TITLE AND EFFECTIVE DATE

(a) **Scope of Rules.** These rules govern procedure in all appeals to the Supreme Court from the Superior Court or an administrative board or agency and in matters of original jurisdiction unless expressly modified by rule or statute.

(b) **Rules Do Not Affect Jurisdiction.** These rules do not extend or limit the Supreme Court's jurisdiction.

(c) **Terminology.** For the purpose of appeals under these rules:

(1) the term "superior court" includes the Civil, Criminal, Family, and Environmental Divisions of the Superior Court, and also includes the Probate Division or any administrative board or agency when an appeal is taken from a decision in which an appeal is permitted by law;

(2) the terms "presiding judge," "judge," or "court" include the superior court judge, environmental judge, probate judge, or the administrative board or agency from which appeal is sought, as appropriate;

(3) the term "clerk" includes the superior court clerk, the clerk of the Environmental Division, the register of probate, or clerk, register, commissioner, or presiding officer of the administrative board or agency appealed from, as appropriate.

(4) the terms and variations of them set forth in 2020 V.R.E.F. 2, V.R.C.P. 83, V.R.Cr.P. 54(c) and (d), V.R.F.P. 13(c), V.R.E.C.P. 6, and V.R.S.C.P. 1(b), so far as applicable in appeals to the Supreme Court from actions and proceedings governed by those rules, have the meaning indicated in those rules unless the context clearly dictates a different meaning.

(5) the term "entry fee" refers to the fee required to initiate a cause in the Supreme Court under 32 V.S.A. § 1431; the term "efiling fee" or "electronic filing fee" refers to the fee required to transmit a document into the efiling system; the term "filing fee" refers to any other court fee.

(6) the term "record of actions" refers to the docket entries or case summary that records the actions and orders in a particular case.

(7) the term "Appeal Volume" is a court-generated PDF containing a table of contents and all the documents filed and created in the trial court proceeding that are contained in the electronic case file.

(d) **Title.** These rules may be cited as the Vermont Rules of Appellate Procedure or V.R.A.P.

(e) **Effective Date of Rules.** These rules take effect on July 1, 1971, and govern all proceedings in actions where the notice of appeal is filed after that date.

(f) **Effective Date of Amendments.** Amendments to these rules take effect on the day specified in the order adopting them. The amendments govern all proceedings ~~in appeals in which a notice of appeal is filed~~ after they take effect, and all further proceedings in appeals then pending. The Court may conclude, however, that the application of the amendments in a particular pending appeal would not be feasible or would work injustice, and in those cases, it will apply the former procedure.

Reporter's Notes—2021 Amendment

The Vermont Judiciary is transferring to a new electronic case management system (CMS) entitled Odyssey, and electronic filing through Odyssey File and Serve (OFS). The new CMS and OFS are being used in all the superior courts and the systems will roll out to the Supreme Court. These rule changes are a necessary part of that transition.

Subdivisions 1(a) and (f) are amended to clarify that the appellate rules apply to both cases on appeal and matters of original jurisdiction, unless expressly modified by another rule. For example, proceedings on petitions for extraordinary relief have different procedures under Rule 21. Further, original jurisdiction matters concerning attorney discipline, attorney licensing, or judicial conduct have sets of rules that provide additional procedures for those proceedings.

Rule 1(c)(4) is amended to indicate that the definitions in the Vermont Rules for Electronic Filing apply. Definitions are added in new paragraphs (c)(5)-(7). Rule (c)(5) defines entry fee, efiling fee, and filing fee. Rule 1(c)(6) provides a definition for the general term record of actions, which is created by the docket clerk pursuant to Rule 45, which requires the clerk to maintain a docket of the actions taken in the appeal and to record documents filed and orders issued. This was referred to as the docket entries in the legacy filing system. The CMS refers to these as the case summary. Record of actions is used a more general term to encompass both. Rule (c)(7) provides a definition for appeal volume, which is a PDF document created by the court using the information in the CMS. The appeal volume contains documents that are in the electronic case file, as defined in 2020 V.R.E.F. 2(c). As the courts transition to the CMS, some trial court cases have paper as well as electronic files. The appeal volume contains only the PDF documents and does not include media files. A photograph included in a PDF document may be part of the appeal volume.

2. That Rule 3 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 3. APPEAL AS OF RIGHT—HOW TAKEN

(a) **In General.** A judgment that is reviewable as of right in the Supreme Court may only be reviewed by appeal in accordance with these rules. An appeal from a judgment preserves for review any claim of error in the record, including any claim of error in any of the orders specified in Rule 4(b). An appeal designated as taken from an order specified in Rule 4(b) will be treated as an appeal from the judgment.

(b) **Filing and Serving the Notice of Appeal.**

(1) *In General*.

(A) Except as provided in paragraph (2), an appeal permitted as of right is taken by filing a notice of appeal with the superior court clerk ~~and paying any entry fee required under 32 V.S.A. § 1431~~ within the time allowed by Rule 4, and paying any entry fee required under 32 V.S.A. § 1431. For appeals from executive-branch administrative boards or agencies, any required entry fee must be paid within 14 days after the Supreme Court clerk dockets the appeal.

(B) The appellant must ~~serve a copy of the notice on~~:

(i) provide a copy of the notice of appeal to the Supreme Court clerk;

(ii) serve a copy of the notice of appeal on counsel of record for each of the other represented parties to the appeal; and

(iii) serve a copy of the notice of appeal on any self-represented party.

(C) Service is sufficient despite the death of a party or a party's counsel.

(D) 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.

(2) *Sentence of Life Imprisonment.*

(A) In a criminal case resulting in a sentence of life imprisonment, an appeal will be entered without the filing of a notice of appeal, except that a notice of appeal must be filed by the defendant in a case in which

(i) the defendant has, with the advice of counsel waived his right to appeal on the record in open court, or

(ii) the defendant, with the advice of counsel, entered a plea of guilty or nolo contendere to the underlying charge.

(B) When an appeal is entered without the filing of a notice of appeal in accordance with subparagraph (A), the following procedures will apply:

(i) The date of entry of judgment will be treated as the date from which all time periods will run that would otherwise be triggered by the filing of the notice of appeal.

(ii) The judge will direct the clerk to transmit a copy of the notice of entry of judgment required by V.R.Cr.P. 56(d), and the record of actions, to the Supreme Court clerk.

(iii) The appeal will be docketed in the Supreme Court and the record and transcript prepared and forwarded as provided in these rules for appeals in other criminal cases. The Supreme Court will review the record in the interests of justice and consider any claim of error as if a notice of appeal has been filed.

(c) **Joint or Consolidated Appeals.**

(1) When two or more parties are entitled to appeal from a superior court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Supreme Court on its own motion, or a party's motion, or by stipulation.

(d) **Contents of the Notice of Appeal.**

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed;

(C) name the court to which the appeal is taken;

(D) indicate if the appeal is from a proceeding under Chapter 51 and 53 of Title 33; and

(E) be signed by the appellant or the appellant's attorney.

(2) A notice of appeal signed by an attorney or by a self-represented litigant~~,~~ who has registered in eCabinet for electronic delivery of court documents ~~is required to register an e-mail address by 2010 V.R.E.F. 3,~~ must include the eCabinet registration number assigned to that attorney or litigant ~~on registering an e-mail address pursuant to V.R.E.F. 3~~.

(3) A notice of appeal filed by a self-represented person is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(4) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(5) An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(e) **Docketing Statements.** After taking an appeal the parties must each file a docketing statement with the Supreme Court clerk using a form prescribed by the clerk. Appellant's docketing statement must be filed and served within 14 days of taking the appeal. Appellee's docketing statement must be filed and served within 14 days thereafter.

Reporter's Notes—2021 Amendment

Rule 3(b)(1)(A) is amended to clarify that in appeals from executive-branch administrative boards and agencies any required entry fee must be paid within 14 days of when the appeal is opened. Executive-branch appeals have always been filed with the board or agency where the decision on appeal was made. Traditionally, appellants provided a check to the board or agency to be forwarded to the Supreme Court. With the implementation of electronic filing and electronic case management, most agencies will transmit the appeal to the Supreme Court electronically, making it difficult to send a paper check. Once the clerk opens the appeal in the Supreme Court, efilers can pay the fee through the electronic filing system. Efilers and nonelectronic filers may also mail or deliver a check to the Supreme Court.

Rule 3(b)(1)(B) is amended to indicate that although the notice of appeal must be served on counsel of record and any self-represented parties, a copy must be sent to the Supreme Court clerk. For electronic filers, the copy can be sent to the Court by using the courtesy copy function in File and Serve and using the general Supreme Court email address, jud.supremecourt@vermont.gov.

3. That Rule 4 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined):

RULE 4. APPEAL AS OF RIGHT—WHEN TAKEN

(a) **Time for Filing a Notice of Appeal.**

(1) Except as provided in paragraph (2), the notice of appeal required by Rule 3 must be filed with the superior court clerk within 30 days after entry of the judgment or order appealed from.

(2) In a criminal case, the State must file an appeal within 7 business days after entry of the judgment or order, but in a criminal case resulting in a sentence of life imprisonment--where the defendant has not waived appeal--the State may file a notice of appeal within 30 days of the judgment entry date.

(3) A notice of appeal filed after the superior court announces a decision, sentence, or order--but before the entry of the judgment or order--is treated as filed on the date the decision, sentence, or order is entered.

(4) A notice of appeal filed before the timely making or disposition of any of the motions set forth in Rule 4(b) is effective when the motion is decided unless the motion is withdrawn.

(5) If a notice of appeal is mistakenly filed in the Supreme Court, the Supreme Court clerk will indicate on the notice the date when it was received and forward it to the superior court clerk. The notice is considered filed in the superior court on the date so noted.

(6) If one party timely files a notice of appeal, any other party may file a notice of appeal with the superior court within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this rule, whichever period ends later.

(b) **Tolling.** If a party timely files in the superior court any of the motions referenced below, the full time for appeal begins to run for all parties from the entry of an order disposing of the last remaining motion:

(1) granting or denying a V.R.C.P. 50(b) motion for judgment as a matter of law;

(2) denying a V.R.C.P. 50(c)(2) motion for a new trial;

(3) granting or denying a V.R.C.P. 52(b) motion to amend or make additional factual findings, whether or not granting the motion would alter the judgment;

(4) granting or denying a V.R.C.P. 54 motion for attorneys' fees if the superior court so orders in accordance with V.R.C.P. 58;

(5) granting or denying a V.R.C.P. 59 motion to alter or amend the judgment;

(6) denying a V.R.C.P. 59 motion for a new trial;

(7) granting or denying a motion for relief under V.R.C.P. 60 if the motion is filed no later than 28 days after the entry of judgment. If, however, the order is one denying a motion under V.R.C.P. 60(b) for relief from a default judgment, the motion need only be timely under that rule;

(8) denying a V.R.Cr.P. 29(c) motion for judgment of acquittal after verdict;

(9) denying a V.R.Cr.P. 33 motion for a new trial on any ground other than newly discovered evidence;

(10) denying a V.R.Cr.P. 33 motion for a new trial based on newly discovered evidence if the motion is made before or within 30 days after entry of judgment;

(11) denying a V.R.Cr.P. 34 motion in arrest of judgment; and

(12) granting or denying a V.R.Cr.P. 35(c) motion to modify a sentence when filed by a prosecuting attorney.

(c) **Reopening the Time To File an Appeal Based on Lack of Notice.** In a civil action, the superior court may, upon motion, reopen the time to file an appeal for 14 days after the date when its order to reopen is entered if:

(1) the reopening motion is filed within 90 days of entry of the judgment or order or within 14 days of receipt of notice of the judgment or order, whichever is earlier; and

(2) the court finds that a party entitled to notice of the entry of the judgment or order did not receive that notice from the clerk or any party within 21 days of its entry; and

(3) the court finds that no party would be prejudiced.

(d) **Motion for Extension of Time To File Notice of Appeal.**

(1) The superior court may extend the time for filing the notice of appeal if:

(A) the relief is requested by motion filed no later than 30 days after the expiration of the time prescribed by Rule 4(a); and

(B) the party shows excusable neglect or good cause.

(2) A motion filed before the expiration of the time prescribed in Rule 4(a) may be filed ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with Rule 25(b).

(3) No extension under this subdivision may exceed 30 days after the time originally prescribed by Rule 4(a) or 14 days after the date the order granting the motion is entered, whichever is later.

(e) **Entry Defined.**

(1) In a civil action, a judgment or order is entered for purposes of Rule 4(a) when it is entered in the civil docket under V.R.C.P. 79(a) and, if V.R.C.P. 58(a) requires the judgment to be set forth on a separate document, when the earliest of the following occurs:

(A) the judgment or order is set forth on a separate document; or

(B) 150 days have run from entry of the judgment under V.R.C.P. 79(a).

(2) The failure to set forth a judgment or order on a separate document when required by V.R.C.P. 58(a) does not affect the validity of an appeal from that judgment or order.

(3) In a criminal case, a judgment or order is entered for the purposes of Rule 4(a) when it is entered in the criminal docket.

(f) **Appeal by an Inmate Confined in an Institution.**

(1) A notice of appeal 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 notice of appeal stating the date the notice of appeal was deposited in the institution's internal mailing system. The notarized statement establishes a presumption that the notice of appeal 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) If an inmate files the first notice of appeal under this Rule 4(f), the 14-day period provided in Rule 4(a)(6) for another party to file a notice of appeal runs from the date when the superior court dockets the first notice.

(3) 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—2021 Amendment

Rule 4(a)(6) is amended to specify that subsequent notices of appeal must be filed in the superior court.

4. That Rule 5 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 5. APPEALS BEFORE FINAL JUDGMENT

(a) **Appeal on Report by Agreement.**

(1) Before entry of final judgment, the superior court may report the action to the Supreme Court, if all the parties appearing agree and:

(A) the court concludes that a question of law raised is raised of sufficient importance or doubt to justify reporting; and

(B) in a civil action, the Supreme Court's disposition would finally dispose of the action in at least one alternative; or

(C) in a criminal action, the Supreme Court's decision would result in a final judgment for the defendant in one alternative.

(2) The order of report must:

(A) contain a statement of the question(s) of law involved;

(B) set forth the parties' agreement regarding the payment of any required entry fee for the appeal; and

(C) be signed by the superior court judge and entered on the docket.~~; and~~

~~(C) be filed, served, and a copy sent to the Supreme Court clerk with any required entry fee as provided for notices of appeal in Rule 3.~~

(3) The superior court clerk must transmit the report to the Supreme Court clerk. Upon receipt, the Supreme Court clerk will open the appeal. The Supreme Court may dismiss an appeal that does not meet the requirements of (a)(1). If the Supreme Court accepts the appeal, the appeal will be ~~The record will then be forwarded and the action entered,~~ considered~~,~~ and determined in the Supreme Court as provided by these rules for other appeals, with the plaintiff in a civil action or the State in a criminal action treated as the appellant. Any required entry fee must be paid to the Supreme Court clerk by the party or parties designated in the order of report within 14 days after entry of the order accepting the appeal.

(4) If the decision on a report in a criminal action is in favor of the State, the Supreme Court may not order entry of judgment of conviction but must remand the action for further proceedings consistent with its decision.

(b) **Appeal of Interlocutory Order by Permission.**

(1) *Motion for Permission To Appeal in a Civil Action*. On any party's motion in a civil action, the superior court must permit an appeal from an interlocutory order or ruling if the court finds that:

(A) the order or ruling involves a controlling question of law about which there exists substantial ground for difference of opinion; and

(B) an immediate appeal may materially advance the termination of the litigation.

(2) *Motion for Permission To Appeal by the Defendant in a Criminal Action*. On the defendant's motion in a criminal action, the trial court must permit an appeal if the trial court makes the findings specified in Rule 5(b)(1)(A) and (B).

(3) *Motion for Permission To Appeal by the State in a Misdemeanor Criminal Action*. On the State's motion in a misdemeanor action, the trial court must allow the State to appeal from a pretrial ruling on a question of law if the trial court makes the findings specified in Rule 5(b)(1)(A) and (B).

(4) *Motion for Permission To Appeal by the State in a Felony Criminal Action*.

(A) On the State's motion in a felony action, the court must allow the State to take an appeal from a pretrial ruling:

(i) granting a motion to suppress evidence;

(ii) granting a motion to have a confession declared inadmissible; or

(iii) granting or refusing other relief where the effect is to seriously impede (but not completely foreclose) continuation of the prosecution.

(B) The prosecuting attorney must certify that:

(i) the appeal is not taken for the purpose of delay; and

(ii) any evidence suppressed or declared inadmissible is substantial proof of a fact material to the proceeding or the relief to be sought on appeal is necessary to avoid seriously impeding the proceeding.

(5) *Timing of Motion and Content of Order*.

(A) The motion must be filed within 14 days after entry of the order or ruling appealed from, but the State's motion in a criminal action must be filed within 7 business days after the decision, judgment, or order appealed from.

(B) The superior court's order must state the grounds on which the appeal has been permitted or denied.

(C) For purposes of this rule, a pretrial ruling in a case tried by jury is a ruling made before the jury is impaneled.

(6) *Permission To Appeal Granted.*

(A) The superior court clerk will transmit the order permitting the appeal ~~will be filed, served, and a copy mailed~~ to the Supreme Court clerk. ~~--with the record of actions and any required entry fee- in the manner provided for notices of appeal in Rule 3.~~

(B) ~~The record must then be forwarded~~ Upon receipt of the order permitting appeal, the Supreme Court clerk will open the appeal. If the Supreme Court determines that the relevant standard is met and accepts the appeal, it will be ~~and the action will be entered,~~ considered~~,~~ and determined in the Supreme Court as provided by these rules for other appeals. Any required entry fee must be paid to the Supreme Court clerk by the appellant within 14 days after entry of the order accepting the appeal.

(7) *Permission To Appeal Denied*.

(A) If the superior court denies the request for permission to appeal, the moving party may, within 14 days after entry of the order of denial, file ~~the~~ a motion for permission to appeal in the Supreme Court. The motion and supporting documents must include: ~~with a statement containing:~~

(i) the question of law asserted to be controlling;

(ii) the facts necessary to understand the question; ~~and~~

(iii) the reasons why an interlocutory appeal should be permitted;

(iv) the written order, if any, from which an appeal is sought; and

(v) the superior court order denying permission to appeal.

(B) The moving party must serve ~~copies of~~ the motion and ~~statement~~ supporting documents on all other parties. ~~The order from which an appeal is sought and the order denying the motion must be filed and served with the motion or as soon afterwards as practicable.~~

(C) Within 14 days after service of the motion, ~~an adverse~~ any party may file and serve a response to the motion ~~an opposition~~.

(D) The matter will be determined on the motion and ~~opposition~~ response without oral argument unless the Court orders otherwise. If the motion for permission to appeal is granted, the moving party must pay any required entry fee to the Supreme Court clerk within 14 days of entry of the order accepting the appeal.

(8) *Dismissal in the Supreme Court*.

(A) On its own or the appellee's motion, the Supreme Court may at any time dismiss the appeal as improvidently granted.

(B) The appellee's motion must contain:

(i) a statement of the facts necessary to understand the question of law found controlling by the superior court; and

(ii) a statement of reasons why an interlocutory appeal should not have been permitted.

(C) The Supreme Court may consider the motion immediately or may wait until the time set for consideration of the appeal.

Reporter's Notes—2021 Amendment

Rule 5 is revised to update its requirements consistent with

current practice and the implementation of the electronic case management system and electronic filing.

Rule 5(a)(2) details the contents of the order of report, which may be prepared by the parties for the superior court's approval or prepared by the court. Subparagraph (2)(B) is added to require the parties to include an agreement regarding payment of any required entry fee. Former subparagraph (2)(B) is renumbered as (2)(C) and specifies that the order of report must be entered on the superior court docket. Former subparagraph (2)(C) is deleted and its contents are included in revised (a)(3).

Rule 5(a)(3) is amended to clarify the process for appeals by report. The superior court transmits the report to the Supreme Court, and the Supreme Court opens the appeal. The entry fee must be paid within 14 days of when the Supreme Court accepts the appeal.

Rule 5(b)(6)(A) provides that the superior court must transmit the appeal to the Supreme Court clerk. Under Rule 5(b)(6)(B), the Supreme Court clerk opens the appeal, the Court determines whether the standard for interlocutory appeal is met, and the entry fee must be paid within 14 days of an order accepting the appeal. Rule 5(b)(7) is amended to clarify the contents of the motion for permission to appeal that must be filed in the Supreme Court. Rule 5(b)(7)(C) is amended to clarify that any party can file a response to a motion for interlocutory appeal. Rule 5(b)(7)(D) clarifies that the fee is due if the Supreme Court accepts the appeal.

For all appeals under this rule, the fee is due once the Supreme Court accepts the appeal. Electronic filers can pay the fee through the electronic filing system. Efilers and nonelectronic filers may also mail or deliver a check to the Supreme Court. If the Supreme Court does not accept the appeal, no fee is required. If accepted, a case follows the rules for other appeals. For example, the docketing statement and transcript order will be filed after the appeal is accepted.

5. That Rule 5.1 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 5.1. COLLATERAL FINAL ORDER APPEALS

(a) **Motion for Permission to Appeal.**

(1) On a party's motion in a civil or criminal action, the superior court may permit an appeal from an interlocutory order or ruling if the court finds that the order:

(A) conclusively determines a disputed question;

(B) resolves an important issue completely separate from the merits of the action; and

(C) will be effectively unreviewable on appeal from a final judgment.

(2) A request for permission to appeal must be filed within 14 days after entry of the order or ruling appealed from.

(3) The superior court's order must state the grounds for its decision to grant or deny the motion and specify whether and on what conditions the proceedings are to be stayed.

(b) **Motion for Permission Denied.**

(1) If the superior court denies the motion for interlocutory appeal, or denies a stay pending an appeal, the court must allow adequate opportunity for the moving party to contact a single justice of the Supreme Court for a stay. The contact may be made by email or telephone ~~from the courthouse~~ or in some other manner ordered by the superior court.

(2) If the motion is denied, the moving party may, within 14 days after entry of the denial, file ~~the~~ a motion for permission to appeal in the Supreme Court. The motion and supporting documents must include: ~~with a statement containing:~~

(A) the questions of law and a statement of the facts necessary to understand the motion; ~~and~~

(B) the reasons why an interlocutory appeal should be allowed or a stay granted;

(C) the written order, if any, from which an appeal is sought; and

(D) the order of denial.

(3) The moving party must serve ~~copies of~~ the motion and supporting documents ~~statement~~ on all other parties. ~~The order from which an appeal is sought, and the order of denial, must be filed and served with the motion or as soon afterwards as practicable.~~

(4) Within 14 days after service of the motion, ~~an adverse~~ any party may file and serve ~~an answer in opposition~~ a response to the motion.

(5) The matter will be determined on the motion and ~~answer~~ response without oral argument unless the Supreme Court orders otherwise. If the motion for permission to appeal is granted, the moving party must pay any required entry fee to the Supreme Court clerk within 14 days of entry of the order accepting the appeal.

(c) **Motion for Permission Granted.**

(1) The superior court clerk will ~~The~~ transmit the order permitting appeal ~~and ruling on a stay must be filed and served, and a copy transmitted~~ to the Supreme Court clerk ~~, with the record of actions and any required entry fee, in the manner provided for notices of appeal in Rule 3~~.

(2) Upon receipt of the order permitting appeal, the Supreme Court clerk will open the appeal. If the Supreme Court determines that the relevant standard is met and accepts the appeal, it will be ~~The record will then be forwarded and the action entered,~~ considered~~,~~ and determined in the Supreme Court as provided by the rules for other appeals. Any required entry fee must be paid by the appellant within 14 days after entry of the order accepting the appeal.

(3) A decision to allow a collateral final order appeal by the superior court or by the Supreme Court does not divest the superior court of jurisdiction over the remainder of the action.

(d) **Dismissal in the Supreme Court.**

(1) At any time after the docketing of the appeal, the appellee may move to dismiss the appeal on the grounds that permission to appeal was improvidently granted; or move to vacate or modify the stay.

(2) The motion must contain a statement of the law and facts necessary for ruling on the motion.

(3) The Supreme Court may consider the motion immediately or may wait until the time set for consideration of the appeal.

(4) If—on its own or the appellee's motion—the Supreme Court finds that the matter is not appealable or that the stay should be vacated or modified, it may dismiss the appeal, modify or vacate the stay, or take any other appropriate action.

Reporter's Notes—2021 Amendment

Rule 5.1 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

Rule 5.1(b)(1) indicates that when a motion for interlocutory appeal and a stay is denied by the superior court, the moving party can contact the Supreme Court by email in addition to telephone.

Paragraphs (b)(2) and (3) are amended to clarify the contents of the motion for permission to appeal that must be filed in the Supreme Court and what must be served. Rule 5.1(b)(4) is amended to clarify that any party can file a response to a motion for a collateral final order appeal. Rule 5.1(b)(5) provides that the entry is fee must be paid within 14 days of when the Supreme Court accepts the appeal.

Where the superior court grants permission to appeal, Rule 5.1(c)(1) and (2) is amended to provide that the Supreme Court clerk opens the appeal, the Court determines whether the standard for interlocutory appeal is met, and the entry fee must be paid within 14 days of an order accepting the appeal.

For all appeals under this rule, the fee is due once the Supreme Court accepts the appeal. Electronic filers can pay the fee through the electronic filing system. Efilers and Nonelectronic filers may also mail or deliver a check to the Supreme Court. If the Supreme Court does not accept the appeal, no fee is required. If accepted, a case follows the rules for other appeals. For example, the docketing statement and transcript order will be filed after the appeal is accepted.

6. That Rule 6 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 6. DISCRETIONARY APPEALS

(a) **Appeals from Final Judgment Based on Superior Court Permission.**

(1) When an appeal from a final judgment may be taken only with the superior court's permission, the party seeking the appeal must file a motion for permission to appeal with the clerk within 14 days of the date of the entry of the judgment or order to be appealed from. The running of the time for filing a motion for permission is tolled to the extent provided, and for the grounds stated, in Rule 4(b).

(2) If permission to appeal is granted by the trial court~~, the order permitting the appeal must be~~:

(A) the court must issue and sign an order permitting the appeal and ~~signed by the superior court,~~ stating whether the proceedings will be stayed and, if so, whether the stay will be on conditions necessary to protect the rights of the adverse party; and

(B) the party appealing must pay any required entry fee; and

(C) ~~filed, served, and a copy~~ the superior court clerk must transmit the appeal ~~transmitted~~ to the Supreme Court clerk. ~~with the record of actions and any required entry fee in the manner provided for notices of appeal in Rule 3.~~

(3) The ~~record must then be forwarded and the~~ action will be entered, considered, and determined in the Supreme Court, as provided by these rules for other appeals.

(4) If the superior court denies permission to appeal, the party seeking permission may, within 14 days after entry of the order of denial, file a motion for permission to appeal in the Supreme Court. The motion and supporting documents must include ~~with a statement containing~~:

(A) the questions to be raised on appeal;

(B) the facts necessary to understand the questions; ~~and~~

(C) the reasons why an appeal should be permitted;

(D) the order from which an appeal is sought; and

(E) the order denying permission to appeal.

(5) The moving party must serve ~~copies of~~ the motion and supporting documents ~~statement~~ on all other parties. ~~The order from which an appeal is sought, and the order denying the motion, must be filed and served with the motion or as soon afterwards as practicable.~~

(6) Within 14 days after service of the motion, ~~an~~ any ~~adverse~~ party may file and serve ~~an answer in opposition~~ a response to the motion.

(7) The matter will be determined on the motion and ~~answer~~ response without oral argument unless the Supreme Court orders otherwise. If the motion for permission to appeal is granted, the

moving party must pay any required entry fee to the Supreme Court clerk within 14 days after entry of the order accepting the appeal.

(b) **Appeals from Final Judgment Based on Supreme Court Permission.**

(1) When an appeal may be taken only with the Supreme Court's approval, the party seeking to appeal must file a request for permission to appeal with the superior court clerk.

(2) The request for permission must be filed within 14 days of the date of the entry of the judgment or order to be appealed from, except that the running of the time for filing a request for permission is terminated to the extent provided, and for the grounds stated, in Rule 4.

(3) The request must contain a statement of the question or questions of law to be raised on appeal, and may contain argument and ~~copies of papers~~ documents or exhibits.

(4) The request cannot exceed 3000 words, and must include a certificate of compliance with this limit by the attorney, or self-represented party. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state the number of words in the brief and identify the word-processing system used.

(5) The appellant must serve copies of the request on all parties.

(6) The superior court clerk must send the request to the Supreme Court clerk.

(7) The Supreme Court clerk may request ~~copies or originals of papers filed with the superior court~~ documents or exhibits that are part of the record and not in the electronic case file to facilitate consideration of the request.

(8) No oral argument will be heard on a request for permission to appeal.

(9) The Supreme Court will issue a written decision on the request and ~~send its decision~~ transmit it to the superior court clerk for entry.

(10) If the Supreme Court grants permission:

(A) The order permitting the appeal must state whether the proceedings will be stayed and, if so, whether the stay will be on conditions necessary to protect the rights of the adverse party;

(B) the appellant must pay to the ~~superior court~~ Supreme Court clerk the entry fee required under 32 V.S.A. § 1431 within 14 days after the Supreme Court's entry of the order accepting the appeal ~~after the decision is entered in the superior court~~; and

(C) ~~the record, including the record of actions, must be forwarded to the Supreme Court, and~~ the ~~action~~ appeal will be ~~entered,~~ considered, and determined in the Supreme Court as provided by these rules for other appeals.

(11) Where time limits under these rules depend on the date of filing the notice of appeal, the date of the entry of the Supreme Court's ~~decision in the superior court~~ order in the Supreme Court will constitute the date that the notice of appeal was filed.

Reporter's Notes—2021 Amendment

Rule 6 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

Paragraph (a)(2) is revised to clarify its provisions regarding what happens when the superior court grants permission to appeal. When the superior court denies permission to appeal, paragraphs (a)(4) and (5) list the contents of the motion for permission to appeal that must be filed in the Supreme Court and what must be served. Paragraph (a)(6) is amended to clarify that any party can file a response to a motion for interlocutory appeal. Paragraph (b)(7) provides that the entry is fee must be paid within 14 days of when the Supreme Court accepts the appeal.

Rule 6(b)(7) provides that the Supreme Court may request items that are part of the record but not in the electronic case file. This may include media exhibits, such as audio or video recordings, or paper filings that were not converted into the electronic case management system. Under 6(b)(10), if the Supreme Court accepts the appeal, it is due within 14 days. Paragraph (b)(11) clarifies that the date of filing the notice of appeal is considered the date that the Supreme Court's decision is entered in the Supreme Court docket, not the superior court docket.

For all appeals under this rule, where permission is required from the Supreme Court to appeal, the fee is due once the Supreme Court accepts the appeal. Electronic filers can pay the fee through the electronic filing system. Efilers and nonelectronic filers may also mail or deliver a check to the Supreme Court. If the Supreme Court does not accept the appeal, no fee is required. If accepted, a case follows the rules for other appeals. For example, the docketing statement and transcript order will be filed after the appeal is accepted.

7. That Rule 9 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 9. RELEASE IN CRIMINAL CASES

(a) **Appeals from Conditions of Release.**

(1) After reasonable notice to the appellee, the Court must promptly hear and determine an appeal authorized by 13 V.S.A. § 7556(b) or (c) or by V.R.Cr.P. 46(c) from an order imposing, refusing to impose, amending, or refusing to amend, conditions of release.

(2) The appeal will be determined on the record ~~as presented by the parties~~ without the necessity of briefing.

(3) The Supreme Court or a single justice may order a defendant's release pending the disposition of the appeal.

(b) **Reviewing Denial of Release.**

(1) *Denial of Release under 13 V.S.A. § 7553a*.

(A) Review authorized by 13 V.S.A. § 7556(d) of a denial of release under 13 V.S.A. § 7553a will be by a single justice of the Supreme Court.

(B) A person seeking this review must file a notice of appeal in the superior court, provide a copy ~~apply~~ to the Supreme Court, and give ~~with~~ reasonable notice ~~provided~~ to the State.

~~(C) The person seeking review must furnish to the Supreme Court the record of the proceedings before the judicial officer. The State may furnish additional parts of the record.~~

(~~D~~ C) Transcript preparation takes precedence over all matters except older matters of the same character.

(~~E~~ D) The reviewing justice must set the time and place of the hearing, which may be conducted by ~~telephone~~ remote audio or video.

(~~F~~ E) The reviewing justice will conduct a de novo review based on the record and any additional evidence authorized by the justice for good cause shown. A party must present the reviewing justice with a memorandum describing any proposed additional evidence at least 24 hours before the hearing.

(~~G~~ F) After a hearing, the reviewing justice must either affirm or vacate the order denying release, and remand to the superior court with instructions to enter an order or take further proceedings consistent with the justice's decision.

(2) *Denial of Release Under Rule 9(b)(1) or 13 V.S.A. § 7553*.

(A) Review authorized by 13 V.S.A. § 7556(e) of a denial of release under Rule 9(b)(1) or 13 V.S.A. § 7553 will be by a panel of three Supreme Court justices.

(B) A person seeking this review must file a notice of appeal in the superior court, provide a copy ~~apply~~ to the Supreme Court, and give ~~with~~ reasonable notice ~~provided~~ to the State.

~~(C) The person seeking review must furnish to the panel the record of the proceedings before the single justice or judicial officer. The State may furnish additional parts of the record.~~

(~~D~~ C) Transcript preparation takes precedence over all matters except older matters of the same character.

(~~E~~ D) After the hearing, the panel must either affirm or vacate the order denying release, and remand to the superior court with instructions to enter an order or take further proceedings consistent with the panel's decision.

(c) **The Record.** For purposes of any appeal or review to be conducted in accordance with Rule 9(a) or (b), the record consists of the charging document, the record of actions, affidavits, all pertinent parts of the transcript of the proceeding of which appeal or review is sought, and any order or orders entered therein.

Reporter's Notes—2021 Amendment

Rule 9 is revised to update its requirements consistent with current

practice and the implementation of an electronic case management system and electronic filing.

Rule 9(b)(1)(B) is amended to clarify that a request to appeal should be filed in the superior court with a copy provided to the Supreme Court. For electronic filers, the copy may be sent through File and Serve using the courtesy copy function to the general email address jud.supremecourt@vermont.gov. Former subparagraph (b)(1)(C) that required a person seeking review to send a copy of the record is deleted because the Supreme Court will have access to the superior court electronic case file. The remaining subparagraphs are renumbered. New subparagraph (b)(1)(D) is amended to allow the hearing to be conducted by remote audio or video.

Rule 9(b)(2)(B) is amended to clarify that a request to appeal should be filed in the superior court with a copy provided to the Supreme Court. For electronic filers, the copy may be sent through File and Serve using the courtesy copy function to the general email address jud.supremecourt@vermont.gov. Former subparagraph (b)(2)(C) that required a person seeking review to send a copy of the record is deleted because the Supreme Court will have access to the superior court electronic case file. The remaining subparagraphs are renumbered.

8. That Rule 10 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 10. THE RECORD ON APPEAL

(a) **Composition.** The record on appeal consists of:

(1) the ~~original~~ documents, data, and exhibits filed electronically or nonelectronically in the superior court;

(2) any transcript of the proceedings, which may be filed either electronically or nonelectronically, and the ~~video or audio~~ recording of the proceedings, if authorized under ~~Rule 10(c) or~~ Rule 10(b)(8); and

(3) the record of actions from the superior court~~, which as used in these rules means the docket entries or the case summary~~.

(b) **Transcript.**

(1) *Appellant's Responsibility*. The appellant must either file and serve a statement that no transcript is necessary or order from a Court-approved transcription service a transcript~~, or a video recording if paragraph (c)(2) applies,~~ of all parts of the proceedings relevant to the issues raised by the appellant and necessary to demonstrate how the issues were preserved. Except as provided in paragraphs (b)(3) and (4), the statement or order must be filed within 14 days of filing the notice of appeal. By failing to order a transcript, the appellant waives the right to raise any issue for which a transcript is necessary for informed appellate review.

(2) *Procedure*. The ordering party must submit a request for transcripts ~~or a video recording~~ directly to a Court-approved transcription service either through the service's website or using a form supplied by the courts. The order confirmation must be served on all parties ~~provided to all parties, and may be sent to represented parties electronically~~. When an appeal is from an administrative agency, any transcript must be obtained in accordance with the agency's procedures. Upon completion of the transcript, the transcriber must certify under oath that the transcription is accurate.

(3) *Life Imprisonment Cases.* In any criminal case resulting in a sentence of life imprisonment where the defendant has not waived appeal or entered a plea of guilty or nolo contendere to the underlying charge, the superior court clerk must, within 14 days of the entry of judgment, order from a Court-approved transcription service a complete transcript of the proceedings.

(4) *Child Abuse or Neglect and Bail Proceedings*. In any proceeding under Chapters 51 and 53 of Title 33 or Chapter 229 of Title 13 of the Vermont Statutes Annotated, the appellant must order the transcript at the same time the notice of appeal is filed, according to the procedure set forth in paragraph (b)(2).

(5) *Appellee's Responsibility*. If the appellee deems a transcript of other parts of the proceedings necessary, the appellee must, within 14 days after service of the appellant's transcript order and docketing statement, file and serve a designation of additional parts to be included. If, within 14 days after service of that designation, the appellant has not ordered those parts, the appellee may, within the following 14 days, either order the parts at the appellee's own expense or request a prehearing conference.

(6) *Additional Transcripts.*

(A) Before the appellant's brief is due, an appellant may order additional transcripts for inclusion in the record on appeal only by written consent of the adverse party or by leave of the Supreme Court, which will be freely given when justice so requires. After that time, an appellant may order additional transcripts for inclusion in the record on appeal only by Supreme Court order for good cause shown.

(B) After the record has been completed but before filing a brief, an appellee may order additional transcripts for inclusion in the record on appeal only by written consent of the adverse party or by leave of the Supreme Court, which will be freely given when justice so requires or when the transcripts to be ordered pertain to issues raised in the appellant's brief but not in the appellant's docketing statement. After the date that the appellee's brief is initially due, an appellee may order additional transcripts for inclusion in the record on appeal only by Supreme Court order for good cause shown.

(7) *Payment*. Before the transcription begins, the ordering party must pay the transcription service a deposit, not to exceed the amount allowed by the Court Administrator's contract with the transcription service. Any balance is due upon completion of the transcripts.

(8) *Digital Audio Recording in Place of Transcript for In Forma Pauperis Parties*. In cases where the superior court proceedings were recorded by a digital audio recording device and the total elapsed time for all relevant proceedings does not exceed four hours:

(A) In forma pauperis appellants or cross-appellants who are not entitled to transcripts at state expense under Rule 24(d) may request that the audio recording be accepted as part of the

official record of the case in place of a transcript.

(B) The request must be made by motion in the Supreme Court and filed at the same time that the party's docketing statement is due. A request filed after that date will be considered only if good cause is shown.

(C) The Supreme Court may grant the motion where the in forma pauperis party raises a nonfrivolous claim of error and a record of the proceedings is necessary to resolve that claim of error.

(D) If the Supreme Court grants the motion, the appellant or cross-appellant must obtain two copies of the audio recording from either the superior court clerk or a Court-approved transcription service, which will send the copies to the appellant or cross-appellant and the Supreme Court.

(9) *Pro Bono Transcripts*. In exceptional circumstances, the Supreme Court may authorize completion of an electronic transcript pro bono by an official transcription service. The number of pages available for pro bono transcription is extremely limited.

(A) Only in forma pauperis appellants or cross-appellants whose proceedings do not qualify under paragraphs (b)(8) and (c)(2) of this rule and who are not eligible for state payment of transcripts are qualified to seek relief under this rule.

(B) A qualified party must file a motion with the Court at the same time the party's docketing statement is due. A request filed after that date will be considered only if good cause is shown.

(C) The motion must set forth the following: the dates of the hearings requested; the total number of hours to be transcribed; and the exact issues that require a transcript. The movant must attach a copy of any final written order in the case.

(D) If the motion is granted, the docket clerk will order the transcript and the transcription service will provide an electronic copy to the movant, the appellee, and the Court. Upon request and demonstration of need, the Court will make a paper copy available to the requesting party.

~~(c)~~ **~~The Record in Video-Recorded Proceedings.~~**

~~(1) *Proceedings Greater Than 12 Hours*. Where the total elapsed time for all video-recorded proceedings in a case exceeds twelve hours, the record on appeal consists of the items set forth in Rule 10(a), including a transcript of the proceedings, if ordered, and also the video recording of the proceedings certified in accordance with V.R.C.P. 79.3 or V.R.Cr.P. 53.1.~~

~~(2) *Proceedings Less Than 12 Hours*. Where the video-recorded proceedings total less than 12 hours, the record on appeal consists of the items set forth in Rule 10(a), except as set forth in this paragraph.~~

~~(A) Unless a party elects to pay for a transcript, the video recording itself will serve as the official record of proceedings. When a record of the proceedings is requested, the transcription service must send copies of all video recordings to the appellant and the Supreme Court, and must bill the appellant for all copies.~~

~~(B) In appeals in which the video is the official record of the proceedings, the appellant must serve and file the appellant's brief within 60 days after receiving notice from the Supreme Court~~

~~clerk that the record is complete and that the video recording--labeled, certified, and logged as set forth in V.R.C.P. 79.3 or V.R.Cr.P. 53.1--is available.~~

~~(C) If either party orders a transcript of the video-recorded proceedings and elects to pay the costs of a copy of the transcript for the opposing party, the transcript will serve as the official record of the proceedings, even if the video-recorded proceedings do not exceed 12 hours. In those cases, the appellant's brief will be due within 30 days of completion of the transcript.~~

~~(3) *Transcript Requirements for Video-Recorded Proceedings*. Transcripts of video recordings must contain, on each page, a reference to the number of the video recording and the month, day, year, hour, minute, and second at which the reference begins, as recorded on the video. For example: Recording No. 126-92-WmS, 10-01-92. 13:12:11.~~

(~~d~~ c) **When the Transcript Is Unavailable.** If a transcript is unavailable, the appellant may prepare a statement of the evidence from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the superior court for settlement and approval. The superior court clerk will enter the approved statement on the docket and transmit a copy to the Supreme Court clerk. ~~As settled and approved, the statement will be included by the superior court clerk in the record on appeal.~~

(~~e~~ d) **Agreed Statement as the Record on Appeal.** In place of the record on appeal as defined in Rule 10(a), the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the superior court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to a decision of the issues presented. If the statement is truthful, it--together with any additions that the presiding judge may consider necessary to a full presentation of the issues on appeal--must be approved by the court and ~~certified~~ transmitted to the Supreme Court as the record on appeal~~. The superior court clerk must forward it to the Supreme Court clerk~~ within the time provided by Rule 11. ~~Copies of the agreed statement may be filed as the printed case required by Rule 30.~~

(~~f~~ e) **Correction or Modification of the Record.** If any difference arises about whether the record truly discloses what occurred in the superior court, the difference must be submitted to and settled by that court and the record conformed accordingly. Except as provided in Rule 10(b), if anything material to either party is omitted by error or accident from, or misstated in, the record, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded on stipulation of the parties, by the superior court before or after the record has been forwarded, or by the Supreme Court. All other questions about the form and content of the record must be presented to the Supreme Court.

Reporter's Notes—2021 Amendment

Rule 10 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

Rule 10(a)(1) is amended to delete the word "original." With electronic case files and records, there is no original document as the term was understood with paper records. Under V.R.E.F. 12, the official record is the electronic record.

Rule 10(b)(2) is amended to provide that the transcript order must be served on all parties. The rule previously required the transcript order to be emailed to represented parties. Service is controlled by Rule 26 and incorporates the efiling rules concerning service by and on electronic filers.

Rule 10(c), regarding video-recorded proceedings, is removed from the rule because the superior courts no longer use video recording as the official record. In all superior courts, the record is made with an audio recording. Other amendments in Rule 10 remove reference to video-recorded proceedings. Subdivisions (d), (e), and (f) are renumbered (c), (d), and (e).

New Rule 10(c) is amended to specify that where there is a statement in lieu of a transcript, the superior court clerk enters it on the superior court docket and then transmits it to the Supreme Court.

New Rule 10(d) is amended to require the superior court clerk to transmit any approved statement to the Supreme Court.

9. That Rule 11 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 11. ~~FORWARDING~~ THE RECORD

(a) **~~Time for Forwarding;~~ Appellant's Duty.**

(1) After filing the notice of appeal, the appellant must comply with Rule 3(e) and Rule 10(b) ~~and do whatever else is necessary to enable the clerk to assemble and forward the record~~.

(2) If there are multiple appeals from a judgment or order, each appellant must comply with the provisions of Rule 10(b) and this subdivision, and the clerk must ~~forward~~ transmit a single record within 14 days after the last notice of appeal is filed.

(b) **Clerk's Duty To ~~Forward~~ Transmit the Record; Transcript.**

(1) Within 14 days after filing of the notice of appeal, the superior court clerk must ~~forward any entry fee, and the record on appeal, including necessary exhibits, but not including the transcript,~~ transmit the appeal to the Supreme Court~~, unless the time is shortened or extended under Rule 11(d)~~. ~~When the superior court clerk receives a statement to be filed under Rule 10(c) or (d), the superior court clerk must forward that statement to the Supreme Court clerk.~~ The superior court clerk must send any documents or audio or video exhibits not contained in the electronic case file but part of the record on appeal.

(2) In any criminal case where the defendant receives a sentence of life imprisonment and has not waived appeal, the superior court clerk must expeditiously perform all actions required under this rule without any notification or assistance from the appellant.

(3) Unless directed to do so by a party or the Supreme Court clerk, the superior court clerk will

not send unusually bulky or heavy documents, and physical exhibits ~~other than documents~~ that are not in the electronic case file but are part of the record on appeal. ~~If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt~~

(4) The record is considered ~~forwarded~~ transmitted when the superior court clerk ~~transmits~~ sends it to the Supreme Court clerk. ~~The superior court clerk must indicate--on the face of the record or otherwise--the date it is forwarded.~~

(5) When each transcript is complete, the transcriber will promptly notify the Supreme Court clerk and the parties, indicate the balance due, and, upon payment, deliver the transcript to the ordering party and the Supreme Court. If the transcript has not been filed electronically, the appellant must file the original with the Supreme Court clerk at or before the time of oral argument.

~~(c) **Retaining the Record Temporarily in the Superior Court for Use in Preparing the Appeal.** The parties may stipulate, or the superior court on motion may order, that the superior court clerk retain the record temporarily for the parties to use in preparing appellate filings.~~

~~(1) The appellant must ensure that the appeal is docketed and the record filed within the time fixed or allowed by:~~

~~(A) complying with the provisions of Rule 12(a); and~~

~~(B) forwarding to the Supreme Court clerk a partial record composed of the record of actions, and a certificate prepared by counsel or a self-represented appellant stating that the record, including all necessary exhibits, is complete except for the transcript.~~

~~(2) After receiving the appellee's brief, or earlier if the Supreme Court orders or the parties agree, the appellant must request that the superior court clerk forward the record.~~

~~(d) **Extending or Reducing Time for Forwarding the Record.**~~

~~(1) The superior court may extend the time for forwarding the record for cause if:~~

~~(A) the request for extension is made within the time originally prescribed or within an extension previously granted; and~~

~~(B) the extension does not exceed 90 days from the date of filing of the first notice of appeal.~~

~~(2) If the superior court lacks authority to grant relief or has denied a request, the Supreme Court may, on motion or for cause, extend the time for forwarding the record or may permit the record to be forwarded and filed after the expiration of the time allowed or fixed. If the superior court has previously denied a request, the motion must state any reasons given for the denial.~~

~~(3) The superior court or the Supreme Court may require the record to be forwarded and the appeal to be docketed at any time within the time otherwise fixed or allowed.~~

~~(e) **Retaining the Record by Court Order.**~~

~~(1) The Supreme Court may order that a certified copy of the record of actions be forwarded instead of the entire record. But a party may at any time request that designated parts of the record be forwarded.~~

~~(2) The superior court may order the record or some part of it retained if needed by the court while the appeal is pending, subject to the request of the Supreme Court.~~

~~(3) If all or part of the record is retained, the superior court clerk must send a copy of the order and the record of actions together with the parts of the original record allowed by the superior court and copies of any parts of the record designated by the parties.~~

~~(f) **Retaining Parts of the Record in the Superior Court by Stipulation.** The parties may agree by written stipulation filed in the superior court that designated parts of the record be retained in the superior court, subject to order of the Supreme Court or request by a party. The parts of the record so designated remain part of the record on appeal.~~

~~(g) **Record for Preliminary Hearing in the Supreme Court.** If, before the record is forwarded, a party files a motion in the Supreme Court for dismissal, for a stay pending appeal, or for any intermediate order, the superior court clerk must send the Supreme Court any parts of the record designated by any party.~~

Reporter's Notes—2021 Amendment

Rule 11 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

The heading of Rule 11(a) referring to forwarding the record is deleted as is the second half of paragraph (a)(1) requiring the appellant to do whatever is necessary to enable the clerk to assemble and forward the record. The appellant is not responsible for providing the Supreme Court with the record on appeal. For appeals from superior court decisions, the Supreme Court will have access to the electronic case record. For appeals from executive-branch agencies and boards, the agency will send the record to the Supreme Court.

Rule 11(b)(1) is updated to provide that the superior court must transmit the appeal to the Supreme Court and send any items that are part of the record but not in the electronic case file. The superior courts have not converted all cases completely into the electronic case file. For cases with both paper and electronic records, the superior court must transmit the paper file to the Supreme Court. In addition, the superior court must send any media exhibits that are not contained in the electronic case file. Under (b)(3), the superior court is not required to send bulky or heavy exhibits that are not in the electronic case file. Rule 11(b)(4) is amended to remove the requirement of indicating on the record when it was forwarded. This step is not necessary with an electronic case file.

Subdivisions (c)-(g), which contained provisions on extending the time to send the record and retaining the record in the superior court are deleted. These provisions are no longer necessary because with electronic case files, the superior court and Supreme Court can access the same documents at the same time.

10. That Rule 12 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 12. DOCKETING THE APPEAL; ~~FILING~~ COMPLETING THE RECORD

(a) **Docketing the Appeal.** After the appeal is received, ~~Upon receiving the copy of the notice of appeal, the record of actions, and any entry fee~~ the Supreme Court clerk must docket the appeal under the title of the superior court action and must identify the appellant, adding the appellant's name if necessary. Within 14 days of opening an appeal, if there is an electronic case file, the Supreme Court clerk must create the Appeal Volume, as defined in Rule 1(c)(7).

(b) **Completion of the Record.**

(1) After receiving notice that each ordered transcript is complete, or that no transcript is necessary for the appeal, the Supreme Court clerk will promptly notify all parties to the appeal in the manner set forth in Rule 25(b) that the record is complete.

(2) The record is complete on the date that notification to the parties is docketed.

(c) **Completion of the Record in Appeals Where Audio~~- or Video~~-Recorded Proceedings are Part of the Record on Appeal.** In a case that has been recorded by ~~video or~~ audio equipment:

(1) *No Recording of the Proceedings Necessary*. If the Supreme Court clerk receives notice that a copy of a recording of the proceedings is not necessary for the appeal, the clerk will notify all parties that the record is complete.

~~(2) *Video-Recorded Proceedings Less Than 12 Hours*. If the total elapsed time for all video-recorded proceedings is less than 12 hours, and a party has requested a copy of the video recording rather than a transcript in place of the video recording, the record will be deemed complete when the Supreme Court receives the ordered video-recorded proceedings.~~

(~~3~~ 2) *Audio-Recorded Proceedings Less Than 4 Hours*. If the total elapsed time for all audio-recorded proceedings is less than 4 hours, and the Supreme Court has permitted a party to submit the audio-recorded proceedings as the official record in place of a written transcript under Rule 10(b)(8), the record will be deemed complete when the Supreme Court receives a copy of the audio-recorded proceedings.

(d) **Dismissal for Appellant's Failure To Order Transcript or Pay Entry Fee ~~Timely Forward or Docket the Appeal~~.**

(1) Any appellee may file a motion in the Supreme Court to dismiss the appeal if the appellant fails to:

~~(A) provide for forwarding the record within the time fixed or allowed;~~

(~~B~~ A) order the transcript and so notify the clerk; or

(~~C~~ B) pay any required entry fee.

~~(2) The motion must be supported by proof of service and a certificate by the superior court clerk~~

~~showing:~~

~~(A) the date and substance of the judgment or order from which the appeal was taken;~~

~~(B) the date on which the notice of appeal was filed; and~~

~~(C) the expiration date of any order extending the time for forwarding the record.~~

(~~3~~ 2) The appellant may respond within 14 days of service.

(~~4~~ 3) The clerk must docket the appeal for the purpose of permitting the Court to entertain the motion without requiring payment of the entry fee, but the appellant will not be permitted to respond without payment of the fee, unless otherwise exempted.

Reporter's Notes—2021 Amendment

Rule 12 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

Rule 12(a) indicates that once the Supreme Court receives the appeal, it is docketed. This means that the case is opened at the Supreme Court and assigned a case number. Within 14 days of opening the appeal, the docket clerk creates an appeal volume for appeals that are from cases in Odyssey and have electronic case files. As indicated in Rule 1(c)(7), the appeal volume contains the PDF documents that are part of the electronic case file. The parties to the appeal are required to cite to the appeal volume in their briefs so it is important for it to be created before the briefs are due. The appeal volume may not contain all of the records in the case. Some cases may have documents or media exhibits that are not part of the electronic case file. For cases opened prior to the transition to Odyssey, there may be paper records that were not scanned into electronic form. In addition, media exhibits will not be part of the electronic case file. As indicated in V.R.A.P. 11(b)(1), the superior court will transmit these exhibits to the Supreme Court. Parties may seek an extension of time to file briefs if all parts of the record are not accessible by the time that record is complete under Rule 12(b).

Rule 12(c) is amended and (c)(2) is deleted to remove reference to video-recorded proceedings as the superior courts no longer use video as a means of creating the record.

Rule 12(d)(1)(A), which allowed an appellee to move for dismissal if appellant failed to forward the record, is deleted. Under Rule 10(a), it is not appellant's responsibility to forward the record for appeal. Rule 12(d)(2), which specified the items to be included in a motion to dismiss, is deleted. With electronic case files, the Supreme Court will have access to the documents necessary for adjudicating the motion. Paragraphs (3) and (4) are renumbered (2) and (3).

11. That Rule 13 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 13. RECORD IN DIRECT APPEALS FROM THE PROBATE DIVISION AND ADMINISTRATIVE AGENCIES

(a) **Record: Probate Appeals.** In direct appeals from the Probate Division, the record consists of a ~~certified copy of~~ the record in the proceedings appealed from, setting forth the questions of law to be determined on appeal. This record must contain the eCabinet registration number assigned to each attorney who has appeared in the case, or to any self-represented litigant who has registered~~, on registering an e-mail address pursuant to 2010 V.R.E.F. 3~~.

(b) **Record: Administrative Appeals.** In appeals from administrative boards or agencies, the record consists of:

(1) the ~~original papers and exhibits~~ items listed in 3 V.S.A. § 809(e);

(2) any transcript of oral proceedings made in accordance with 3 V.S.A. § 809(f); and,

(3) where required by law, a statement of the questions of law to be reviewed.

(c) **Transmitting the Record for Administrative Appeals.** The administrative agency or board from which an appeal is taken must transmit the record to the Supreme Court within 14 days from receiving a notice of appeal.

(d) **Protection of Restrictions on Public Access for Administrative Appeals.** The transmittal by the administrative board or agency must comply with the Rules for Public Access to Court Records. If the decision-making body treats all or part of the record of the case as not publicly accessible, that status will be maintained in the Supreme Court in accordance with Vermont Rule for Public Access to Court Records 6(i).

Reporter's Notes—2021 Amendment

Rule 13 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

Rule 13(a) is amended to delete reference to a certified copy of the record. With access to the electronic case file, there is no need for the case file to be certified. The reference to the 2010 Vermont Rules for Electronic Filing in (a) is also removed as those rules have been abrogated.

New subdivision (c) clarifies that the administrative agency or board must transmit the record to the Supreme Court within 14 days after the notice of appeal is received. The record may be transmitted in electronic or paper form. The Supreme Court will make the entire record from the agency available to the parties, either by converting it to electronic form, or by making the paper record available for the parties to access.

New subdivision (d) is added to address the scope of privacy protections in records received from an administrative agency or board with respect to an appeal to the Supreme Court from a case decision and how protections are implemented. Rule 13(c) provides that the board or agency must transmit the record of the proceeding from which the appeal is taken. Whether the transmittal occurs electronically or in paper form, the agency or board producing the record is the most knowledgeable entity to take the steps to ensure that privacy protections in the Vermont Rules for Public Access to Court Records are implemented. Thus, the board or agency in transmitting the administrative adjudication record must comply with Rule 7(a)(1) of those rules.

There is an additional reason to place this responsibility on the board or agency. Rule 13(d) provides that the administrative records are also subject to any restrictions on public access to the records imposed in the administrative proceedings. These may be imposed by statute or rule or a sealing order in the administrative proceedings. The agency or board that imposed or administered these restrictions is in the best position describe how they should be implemented in the appeal process.

12. That Rule 14 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 14. CERTIFICATION OF QUESTIONS OF LAW BY FEDERAL COURTS TO THE SUPREME COURT

(a) **Answers to Certified Questions.** The Vermont Supreme Court may answer a question of Vermont law certified to it by a federal court if the answer might determine an issue in pending litigation and there is no clear and controlling Vermont precedent. The Supreme Court may decline to answer any question certified to it without providing any reasons for its decision.

(b) **Reformulation of Questions.** The Court may reformulate any question of law certified to it.

(c) **Certification Order.** The certifying court must:

(1) issue a certification order;

(2) forward the certification order to the Supreme Court clerk; and

(3) serve it on each party as provided for serving notice of appeal or rehearing in the certifying court.

(d) **Contents of the Certification Order.** A certification order must contain:

(1) the question of law to be answered;

(2) the relevant facts, showing the nature of the controversy out of which the question arose. If the parties cannot agree on a statement of facts, the certifying court will determine the relevant facts and state them as a part of its certification order;

(3) a statement acknowledging that the Supreme Court may reformulate the question;

(4) the names and addresses of counsel of record and any self-represented parties; and,

(5) a statement assigning responsibility for payment of any entry fee required under Rule 3(b)(1) to one or more of the parties.

(e) **Record.** Before responding to a certified question, the Supreme Court may request the certifying court to forward all or part of its record to the Court. If the request is not complied with, the Court may decline to answer the question.

(f) **Notice.** The Supreme Court must notify the certifying court and the parties that it has accepted, reformulated, or declined to answer the question.

(g) **Procedure.** After the certification order is received, the case will be docketed in accordance with Rule 12(a). If the Supreme Court accepts the case, any required entry fee for an appeal under Rule 3(b)(1) must be paid to the Supreme Court clerk within 14 days of entry of the order accepting the appeal. ~~After the Supreme Court has accepted a certified question and after payment of any entry fee required for an appeal under Rule 3(b)(1), the case will be docketed in accordance with Rule 12(a).~~ Rules 2, 25-32, 34-35, 39, 43-45, and 45.1 will govern the proceedings, where applicable. For purposes of this proceeding, the plaintiff, or the government, is considered the appellant.

(h) **Opinion.** The Supreme Court will issue a written opinion answering the certified question. The clerk will send a copy of the opinion to the certifying court and serve it on the parties.

(i) **Costs.** Parties must divide costs equally in a proceeding under this rule unless the certifying court orders otherwise.

Reporter's Notes—2021 Amendment

Rule 14(g) is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing. Under amended (g), after a certification order is received, the Supreme Court opens the appeal. The entry fee is required after the Supreme Court accepts the appeal. The fee can be paid through Odyssey File and Serve, by sending a check to the Supreme Court, or by calling the Court for instructions on how to pay over the telephone.

13. That Rule 21 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 21. EXTRAORDINARY RELIEF

(a) **Procedure.**

(1) The Rules of Civil Procedure, as modified by this rule, govern an original action for extraordinary relief in the Supreme Court.

(2) Parties may commence an action by filing ~~presenting~~ a complaint ~~to~~ with the Supreme Court

or ~~to~~ a single justice at any time where there is no adequate remedy under these rules or by appeal, or through proceedings for extraordinary relief in the superior court.

(3) The complaint must contain an allegation verified or supported by affidavit and subject to the obligations set forth in V.R.C.P. 11. The complaint must concisely set forth the reasons why there is no adequate remedy under these rules or by appeal or through proceedings for extraordinary relief in the superior court.

(4) The Court or a justice may issue any orders necessary to resolve the complaint promptly.

(b) **Writs Abolished.**

(1) Parties may no longer seek the extraordinary writs of certiorari, mandamus, prohibition, and quo warranto.

(2) Any relief that would have been available through those writs by original action in the Supreme Court may be sought only as provided in this rule.

(c) **Costs.** The Court may assess costs equitably for or against either party.

Reporter's Notes—2021 Amendment

Rule 21(a)(2) is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing. The amendment clarifies that these petitions are initiated by filing directly with the Supreme Court, whether by electronic or nonelectronic filing.

14. That Rule 24 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 24. WAIVER OF FILING FEE AND SERVICE COSTS

(a) **Waiver of Filing Fee and Service Costs.**

(1) *Application in the Superior Court.*

(A) A party to an action in the superior court who desires to waive the filing fee and service costs on appeal must file an application in the superior court, including an affidavit that:

(i) contains the information required by V.R.C.P 3.1(a);

(ii) claims an entitlement to redress; and

(iii) states the issues that the party intends to present on appeal.

(B) A party may proceed without further application to the Supreme Court and without prepayment of filing fees or service costs in either court or the giving of security, except as provided below, if the affidavit sets forth, and the superior court clerk finds, that:

(i) the applicant receives any kind of public assistance or is a person whose gross

income is at or below 150% of the poverty income guidelines for nonfarm families established under the Community Services Act of 1974; or

(ii) the applicant is unable to pay either the filing fee or service costs without expending household income or liquid resources necessary for the maintenance of the applicant and all dependents,

(C) If the superior court clerk denies the application, the applicant may appeal the denial to the presiding judge of the superior court in accordance with V.R.C.P. 3.1(b)(4). The clerk must serve on the applicant notice of the denial and of the right to appeal. The notice must state the reasons for that denial in writing.

(2) *Prior Approval in Superior Court.* Notwithstanding the provisions above, a party who was permitted to waive the filing fee and service costs in the superior court in accordance with V.R.C.P. 3.1(b)(1)-(2), or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal with the filing fee and service costs waived without further authorization, unless the superior court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to waive the filing fee and service costs and states in writing its reasons for the certification or finding.

(3) *Notification.* The superior court clerk must immediately notify the parties and the Supreme Court when the presiding judge of the superior court:

(A) denies an application for waiver of the filing fee and service costs;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to waive the filing fee and service costs.

(4) *Motion in Supreme Court.*

(A) The notification provided under paragraph (a)(3) must include the nature of, and the reasons for, the action of the presiding judge and the right of the applicant to move for review by the Supreme Court.

(B) The applicant may file a motion in the Supreme Court to waive the filing fee and service costs within 30 days after service of the notice required by paragraph (a)(3). The motion must include a copy of the affidavit filed in the superior court and the court's statement of reasons for its action. If no affidavit was filed in the superior court, the applicant must include the affidavit prescribed by paragraph (a)(1).

(b) **Application To Waive the Filing Fee and Service Costs on Appeal or Review of a Probate Division or Administrative Agency Proceeding.** When an appeal or review of a proceeding before the Probate Division, an administrative agency, board, commission, or officer proceeds directly in the Supreme Court, a party may file in the Supreme Court an application to waive the filing fee and service costs with the affidavit prescribed by subparagraph (a)(1)(A).

~~(c) **Form of Briefs and Leave To Use Original Record.** A party allowed to waive the filing fee and service costs may file briefs, the printed case, and other papers in typewritten form, and may request that the appeal be heard on the original record without reproducing any part~~.

(~~d~~ c) **Transcript.** If an appellant is permitted to waive the filing fee and service costs on appeal:

(1) the state will pay the costs of preparing all or part of the transcript only when required by law;

(2) the procedure of Rule 10(b) will be followed; and

(3) any other parties who have been permitted to waive the filing fee and service costs on appeal may receive a copy of the transcript at the state's expense only if required by law.

Reporter's Notes—2021 Amendment

Rule 24(c) is deleted. The subdivision formerly allowed parties who were approved to waive the filing fee to file documents in typewritten form and to request that the appeal be heard on the original record. These matters are now addressed elsewhere in the rules. The formatting requirements for all nonelectronically filed documents are now contained in Rule 32. As to reproduction of the record, as amended, Rule 30 requires a printed case in only a narrow category of cases and allows the requirement to be waived on motion or the Court's initiative.

Former paragraph (d) is renumbered (c).

15. That Rule 25 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 25. FILING AND SERVICE

(a) **Filing.**

(1) *Filing in General ~~with the Clerk~~.* A document ~~paper~~ required or permitted to be filed in the Supreme Court must be filed ~~with the clerk~~ either electronically or nonelectronically in accordance with the 2020 Vermont Rules for Electronic Filing.

(2) *Method and Timeliness for Nonelectronic Filing.*

(A) Nonelectronic Filing In general. Nonelectronic filing may be used when permitted or required by 2020 V.R.E.F. 3 or 6. Nonelectronic ~~F~~filing may be accomplished by ordinary first-class mail or by third-party commercial carrier addressed to the clerk, but ~~except as provided in (B),~~ filing is not timely unless the clerk receives the documents ~~papers~~ within the time fixed for filing.

(B) A brief or printed case. A brief or printed case is timely filed if mailed or delivered to the carrier on or before the last day for filing.

(C) Filing by an inmate confined in an institution.

(i) A ~~paper~~ 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 ~~paper~~ document stating the date the ~~paper~~ document was deposited in the institution's internal mailing system. The notarized statement establishes a presumption that the ~~paper~~ 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.

(ii) 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 paper.

(3) *Filing a Motion with a Single Justice*. If a motion requests relief that may be granted by a single justice, the justice may permit the motion to be filed with the justice by any appropriate method. The justice must note the filing date on the motion and forward it to the clerk.

(4) *Public Access Compliance.* All new filings in the Supreme Court, including filings of briefs and printed cases, must comply with Rule 7(a)(1) of the Rules for Public Access to Court Records. An efiler must certify compliance as part of the electronic filing process. A nonelectronic filer must certify compliance in a separate certification. Any preexisting document that is part of the record on appeal, and for which public access was restricted in whole or in part in the trial court or in the administrative body from which an appeal is taken, must continue to be so restricted in the Supreme Court. ~~*Social Security Numbers*. Before filing, the filer must redact the social security number of any person from any paper, including a paper in the printed case, unless the social security number is specifically requested by the Supreme Court or is required by law.~~

(b) **Manner of Service.** Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal in the manner provided by V.R.C.P. 5(b) and 2020 V.R.E.F. 11, if applicable, but ~~papers~~ documents filed after the deadline for filing an appellee's docketing statement do not need to be served on a party who has neither filed a docketing statement nor entered an appearance in the Supreme Court.

(c) **Proof of Service**. ~~**Filing as Proof of Service.** Filing of any paper under this rule by a party's attorney constitutes a representation by the attorney, subject to V.R.C.P. 11, that a copy of the paper has been or will be served on each of the other parties as provided in Rule 25(b). No further proof of service is required unless an adverse party raises a question of notice.~~

(1) *Certifying Service When Electronically Filing*. When a document is filed electronically, the efiler must certify compliance with service requirements as set out in 2020 V.R.E.F. 11(g).

(2) *Certifying Service When Nonelectronically Filing.* When a document is filed nonelectronically, the filer must certify compliance with service requirements as set out in V.R.C.P. 5(h).

(d) **Signing of Documents ~~Papers~~; Representations; Sanctions.**

(1) *Signing of Documents ~~Papers~~*. If a party is represented by counsel, at least one attorney of record must sign every ~~paper~~ document filed and provide his or her address. If a party is not represented, he or she must sign the ~~paper~~ document and provide his or her address. The Court will strike any unsigned ~~paper~~ document unless the ~~paper~~ document is signed promptly after the omission

is brought to the attention of the person who filed it.

(2) *Representations*. By presenting a document ~~paper~~ to the Court--whether by signing, filing, submitting, or later advocating it--an attorney or self-represented party is making the certification provided by V.R.C.P. 11(b) as to that paper.

(3) *Sanctions*. If after notice and a reasonable opportunity to respond, the Court determines that V.R.C.P. 11(b) has been violated, the Court may, subject to V.R.C.P. 11(c), impose an appropriate sanction on those violating the rule or responsible for the violation.

Reporter's Notes—2021 Amendment

Rule 25 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

Rule 25(a)(1) is amended to specify that filings may be done electronically or nonelectronically. Rule 25(a)(2) addresses nonelectronic filing and cross references the 2020 Vermont Rules for Electronic Filing for when nonelectronic filing is permitted.

Rule 25(a)(4), which required redaction of social security numbers in filings in the Supreme Court, is amended to require that filings comply with Rule 7(a)(1) of Rules for Public Access to Court Records, whether the record is being filed electronically or nonelectronically. See also V.R.E.F. 5(b)(5)-(6), 7(a)(5), 7(c)(3). The earlier version highlighted only one part of the privacy protection requirements of filers. In anticipation of electronic case files in the Vermont Courts, the responsibilities of filers were expanded and generalized in a 2019 rewrite of the Rules for Public Access to Court Records. See Reporter's Notes to Rule 1 of the Rules for Public Access to Court Records. The amendment specifies that those responsibilities apply to filings in the Supreme Court.

In appeals from the superior court, the appellate record includes individual case records filed in the lower court. These individual records were filed, or converted to electronic records, in compliance with the Rules for Public Access to Court Records. To the extent that the process resulted in restrictions on public access in whole or in part, those restrictions continue to apply in the Supreme Court under Vermont Rule for Public Access to Court Records 6(i). For example, any record that was not publicly accessible in the superior court will not be publicly accessible as part of a public appeal volume or be included in a printed case that is publicly accessible. Where a redacted version of a record has been filed in the trial court, it can be included in a printed case to which the public has access. In keeping with the current practice of the Supreme Court with respect to proceedings that are closed in the superior court, and for which all records are not publicly accessible, briefs in the Supreme Court are not publicly accessible even if initials are used for parties to prevent public identification of the parties.

Rule 25(b) and (c) are amended to clarify how parties are served and how to prove service. Parties must serve documents as required by V.R.C.P. 5(b) and 2020 V.R.E.F. 11 when applicable. Subdivision (c) is amended to explain how to prove service. When documents are electronically filed, the efiler must comply with V.R.E.F. 11(g) which requires service on other efilers to be certified through use of a submission agreement upon filing or through use of a certificate of service. Certifying service for nonelectronic filing is done as set out in V.R.C.P. 5(h) using a certificate of service.

Subparagraph 25(a)(2)(C) and paragraphs (d)(1) and (2) are amended to replace the word "paper" with "document."

16. That Rule 26 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 26. COMPUTING AND EXTENDING TIME

(a) **Computing Time.** V.R.C.P. 6(a) governs the computation of any period of time prescribed by these rules, by any applicable statute, or by court order.

(b) **Extending Time.** For good cause, the Supreme Court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the Court may not extend the time for filing:

(1) a notice of appeal or a motion for permission to appeal, unless specifically authorized by law or by these rules; or

(2) materials in appeals under Chapters 51 and 53 of Title 33, absent extraordinary circumstances.

(c) **Additional Time After Certain Kinds of Service.** When a party may or must act within a prescribed period after service and service is made under V.R.C.P. 5(b)(2), (3), or (4), 3 days are added to the prescribed period after the period would otherwise expire under V.R.C.P. 6(a).

(d) **Stipulation to Extend Time <u>to File Appellate Briefs</u> ~~on Appeal~~.**

(1) *<u>Stipulations to Extend Time to File Briefs.</u>* ~~Subject to the provisions of Rules 12(c), 26(e), and 42(b), the parties may extend any period of time prescribed by these rules by filing a stipulation.~~ <u>The parties may stipulate one time to extend the time to file each type of brief. The stipulated extension of time may not exceed:</u>

<u>(A) Appellant's principal brief—30 days;</u>

<u>(B) Appellee's principal brief—21 days;</u>

<u>(C) Appellant's reply brief and appellee's reply brief in a case with a cross appeal—14 days.</u>

(2) *<u>Exception.</u>* ~~But t~~ <u>The</u> parties may not by stipulation extend the period to file~~:~~

~~(A) a notice of appeal or a request for permission to appeal; or~~

~~(B)~~ ~~materials~~ briefs in appeals in proceedings under Chapters 51 and 53 of Title 33.

(~~2~~ 3) *Form of Stipulation.* The stipulation must be signed by all counsel of record and must set forth in clear and specific terms:

(A) the period being extended;

(B) the date to which the period is extended; and

(C) the reason for the extension.

~~(3) *Filing procedure.*~~

~~(A) If filed before the record on appeal is sent to the Supreme Court, the stipulation must be filed with the superior court clerk.~~

~~(B) If filed after the record on appeal is sent to the Supreme Court, the stipulation must be filed with the Supreme Court clerk.~~

(~~e) **Stipulations Limited.** No stipulated extension of time may exceed 30 days for appellant or 21 days for appellee. Only one Rule 26(d) extension may be filed for the appellant's brief and printed case and the appellee's brief.~~

Reporter's Notes—2021 Amendment

Rule 26(d) regarding stipulations to extend time to file appellate briefs is amended. Under the amended rule, the parties may stipulate one time to extend the time to file each type of brief. This means that the parties can stipulate once for the appellant's principal brief, once for the appellee's principal brief, and once for a reply brief. The extensions may not exceed 30, 21, or 14 days, respectively. Rule 26(d)(2) retains the exception that the parties cannot stipulate to extend time to file briefs in juvenile cases. Former paragraph (d)(2) is renumbered (d)(3) and has a new heading. Former paragraph (d)(3), allowing some stipulations to be filed in the superior court, is deleted as unnecessary.

17. That Rule 27 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 27. MOTIONS

(a) **In General.**

(1) *Application for Relief.* An application for an order or other relief is made by motion filed with the Supreme Court clerk unless these rules prescribe another form. A motion must be in writing unless the Court permits otherwise.

(2) *Contents of a Motion*.

(A) A motion must state with particularity the grounds for the motion and the order or relief sought.

(B) Any brief, affidavit or other required ~~paper~~ document necessary to support a motion must be served and filed with the motion.

(3) *Response*. Except as provided in Rule 40 and Rule 27(b), any party may file a response to a motion within 14 days after service of the motion, unless the Court shortens or extends the time.

(b) **Disposition of a Motion for a Procedural Order or Stay.**

(1) *Motion for Procedural Order*. The Court may act on a motion for a procedural order--including a motion under Rule 26(b)--at any time, without notice to, or response from, other parties.

(2) *Motion for Stay*. The Court may act on a Rule 8 motion for a stay or other relief after reasonable notice.

(3) *Reconsideration*. A party adversely affected by the Court's action may file a motion to reconsider, vacate, or modify that action.

(c) **Power of a Single Justice To Decide a Motion.** A single justice may grant or deny any motion, but may not dismiss or otherwise determine an appeal or other proceeding. The full Court may review the action of a single justice.

(d) **Form of Motions ~~Papers; Number of Copies~~.**

(1) The format ~~form~~ of a motion is governed by Rule 32(~~c~~ b).

(2) *Separating Motions and Responses.* ~~A party must file the original motion and one copy, unless the Court orders otherwise.~~

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

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

(C) An efiler may not respond to a motion and file a new motion in the same document.

Reporter's Notes—2021 Amendment

Rule 27 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

Rule 27(a) is amended to specify that a motion must be in writing unless the Court approves otherwise. This change is consistent with FRAP 27(a).

Subparagraph (a)(2)(B) is amended to refer to "document" instead of "paper."

Subdivision 27(d) specifies that motion format is controlled by Rule 32(b). New paragraph 27(d)(2) restates the requirements of 2020 V.R.E.F. 5(g)(1) regarding motion formatting. When documents are filed into Odyssey File and Serve they are given a title by the efiler. If the efiler combines several requests for different types of relief into one document, the different motions cannot be clearly separated in the electronic case management system and it can cause confusion for other parties responding to the motions and for the Court in resolving the motions. For example, a notice of appearance and a request to extend time should be filed as separate documents. For a further explanation, see the original Reporter's Notes to 2020 V.R.E.F. 5(f).

18. That Rule 28 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 28. BRIEFS

(a) **Appellant's <u>Principal</u> Brief.** The appellant's <u>principal</u> brief must contain under appropriate headings and in this order:

(1) a statement of the issues presented for review, with references to the pages where the discussion of each begins;

(2) a table of contents and a table of cases (alphabetically arranged), statutes, and other authorities--with references to the pages of the brief where they are cited;

(3) a concise statement of the case, including the subject of the litigation, the claims of the parties, the facts of the case and proceedings below, and the appellant's specific claims of error, with appropriate references to the record;

(4) an argument, which may be preceded by a summary, and must contain:

(A) the issues presented, how they were preserved, and appellant's contentions and the reasons for them—with citations to the authorities, statutes, and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review, which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues.

(5) a short conclusion stating the precise relief sought.

(b) **Appellee's Principal Brief.** The appellee's <u>principal</u> brief must conform to the requirements above, but it need not include a statement of the case or the standard of review unless the appellee is dissatisfied with the appellant's statement.

(c) **<u>Appellant's</u> Reply Brief.** The appellant may file a brief in reply to the appellee's brief. ~~An appellee who has cross-appealed may file a reply brief limited to the appellant's response to the issues presented by the cross-appeal.~~ No further briefs may be filed without Court permission<u>, except as provided in (d)</u>.

(d) **Briefs in a Case Involving a Cross-Appeal.**

(1) *Designation of Appellant.* If a cross-appeal is filed, the party who files a notice of appeal first is the appellant for the purposes of this rule, and Rules 30 and 31. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by agreement of the parties or by Court order.

(2) *Appellee's Principal Brief.* In a case with a cross-appeal, the appellee must file a principal brief that addresses the cross-appeal and also responds to the appellant's principal brief. The appellee's principal brief must conform to the requirements of paragraphs (a)(1)-(5), except an appellee who is satisfied with appellant's statement need not include a statement of the case.

(3) *Appellant's Reply Brief.* The appellant must file a brief that responds to the principal brief in the cross-appeal and in the same brief may reply to the response in the appeal.

(4) *Appellee's Reply Brief.* An appellee may file a brief in reply to the response in the cross-appeal. The brief must be limited to the issues presented by the cross-appeal.

(5) *No Further Briefs*. No further briefs may be filed without Court permission.

(~~d~~ e) **References to the Record.**

Parties must cite to the record in their briefs as follows:

(1) If there is an Appeal Volume for the case, cite to the page in the Appeal Volume where the document is located as follows: AV-28;

(2) If there is a Printed Case, cite to the page in the Printed Case where the document is located as follows: PC-28;

(3) Cite to the page in the transcript or time stamp in audio recording as follows: 5/12/20-TR-52 or 5/1/21-R-21:01.

~~(1) *Cases with Nonelectronic Case File.* References in the brief to parts of the record contained in the printed case must be to the pages of the printed case where those parts appear. If the record is reproduced in accordance with Rule 30(e), or if references are made in the briefs to parts of the record not reproduced, the references must be to the pages of the original document involved.~~

~~(2) *Cases Filed Under the 2010 Vermont Rules for Electronic Filing.* If the parties chose not to file a printed case, the parties must directly cite to the particular document in the superior court record, identified by document name and file date, as well as the relevant page number(s).~~

~~(3) *Cases Filed Under the 2020 Vermont Rules for Electronic Filing.* The parties must cite to pages of the record created from the electronic filing system where the document appears.~~

~~(4) *References to Challenged Evidence.* A party referring to evidence whose admissibility is in controversy must cite the pages of the printed case, of the record from the efiling system where the document appears, or of the transcript at which the evidence was identified, offered, and received or rejected, with the number of any interrogatory and answer or the name and mark of any document offered.~~

~~(e) **References in Briefs to Audio and Video Record.** When audio or video recordings are part of~~

~~the official record in place of a transcript, the parties must, when referring to the record of the audio- or video-recorded proceedings in their briefs, provide references that include the number of the audio- or video recording as well as the date (if more than one date), hour, minute and second when the reference begins.~~

~~(f) **Reproduction of Rules, Regulations, etc.** If the Court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum, or may be supplied to the Court in pamphlet form.~~

~~(g) **Briefs in a Case Involving a Cross-Appeal.** If a cross-appeal is filed, the party who files a notice of appeal first is the appellant for the purposes of this rule, and Rule 30 and 31. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by agreement of the parties or by Court order. With respect to appellee's cross-appeal and response to appellant's brief, appellee's brief must conform to the requirements of paragraphs (a)(1)-(5). An appellee who is satisfied with appellant's statement need not include a statement of the case.~~

(~~h~~ f) **Briefs in a Case Involving Multiple Appellants or Appellees.** In a case involving more than one appellant or appellee, including cases consolidated on appeal, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(~~i~~ g) **Length of Briefs.**

(1) Briefs cannot exceed the limits stated in Rule 32(a)(7), except by Court permission.

(2) A request for permission to exceed these limits must specify the number of additional words requested, and must be filed no later than 7 days before the filing deadline for the brief involved.

(~~j~~ h) **Citation of Supplemental Authorities.** If pertinent and significant authorities come to a party's attention after the party's brief has been filed--or after oral argument but before decision--a party may promptly file ~~with the clerk eight copies of~~ a letter setting forth the citations, ~~with a copy also provided to~~ and serve it on all other parties. The letter must state without argument the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. Any response must be made promptly and must be similarly limited.

Reporter's Notes—2021 Amendment

Rule 28 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

Subdivisions (a) and (b) are amended to add the word "principal" before appellant's and appellee's brief to make the language consistent with Rule 32.

Rule 28(c) is amended to clarify that it pertains to the appellant's reply brief. The reference to a cross-appeal is removed as this is addressed in new subdivision (d).

New subdivision (d) addresses cross-appeals. It clarifies the different

briefs permitted for cases involving cross-appeals. New Rule (d)(2) clarifies that in a case with a cross-appeal an appellee's principal brief is the opportunity to make the principal argument and also to respond to appellant's principal brief. Under (d)(5) no further briefs are permitted without the Court's permission.

Former subdivision (d) is now (e). It contains new paragraphs (1)-(3) addressing how to cite to the record in a brief. Where there is an appeal volume, the location of the document in the appeal volume must always be included. If the case has a printed case, either required or optional, the document is referenced by using the page number in the printed case. For cases where an optional printed case is filed, the reference to the appeal volume must also be included. When multiple superior court cases are consolidated into one appeal, the parties can identify the appeal volume by using the docket number for the superior court case or using another means to clearly identify which case is being cited.

Former paragraphs (d), (e), (f), and (g) are deleted. Former paragraphs (h), (i), and (j) are now (f), (g), and (h).

19. That Rule 30 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 30. PRINTED CASE

(a) **Required Printed Case**. ~~**Appellant's Duty.** No printed case is required when there is an electronic case file under the 2010 or 2020 Vermont Rules for Electronic Filing. In all other cases, the appellant is required to file a printed case in accordance with this rule.~~

(1) *When Required*. In cases where there is no Appeal Volume, including appeals from executive-branch administrative agencies, the appellant must file a printed case except:

(A) A printed case is not required in small claims appeals or appeals from the Human Services Board and Employment Security Board.

(B) The Court may waive the requirement on its own initiative or on a party's motion.

(2) *Contents.* ~~The appellant must prepare and file a printed case containing~~ A required printed case must contain extracts from the record that are necessary to present fully the questions raised, including:

(A) the relevant ~~docket entries~~ record of actions in the proceedings below;

(B) the relevant parts of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the Court's attention.

(b) **Supplemental Printed Case**. The appellee may assemble a supplemental printed case. The appellee must file any supplemental printed case when the appellee's brief is filed.

(c) **Optional Printed Case**. When a printed case is not required under (a), any party may file an

optional printed case containing extracts from the record to which the party wishes to direct the Court's attention.

(~~2~~ d) **Format**.

(~~A~~ 1) The pages of the printed case must be numbered sequentially so that the electronic and paper page references are consistent. This may be done either by designating the cover page as page one or by using separate sectional pagination and adjusting the PDF settings so that the page search function recognizes the numbering scheme.

(~~B~~ 2) The sections of the printed case must be reproduced in the following order:

(~~i~~ A) a table of contents--listing the parts of the record included, with references to the page of the printed case at which each part begins;

(~~ii~~ B) the decision appealed from;

(~~iii~~ C) the record of actions ~~docket entries~~; and

(~~iv~~ D) the remaining parts of the record in chronological order.

~~(3) *Number of Copies.* The appellant must file with the Supreme Court clerk eight paper copies and an electronic version of the printed case as set forth in Rule 32(b)(1) when the appellant serves and files the appellant's brief as provided in Rule 31(a).~~

(~~4~~ 3) ~~*Excluded Material.*~~ Only materials that are part of the record below may be included in the printed case. The Court and the parties may rely on parts of the record that are not included in the printed case.

~~(b) **Electronic Case File.** When the case on appeal contains an electronic case file as defined in Rule 12(b) of the 2010 Vermont Rules for Electronic Filing, the appellant is not required to assemble and file a printed case as described in Rule 30(a), but may do so if desired. When the case on appeal was filed under the 2020 Vermont Rules for Electronic Filing, no printed case may be filed.~~

~~(c) **Supplemental Printed Case.** In cases where there is no electronic case file and if necessary to direct the Court's attention to parts of the record not included in the appellant's printed case, the appellee may assemble a supplemental printed case. The appellee must file the supplemental printed case when the appellee's brief is filed by sending the Supreme Court clerk eight paper copies and an electronic version of the supplemental printed case as set forth in Rule 32(b)(1).~~

(~~d~~ e) **Costs of Production.** Mindful that the entire record is always available to the Court, the parties must not include unnecessary material in the required printed case or supplemental printed case. The cost of producing ~~the~~ a required paper printed case ~~or supplemental printed case~~ is a taxable cost. If any party unnecessarily produces a printed case or causes unnecessary parts of the record to be included in the required printed case, ~~however,~~ the Court may impose the cost of producing those parts on that party.

~~(e) **Reproduction of Exhibits.** Exhibits designated for inclusion in the printed case may be reproduced in a separate appendix. Eight paper copies and an electronic copy must be filed with the printed case or supplemental printed case. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a superior court action and has been designated for~~

~~inclusion in the printed case, the transcript will be treated as an exhibit.~~

~~(f) **Considering Appeals Without the Printed Case.**~~

~~(1) The Court may dispense with the requirement of the printed case and consider the appeal on the relevant parts of the original record.~~

~~(2) A printed case is not required in small claims appeals.~~

~~(g) **Service of Printed Case, Supplemental Printed Case, and Appendix.** Service of the printed case, supplemental printed case, or any appendix must be made by sending an electronic version of the document to each party to the appeal. If a party is self-represented, then a paper copy must be served as provided in Rule 25, unless the parties agree otherwise.~~

Reporter's Notes—2021 Amendment

Rule 30 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

The new case management system, Odyssey, and electronic filing through File and Serve are in effect in all Vermont Superior Courts. For cases that are initiated in Odyssey and those that are fully converted, the electronic case record is the official record and the Supreme Court has ready access to that electronic record. When an appeal is transmitted to the Court, the Court produces an Appeal Volume, containing all of the PDF documents that are contained in the electronic case file. The parties and the Court are able to readily access and cite to documents from the Appeal Volume. Therefore, in these cases, a printed case is not required.

Rule 30(a) is amended to specify when a printed case is still required. This includes appeals from executive-branch administrative agencies. Rule 30(a)(1)(B) allows the Court to waive a required printed case on its own initiative or on a party's motion. The contents of a required printed case remain unchanged. Subdivisions (b) and (c) specify when a supplemental or optional printed case may be filed. While superior courts are transitioning from paper files to electronic files, there may be cases with partial electronic and paper records. In those cases, not all documents will be in the Appeal Volume. The parties are encouraged to file an optional printed case to draw the Court's attention to documents not in the electronic case record.

Rule 30(d) incorporates the format requirements of former (a)(2).

Former Rule 30(a)(3) requiring the filing of multiple copies is deleted. The Court will have access to the electronic printed case or Appeal Volume.

Former subdivisions (b), (c), (e), and (f) are deleted. Their provisions are either no longer applicable with electronic case records or are incorporated elsewhere in Rule 30. Former subdivision (d) regarding the cost of production is relettered (e). It is amended to specify that only the cost of producing a required printed case can be recovered as a taxable cost on appeal.

20. That Rule 30.1 of the Vermont Rules of Appellate Procedure be abrogated:

~~**RULE 30.1. PRINTED CASE REFERENCES IN VIDEOTAPE PROCEEDINGS**~~

~~In cases where there is a videotape but no transcript and materials that are required under Rule 30 are unavailable, appellant must instead supply appropriate videotape references including the number of the videotape, date, hour, minute, and second when the reference begins. The other requirements of Rule 30 remain in effect.~~

Reporter's Notes—2021 Amendment

Rule 30.1 is abrogated because there are no longer proceedings in which the official record is a videotape.

21. That Rule 31 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 31. SERVING AND FILING BRIEFS

(a) Filing Deadlines.

(1) *Appellant's Brief.* Except as provided by Rule 10(c)(2), the appellant must serve and file a brief within 30 days after the record on appeal is complete.

(2) *Appellee's Brief.* The appellee must serve and file a brief within 21 days after the appellant's brief is served.

(3) *Reply Brief.* The appellant may serve and file a reply brief within 14 days after service of the appellee's brief. In a case with a cross-appeal, the appellee may serve and file a reply brief in accordance with Rule 28(c) within 14 days after service of the appellant's reply brief.

~~**(b) Number of Copies.** Eight paper copies of each brief must be filed with the Supreme Court clerk unless the Court orders that fewer be filed. An electronic version of the brief must also be filed with the Supreme Court clerk as provided in Rule 32(b), and served on each party to the appeal. A paper copy of the brief must be served on any self-represented party as provided in Rule 25, unless the parties agree otherwise. A party who has received permission to proceed in forma pauperis must file the original and five legible paper copies with the clerk, and serve one paper copy on each party.~~

(~~c~~ b) Consequence of Failure To File. If an appellant does not file a brief within the time provided by this rule, or as extended, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument without Court permission.

Reporter's Notes—2021 Amendment

Rule 31(b), requiring the parties to submit paper copies of briefs, is deleted. With the migration to electronic case files, the Court does not require paper copies of the briefs. The Court retains the authority to order paper filings if necessary.

22. That Rule 32 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 32. FORM OF BRIEFS, MOTIONS ~~PRINTED CASE~~, AND OTHER DOCUMENTS ~~PAPERS~~

(a) **Form of Briefs ~~and the Printed Case~~.**

(1) *Form of Electronically Filed Briefs*. A brief filed electronically must comply with the following:

(A) File Type. Be in text-searchable PDF in accordance with 2020 V.R.E.F. 7(a) and (b);
(B) Margins. Have margins of not less than one inch;
(C) Page Numbers. Have page numbers in the center of the bottom margin and all pages numbered sequentially so that the electronic page counter and paper numbers are consistent;
(D) Font and Spacing. Be in 13-point proportionally spaced serif font, including footnotes, and use italics or boldface for emphasis, not underlining or all caps. Have 1.2 line spacing, except the following may be single spaced: headings, block quotes, signature block. Be left-aligned, not justified;
(E) Links. Not contain any embedded hyperlinks or internal bookmarks;

(2) *Form of Nonelectronically Filed Briefs*. A brief filed nonelectronically must comply with the following:

(A) Format. Be clearly legible, with all text visible and dark enough to be readable on a scanned image in accordance with 2020 V.R.E.F. 7(c). Be either all single-sided or all double-sided;
(B) Paper Size. Be on 8 ½ by 11 inch paper;
(C) Binding. Be submitted in unbound form (no staples or other binding).

~~(1) *Reproduction.*~~

~~(A) A brief and a printed case may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used for a brief, but a printed case may be reproduced on both sides of the paper.~~

~~(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.~~

~~(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. A glossy finish is acceptable if the original is glossy.~~

~~(D) A printed case may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.~~

(~~2~~ 3) *Cover*. ~~Except for filings by self-represented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any appellant's reply brief in a cross-appeal, yellow; any other reply brief, gray; any supplemental brief, tan; and any printed case, white.~~ The front cover of a brief ~~and printed case~~ must contain:

(A) the phrase "In the Supreme Court of the State of Vermont," and the Supreme Court docket number centered at the top;

(B) the title of the case;

(C) the nature of the proceeding in the Supreme Court;

(D) the name of the court or other tribunal below and the docket number below;

(E) the title of the document, identifying the party or parties for whom it is filed; and

(F) the name, office address, telephone number, and email address of counsel representing the party for whom the brief is filed~~, or the address and telephone number, and email address, if available, of a self-represented party~~.

~~(3) *Binding*. A brief must be bound in a secure manner that does not obscure the text and that permits the brief to lie reasonably flat when open. A single staple is preferred.~~

~~(4) *Formatting*. The brief must be on 8 ½ by 11 inch paper or in a format suitable for printing on paper of that size. The text must be double-spaced, but quotations more than 2 lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.~~

~~(5) *Typeface*. A proportionally spaced typeface in Times New Roman, Bookman Old Style, Century Schoolbook, or Georgia fonts no smaller than 12-point must be used, except 11-point type in the same fonts may be used for footnotes in briefs. A self-represented party proceeding in forma pauperis may file handwritten or typewritten briefs provided they are legible and otherwise substantially comply with these rules.~~

~~(6) *Type Styles*. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined. Excessive use of italics, boldface, and underline is discouraged.~~

(~~7~~ 4) *Length*. The following word-count limits include in total all text, headings, footnotes, and quotations.

(A) Principal Brief.

(i) A principal brief must not exceed 9000 words.

(ii) An appellee's principal brief in a cross-appeal must not exceed 12,000 words.

(B) Reply Brief.

(i) A reply brief must not exceed 4500 words.

(ii) An appellant's reply brief in a case with a cross-appeal must not exceed 6000 words.

(iii) An appellee's reply brief in a case with a cross-appeal must not exceed 3000 words.

(C) Specific Exclusions from Word-Count Limits. The statement of issues, table of contents, table of authorities, signature blocks, certificate of compliance, and ~~any addendum containing statutes, rules, or regulations,~~ certificate of service do not count toward the word-count limits.

(D) Certificate of Compliance. A brief submitted under this rule must include a statement by the attorney, or self-represented party, certifying that the brief complies with the word-count limit. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state the number of words in the brief and identify the word-processing system used.

~~(b) **Briefs and Printed Case in Digital Format Required.**~~

~~(1) *Filing Requirement.*~~

~~(A) Parties Represented by Counsel. A party represented by counsel must file one copy of each brief and the printed case, if one is required, in Portable Document Format (PDF) in addition to the paper copies required by Rules 30 and 31 (b), unless counsel certifies that submission of a PDF document is not practical or would constitute a hardship. Upon that certification, counsel may submit an electronic version of the brief and printed case using WordPerfect or Microsoft Word software. The electronic version of the brief and printed case may be submitted on a disk, CD-ROM, or as an attachment to an email message to the Vermont Supreme Court's email filing address. If counsel certifies that any form of electronic submission is not practical or would constitute a hardship, counsel must file one unbound copy of the paper brief or printed case in addition to the required number of paper copies.~~

~~(B) Self-Represented Parties. A self-represented party must file one copy of each brief and printed case in electronic or unbound paper format in addition to the required number of paper copies.~~

~~(2) *Content and Form.* One electronic file must contain the entire brief as defined in Rule 28. Any appendix or printed case must be contained in a separate electronic file. An electronic brief may contain live links to parts of the record or to authorities cited in the brief. In other respects, the electronic brief and other documents must comply with all requirements of Rule 32(a) of this rule except those applicable only to paper briefs.~~

~~(3) *Time for Filing.* The electronic versions of a brief and printed case required by this rule must be filed and served no later than the time for filing the paper copies required by Rules 30(a)(3) and 31(a).~~

~~(4) *Virus Protection.* Each party submitting an electronic brief or printed case on a disk, CD-ROM, or as an email attachment must certify that the electronic file has been scanned for viruses and that no virus has been detected.~~

~~(5) *Identifying Information.* A party submitting an electronic brief or printed case must provide the following identifying information typed on a label affixed to a disk or CD-ROM, or placed in the "Subject" or "Re" box of the header of an email that sends an attachment:~~

~~(A) the Supreme Court docket number;~~

~~(B) the name of the party on whose behalf the brief is filed;~~

~~(C) the nature of the document, i.e., "printed case," "appellant's brief," "appellee's brief," "appellant's reply brief," "amicus brief"; and~~

~~(D) the date the disk or CD-ROM is submitted to the Court.~~

~~(E) If the electronic version of the brief or printed case is in a format other than PDF, the label must also identify the file format.~~

~~(6) *Corrections.* If an electronic brief or printed case is corrected, a new disk, CD-ROM, or email attachment with the corrected version must be submitted, and the label must add the date the corrected version is submitted to the Court.~~

(~~c~~ b) **Format of Motions and Other Documents ~~Papers~~.**

(1) Motions and other documents ~~papers~~ must be ~~produced~~ formatted as provided ~~for paper copies of briefs~~ in Rule 32(a)(1) and (2)~~, preferably secured by a single staple in the top left corner~~.

~~(2) No cover is required, but if one is used, it must be white.~~

(~~3~~ 2) The motion must include:

(A) a caption stating the Supreme Court docket number and name of the case; and

(B) a brief descriptive title indicating the purpose of the ~~paper~~ document and identifying the party or parties for whom it is filed.

~~(4) The word count limits of Rule 32(a)(7) do not apply.~~

Reporter's Notes—2021 Amendment

Rule 32 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

The title of Rule 32 is amended to clarify that it applies to motions but not to the format of the printed case, which is contained in Rule 30.

Rule 30(a) is updated to provide the form of briefs for filing and reading electronically. Former (a)(1) is deleted. New Rule 30(a)(1) addresses the requirements for electronically filed briefs and (a)(2) addresses nonelectronically filed briefs. The format required to best read documents electronically is different than the optimal formatting for paper documents and Rule 30(a)(1) delineates the requirements to optimize a document for reading electronically. It is important for documents to be paginated so that the electronic page counter coincides with the page numbers on the document. This can be done either by designating the cover page as page one or by using separate sectional pagination and adjusting the PDF settings so that the page-search function recognizes the numbering scheme. Documents must be in PDF form to be filed into the electronic filing system. In addition, a

document with live hyperlinks or internal bookmarking will cause errors in the electronic filing system. A document can contain a reference to a web address but the link must not be live. The font size applies to all text in the document, including footnotes.

For nonelectronically filed documents, it is important the writing is clearly legible, all single-sided or all double-sided, on regular paper size, and unbound so that the filing can be easily scanned into the case management system. Documents can be secured with a paper clip or binder clip.

Former (a)(2) is now (a)(3) and retains the requirements for the cover of the brief. The color requirements are deleted from the rule as they are not useful electronic documents.

Former (a)(3)-(6) are deleted. The formatting requirements are now contained in (a)(1) and (2).

Former (a)(7) is now (a)(4). The word-count limits remain the same. The exclusions to the word-count limits in (4)(C) are amended to remove the addendum, which is no longer required to be filed, and to add the certificate of service.

Former (b), which previously required the filing of a brief and printed case in digital format, is deleted as the Court will now receive an electronic copy through efiling or by scanning a nonelectronically filed paper document.

Former (c) is now (b). It addresses the format for motions and other documents. Note that V.R.A.P. 27(d) has requirements for efiling of motions that conforms to the requirements of 2020 V.R.E.F. 5(g).

23. That Rule 34 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined):

RULE 34. ORAL ARGUMENT

(a) **Cases Ripe for Argument.** A case is ripe for argument after the reply brief is filed or the time for filing the reply brief has expired. After a case is ripe, it will be heard at the next available term, unless otherwise ordered upon motion filed at least 14 days before the opening of the term. If good cause is shown, a case that becomes ripe after the calendar for a term has been distributed may be put on the calendar and heard at that term.

(b) **Time Allowed for Argument.** Each side has the opportunity for oral argument. The Court determines the amount of time allowed each side. Counsel may request additional time, which will be liberally granted if necessary for the adequate presentation of argument. Requests may be made by motion reasonably in advance of argument. A party need not use all of the time allowed, and the Court may terminate the argument when it decides further argument is unnecessary.

(c) **Order and Contents of Argument.** The appellant opens and concludes the argument. Counsel

must not read at length from briefs, records, or authorities, but may read any parts of the evidence that may be necessary to show the points relied on.

(d) **Cross-Appeals and Separate Appeals.** If there is a cross-appeal, Rule 28(g) determines which party is the appellant and which is the appellee for purposes of oral argument. A cross-appeal or separate appeal must be argued when the initial appeal is argued unless the Court directs otherwise. Separate appellants who support the same argument should avoid duplicative argument.

(e) **Number of Counsel To Be Heard.** Only one counsel will be heard for each party on the argument of a case, except by leave of the Court.

(f) **Amicus Curiae.** By leave of the Court, counsel for an amicus curiae whose brief has been filed under Rule 29 may, with the consent of a party, argue orally on the side of that party. The consent of the party must specify how much the time will be allocated to amicus curiae counsel. In the absence of consent, amicus curiae counsel may argue orally only by leave of the Court, which will be granted only in extraordinary circumstances. If the motion is granted, counsel for the opposing party will be granted an equal amount of additional time for oral argument.

(g) **Nonappearance of a Party.** If the appellee fails to appear for argument, the Court will hear appellant's argument. If the appellant fails to appear for argument, the Court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the Court orders otherwise.

(h) **Submission on Briefs.** The parties may agree to submit a case for decision on the briefs, but the Court may direct that the case be argued. All small claims appeals will be submitted for decision on the briefs unless the Court orders otherwise. A request for oral argument by a small claims party may be made at any time up to 30 days after the deadline for filing the appellee's brief.

(i) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the Court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the Court directs otherwise. The clerk may destroy or dispose of exhibits that are not reclaimed within a reasonable time after the clerk gives notice to remove them.

(j) **Public Access to Oral Arguments.** Unless otherwise ordered by the Court for a specific case, all oral arguments are open to the public. In a case in which the public did not have access to proceedings in the trial court or administrative board or agency, oral advocates must reference all parties, witnesses, or other persons involved in the case by initials and not by full names.

Reporter's Notes—2021 Amendment

By tradition and practice, all arguments to the Supreme Court occur in open court, and the public may attend the argument. The arguments are audio recorded, and the audio is available to the public. This practice has included arguments in cases that are heard in cases that in the trial court are heard in a closed courtroom and are not open to the public. To protect the privacy of the litigants and other persons in the proceeding, the briefs of the parties are not accessible to the public, and Supreme Court has required that parties and their advocates not

identify parties or witnesses by name during oral argument, using initials or the person's functional designation instead, and the case title uses initials instead of names. The Court's decision, which is also public, uses initials instead of names. The tradition and practice represent a balance between transparency of court proceedings and privacy of litigants and witnesses. This addition of subdivision (j) codifies the practice.

24. That Rule 39 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 39. COSTS

(a) **Assessment.** The following rules apply unless the law provides or the Court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed with direction for entry of judgment for the appellant, costs are taxed against the appellee;

(4) if a judgment is reversed and remanded for a new trial, costs on the appeal are taxed against the appellee, but costs on the first trial will be held in abeyance pending judgment in the new trial when costs of both trials will be allowed to the prevailing party;

(5) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are allowed only as the Court orders.

(b) **Costs Against the State of Vermont.** In cases involving the State of Vermont or an agency or officer of the state, costs are taxed against the state only to the extent permitted by law.

(c) **Costs Taxable in the Supreme Court.** The following costs will be taxed in the Supreme Court:

(1) costs allowable under 32 V.S.A. § 1471 and incurred in the Court;

(2) the cost of the transcript, if necessary for the determination of the appeal; and

(3) the cost of producing a paper copy of a brief or a required printed case for service on a self-represented litigant, who is not served electronically. ~~the costs of producing the necessary copies of briefs, the printed case, or appendix authorized by Rule 30(e).~~

(d) **Bill of Costs: Objections; Insertion in Mandate.**

(1) A party who seeks costs must--within 14 days after entry of judgment--file with the clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 14 days after service of the bill of costs, unless the Court extends the time.

(A) Unnecessary matter will not be allowed as costs.

(B) The deputy clerk will determine all questions that arise concerning unnecessary matter, subject to review by the justice who signed the opinion if that review is requested within 14 days after costs are taxed.

(3) The deputy clerk must prepare and certify an itemized statement of costs to insert in the mandate, but issuance of the mandate will not be delayed for taxing costs. If the mandate issues before costs are finally determined, the superior court clerk must--upon the deputy clerk's request—add the statement of costs, or any amendment of it, to the mandate.

(e) **Costs on Appeal Taxable in the Superior Court.** The superior court must tax the premiums paid for costs of bonds to preserve rights pending appeal ~~the following costs of the appeal~~ in favor of the party entitled to costs under this rule~~:~~.

~~(1) costs incurred in the preparation and forwarding of the record, except the cost of the transcript; and,~~

~~(2) the premiums paid for costs of bonds to preserve rights pending appeal.~~

(f) **Attorney's Fees.** A party seeking attorney's fees and other nontaxable expenses incurred on appeal must file a motion in the superior court under V.R.C.P. 54(d)(2) within 14 days after the Court issues the mandate according to Rule 41(a). The motion may be joined or consolidated with a motion for fees or expenses in the superior court.

Reporter's Notes—2021 Amendment

Rule 30(c)(3) is amended to clarify when costs are allowed for reproducing briefs or the printed case. The amendment limits an award of costs for producing a paper copy of a brief or a required printed case for when it is required to serve a self-represented litigant, who is not served electronically, either because the self-represented litigant has chosen to electronically file or because there is an agreement for alternate service by email.

Rule 30(e) is amended to reflect that the parties do not incur costs for preparing or forwarding the record.

25. That Rule 44 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 44. CASE INVOLVING A CONSTITUTIONAL QUESTION WHEN THE STATE OF VERMONT IS NOT A PARTY

(a) **Constitutional Challenge to a Legislative Act.** If a party questions the constitutionality of any legislative act affecting the public interest in a proceeding in the Supreme Court to which the State of Vermont or any agency, officer, or employee is not a party in an official capacity, that party must ~~give~~ file ~~written~~ a document providing notice of that fact to the clerk ~~immediately upon the filing of the record~~ when the appeal is filed or as soon as the question is raised in the Supreme Court. The clerk

must then certify that fact to the Attorney General.

(b) **Intervention by the Attorney General.** After certification by the clerk, the Attorney General will be allowed to intervene for argument on the question of constitutionality.

Reporter's Notes—2021 Amendment

Rule 44(a) is amended to clarify that notice of a constitutional challenge is provided by the party through "filing," either by electronic or nonelectronic means.

26. That Rule 45 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 45. CLERK'S DUTIES

(a) **When Court Is Open.** The Supreme Court is always open for the purpose of filing any document ~~paper~~, issuing and returning process, making a motion, or entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays.

(b) **Records.**

(1) *The Docket*. The clerk must:

(A) maintain the docket and an index of all docketed cases;

(B) assign consecutive file numbers to all cases;

(C) record all documents filed with the clerk; and

(D) record all documents, orders, and judgments chronologically in the docket assigned to the case. Entries must be brief but show the nature of each document filed or judgment or order entered. The entry of an order or judgment must show the date the entry is made.

(2) *Calendar*. At least 7 days before the opening of a term, the clerk must prepare and distribute a calendar of cases then ripe for argument as defined in Rule 34(a) to the ~~attorneys~~ parties having cases on it. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases.

(3) *Other Records*. The docket clerk must keep other ~~books and~~ records required by law or by order of the Clerk of the Court.

(c) **Notice of an Order or Judgment.**

(1) *Orders or Judgments*. Upon the entry of an order or judgment, the clerk must immediately provide a notice of entry to each party, with a copy of any opinion, or if no opinion was written, of the order or judgment, and must indicate the date of notice on the docket.

(2) *Method of Giving Notice*. The clerk must give notice under Rule 45(c)(1) and any other required notice by a method that the Supreme Court has provided by administrative order or directive. That notice will be sufficient for all purposes for which notice by the clerk is required under these

rules.

(d) **Custody of Records ~~and Papers~~.**

(1) *Custodian of Records*. In accordance with Vermont Rule for Public Access to Court Records § 3(c), the custodian of the Supreme Court's paper case records is the Deputy Clerk of the Supreme Court, and the custodian of the Supreme Court's electronic case records is the Court Administrator.

(2) *Official Paper Records*. ~~The clerk has custody of the Court's records and papers and must maintain them as provided by law.~~ When the official record is the paper record, the paper record ~~Papers belonging to the files~~ will be allowed to go out of the clerk's possession only upon receipt signed by the attorney to whom they are entrusted. Unless the Court or a justice orders or instructs otherwise, the clerk must not permit an original paper record or paper to be taken from the clerk's office.

(3) *Return of Records*. Upon disposition of the case, ~~original papers constituting the record on appeal~~ any official paper records must be returned to the original tribunal. The clerk must preserve a copy of any brief and printed case and all other ~~papers~~ documents filed in the Supreme Court.

Reporter's Notes—2021 Amendment

Rule 45 is revised to update its requirements consistent with current practice and the implementation of an electronic case management system and electronic filing.

Rule 45(a) is amended to replace the word "paper" with "document" to reflect that filings may be submitted electronically or nonelectronically. Note that under 2020 V.R.E.F. 5(e) and 2020 V.R.E.F. 6(d), documents filed electronically and nonelectronically are reviewed by court staff and may be rejected for noncompliance with Rule 7(a)(1) of the Vermont Rules for Public Access to Court Records, for failure to comply with the word limit or to certify the word count, or for failure to sign a document.

Rule 45(b)(2) is amended to clarify that the calendar is distributed to the parties in the case, either to attorneys or to self-represented litigants.

The title of Rule 45(d) is amended to delete the reference to papers as that language is outdated for electronic files. New (d)(1) explains that the custodian of records is controlled by the Vermont Rules for Public Access to Court Records.

New (d)(2) is amended to refer to official paper records. The substantive provisions regarding how those records are treated remains the same.

New (d)(3) provides that official paper records must be returned to the original tribunal. This may include executive-branch administrative agencies that do not have electronic case files or paper records received from superior courts where the entire file has not been converted to

electronic form.

27. That Rule 45.1 of the Vermont Rules of Appellate Procedure be amended as follows (new matter underlined; deleted matter stricken):

RULE 45.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS

(a) **Appearance: In General.**

(1) *Docketing Attorneys of Record.* At the time the appeal is filed, the Supreme Court clerk must enter the names of the parties' attorneys as they appear in the superior court record.

(2) *Changing Attorneys*.

(A) If, while an appeal is pending, a party changes an attorney, the name of the new attorney will be substituted on the docket for that of the former attorney.

(B) All notice given to or by the first attorney will be construed as notice to or from the client until the notice of a change in attorney has been filed, except in cases where the law requires that the notice be given to the party personally.

(3) *Self-Representation*.

(A) These rules do not prevent a party from being self-represented.

(B) A self-represented party is subject to the same rules that are or may be provided for attorneys in like cases, so far as the same are applicable.

(C) A party choosing self-representation after the appeal has been docketed must file an appearance with the clerk. The appearance must:

(i) be in writing;

(ii) be signed;

(iii) state the party's resident address, telephone number, and any email address; and

(iv) be served in accordance with Rule 25.

(b) **Form; Service.**

(1) Appearances by new attorneys must be filed in writing with the clerk and served in accordance with Rule 25.

(2) The attorney must sign the appearance in the attorney's individual name and must state the attorney's office address, telephone number and email address.

(c) **Multiple Parties.**

(1) Appearances by new attorneys must specify the party for whom they appear.

(2) If there are several plaintiffs or defendants, the new attorney will be deemed to be appearing

for all, unless stated otherwise.

(d) **Attorneys Not Admitted in Vermont.**

(1) An attorney not admitted to practice before the Supreme Court may only appear or be heard if he or she is associated with an attorney admitted in Vermont who has entered an appearance in the case.

(2) An attorney not admitted to practice before the Supreme Court must comply with--or previously have complied with in the superior court in the proceedings below--the requirements of § 16 of Administrative Order No. 41, Licensing of Attorneys.

(e) **Withdrawal: In General.**

(1) Once an attorney's name is entered on the docket, the attorney must remain as counsel until the Court grants leave to withdraw.

(2) After the appeal has been docketed, leave to withdraw will be granted only for good cause and on those terms as the Court may order.

(3) The Court will not consider a motion to withdraw until the clerk has given notice to the party of the motion with either the date and time of hearing thereon, or at least 14 days to file a written response to the motion.

(4) The only exception to the above subsection is when:

(A) an attorney includes with the motion an affidavit stating that after diligent search the attorney cannot determine the present address of the party; or

(B) another attorney has entered an appearance for the party.

(f) **Notification of Party.**

(1) When an attorney has been granted leave to withdraw, the clerk must:

(A) notify the party by mail of the withdrawal; and

(B) inform the party that unless the party files an intent to be self-represented or appears by an attorney within 30 days after receipt of the notification, the appeal will be dismissed or resolved, notwithstanding the party's lack of representation.

(g) **Attorney License Number; eCabinet Registration Number.** Any document that is a first appearance of an attorney, in addition to a notice of appeal governed by Rule 3(d), must contain not only the name of the appearing attorney, but also the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Administrative Order 44 ~~2010 V.R.E.F. 3~~. The requirement to provide a registration number also applies to a self-represented litigant who has elected, or is required, to receive documents and notices by e-mail. A document filed under Rule 5 or 5.1 triggers the obligation to provide attorney license and/or efiling registration numbers.

Reporter's Notes—2021 Amendment

Rule 45.1(g) is amended to delete reference to the 2010 Vermont

Rules for Electronic Filing, which were abrogated, effective March 15, 2021.

28. That this rule is prescribed and promulgated effective _____, 2021. The Reporter's Notes are advisory.

29. That the Chief Justice is authorized to report this rule 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 _____, 2021.

_____
Paul L. Reiber, Chief Justice

_____
Beth Robinson, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice

_____
Karen R. Carroll, Associate Justice

_____
William D. Cohen, Associate Justice