

STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_ TERM 2021

**Order Amending Rules 1, 3, 5, 6, 7, and 10 of the 2020 Vermont Rules for Electronic Filing**

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

1. That Rule 1 of the 2020 Vermont Rules for Electronic Filing be amended as follows (new matter underlined; deleted matter stricken):

**RULE 1. TITLE; APPLICABILITY; EFFECTIVE DATES**

(a) **Title.** These rules may be known and cited as the 2020 Vermont Rules for Electronic Filing.

(b) **Scope.** These rules apply to all actions and proceedings commenced in the divisions and units of the superior court authorized by the Court Administrator under subdivision (~~e~~ e), except for the actions specified in subdivision (c), and to actions and proceedings in the judicial bureau authorized by the Court Administrator under subdivision (~~e~~ f). These rules also apply to all actions and proceedings commenced in the Supreme Court on or after the date specified pursuant to subdivision (d) and in actions and proceedings existing in the Supreme Court on that date.

(c) **Exception for Existing Electronic Filing.** Electronic filing in effect prior to promulgation of the 2020 Vermont Rules for Electronic Filing will be conducted under the existing 2010 Vermont Rules for Electronic Filing and according to the applicability provisions of Rule 1(a) of those rules. When the Court Administrator directs that electronic filing be implemented in a division, unit, and type of case in which electronic filing is already occurring, the 2020 Vermont Rules for Electronic Filing will apply to all efile that occurs after the date specified by the Court Administrator.

(d) **Authorization for Electronic Filing in the Supreme Court.** The Supreme Court by administrative order may direct that electronic filing will go into effect in the Court as of a specified date. The Court Administrator must send notice by email to all members of the Vermont Bar of the directive at least 30 days before the specified date and provide instructions on how to efile under these rules.

(~~e~~ e) **Authorization for Electronic Filing in the Superior Court.** The Court Administrator may direct a unit and/or division of the superior court to implement electronic filing in some or all types of cases as of a specific date. The Court Administrator must send notice by email to all members of the Vermont Bar of the directive at least 30 days before the implementation date and provide instructions on how to efile under these rules.

(~~f~~ e) **Judicial Bureau.** The Court Administrator may direct the judicial bureau to implement electronic filing as of a specific date. The directive must be issued at least 30 days before the implementation date. Electronic filing will apply to all cases commenced after the specified date

unless otherwise directed by the Court Administrator. Rule 3 notwithstanding, the directive must specify those required and permitted to electronically file.

(g) **Authorization of Alternate Form of Electronic Transmission.** The Court Administrator may authorize some or all filings of a specified type of filer in a specified type of case to be transmitted electronically to the electronic case file.

### **Reporter's Notes—2021 Amendment**

Rule 1(b) is amended to make the e-filing rules applicable to the Supreme Court. New subdivision (d) establishes the procedure for instituting electronic filing in the Supreme Court and actions needed to instigate e-filing. E-filing commences pursuant to these rules when the Court issues an administrative order. The order must be made with enough time for the Court Administrator to give at least 30 days' notice to the Vermont Bar of the Court order and provide instructions on how to e-file. E-filing pursuant to these rules will commence on that date in all cases open in the Court, including those initiated in the Court prior to that date, and all cases commenced in the Court thereafter. As in the trial courts, e-filing will be mandatory pursuant to Rule 3(a) unless an exception applies pursuant to Rule 3(b)-(d).

2. That Rule 3 of the 2020 Vermont Rules for Electronic Filing be amended as follows (new matter underlined; deleted matter stricken):

### **RULE 3. REQUIRED ELECTRONIC FILINGS; EXCEPTIONS**

(a) **Electronic Filing Required.** Except as provided in (b) and (c), and other provisions of these rules, all documents filed in a case in the Supreme Court, superior court, or the judicial bureau must be electronically filed as of the effective date specified by Rule 1.

(b) **Nonelectronic Filing Permitted.** A document may be nonelectronically filed when:

(1) the filer, who is not filing on behalf of a government agency, is a self-represented litigant who has not elected to file electronically consistent with subdivision 3(d) in the specific case;

(2) the filer is a guardian ad litem, is filing pursuant to the duties of that position, and has not filed electronically in the specific case;

(3) nonelectronic filing of a particular document is permitted by the court to protect confidentiality or for other good cause;

(4) the document is a nonelectronic stipulation, agreement, or other case document created or finalized while the parties and/or counsel are present at court premises, in or related to proceedings, and nonelectronic filing is permitted by the court;

(5) a filer in a particular case is excused from electronic filing in that case by the court when exceptional circumstances make electronic filing not feasible;

(6) nonelectronic filing is expressly permitted by these rules or an applicable rule of procedure;

(7) an item cannot reasonably be scanned and filed electronically because of its size, shape, or condition; or

(8) the electronic filing system is unavailable when the filer seeks to make an electronic filing, despite reasonable efforts to make a filing or in the case of a preannounced system outage.

(c) **Nonelectronic Filing Required.** A document must be nonelectronically filed when:

(1) nonelectronic filing is expressly required by these rules or an applicable rule of procedure; or

(2) the court orders a filer to nonelectronically file upon a finding that the filer has abused the efile system by repeated filing of irrelevant, abusive, or duplicative documents or information.

(d) **Self-Represented Litigants.**

(1) *Electing to Efile.* Unless ordered otherwise, a self-represented litigant may elect to electronically file and serve but is not required to do so.

(2) *Duration of Electronic Filing in the Superior Court.* A self-represented litigant who commences efile in a case must continue to efile throughout the duration of the case. The self-represented litigant may discontinue efile only after obtaining a court order of discontinuance issued for good cause shown and after notifying all other parties that the litigant will not be efile in the future. Efile by a self-represented litigant does not create an obligation to efile in another case.

(3) *Efiling in the Supreme Court.* A self-represented litigant who has efiled in a case in the superior court is presumed to continue to efile on appeal in the Supreme Court. The self-represented litigant may discontinue efile after giving efiled notice to the Court and serving the notice on all other parties to the appeal.

(4) *Guide and File.* A self-represented litigant who prepares and efiles a document through Guide and File is not required to continue to file electronically in that case as a result of that filing.

### Reporter's Notes—2021 Amendment

This amendment is made in connection with the introduction of efile in the Supreme Court. Accordingly, the Supreme Court is added to Rule 3(a).

As in the superior courts, a self-represented litigant has the option to efile in the Supreme Court but is not required to do so. Under paragraph (d)(3), if the self-represented litigant is appealing from a superior court case where the self-represented litigant is efile, it is presumed that the self-represented litigant will continue to efile in the Supreme Court. The self-represented litigant who is presumed to continue efile in the Supreme Court or has elected to efile in the Supreme Court may discontinue efile by giving notice to the Court and serving that notice on all other parties. In contrast to the procedure prescribed for self-represented efilers to discontinue efile in superior court proceedings under paragraph (d)(2) of these rules (requiring a court order of discontinuance issued for good cause shown), an order of the Supreme Court is not required for a self-represented litigant to discontinue efile. Because the litigant is under an obligation to efile when the notice is given, the notice itself must be efiled.

3. That Rule 5 of the 2020 Vermont Rules for Electronic Filing be amended as follows (new matter underlined; deleted matter stricken):

#### **RULE 5. PROCEDURE FOR ELECTRONIC FILING**

(a) **In General.** An electronic filer may initiate a new action or proceeding, or efile documents in an action or proceeding that is in the electronic filing system, when required or permitted under Rule 3, by logging in, and complying with the instructions in the electronic filing system.

(b) **Electronic Filing Requirements.** The efiler must submit each electronic filing in accordance with the instructions in the electronic filing system and must:

(1) prepare and format the efile in accordance with Rule 5(~~f~~ g) and (~~g~~ h), and Rule 7;

(2) sign the efile as provided in Rule 9;

(3) provide a mailing address and email address on the documents electronically filed;

(4) satisfy payment requirements of Rule 10, except that failure to pay a Supreme Court entry fee to the Vermont Judiciary in connection with the filing of a notice of appeal, or to seek a waiver of that fee, is not grounds for rejecting a filing;

(5) take any actions required under Rule 7(a)(1) of the Rules for Public Access to Court Records;

(6) certify that each document filed complies with the Rules for Public Access to Court Records; and

(7) for initial filings, provide service contacts that will enable post-commencement service on the efiler and maintain updated contacts.

(c) **Electronic Filing Time.** An electronic filing may be submitted on any day, including holidays and weekends, and at any time.

(1) *Filing Date.* An e filing is considered submitted on a date if it is submitted prior to midnight on that date;

(2) *Technology Failure of Filer.* Failure of the e filer’s system or internet unavailability will not excuse a failure to comply with a filing deadline, unless the court specifically authorizes an extension of the deadline;

(3) *System Unavailability.* A deadline will be extended for unavailability of the electronic filing system, if the e filer could not reasonably file nonelectronically pursuant to Rule 3(b)(7).

**(d) Court Staff Processing in the Superior Court.**

(1) *Court Staff Review.* Court staff will review all electronic filings for compliance with these rules and Rule 7(a)(1) of the Rules for Public Access to Court Records.

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

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

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

(5) *Assigning Case Number.* The electronic filing system will provide a case number for a new case filing that has been accepted in the acceptance notification. The assigned case number must appear on all subsequent e filings pertaining to the case.

**(e) Court Staff Processing in the Supreme Court.**

(1) Court Staff Review. Court staff will review all electronic filings for compliance with these rules, the Vermont Rules of Appellate Procedure, and Rule 7(a)(1) of the Rules for Public Access to Court Records.

(2) Accepting or Rejecting a Filing. Staff will electronically notify the e filer that the e filing has been accepted or rejected. Staff may reject an e filing for noncompliance with Rule 7(a)(1) of the Vermont Rules for Public Access to Court Records, the applicable limit on the number of words in the brief as contained in V.R.A.P. 32(a)(4), the failure to include a word count in a brief as

required by V.R.A.P. 32(a)(4)(D), or the failure to sign a document as required by these rules or the Vermont Rules of Appellate Procedure.

(3) *Correcting an eFiling.* If staff rejects an efiling pursuant to this subdivision, the filer may correct the efiling as set forth in paragraph 5(d)(3) of this Rule and paragraph 5(d)(4) will apply to determine the filing date.

(4) *Limit of Review.* This rule does not limit the actions the Supreme Court may take for violation of these rules, the Vermont Rules of Appellate Procedure, or the Vermont Rules for Public Access to Court Records.

(5) *Assigning Case Number.* The electronic filing system will provide a case number for a new case filing that has been accepted in the acceptance notification. The assigned case number must appear on all subsequent efilings pertaining to the case.

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

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

(1) Requirements for Motions in the Supreme and Superior Courts.

(A 4) *Motions Requesting Alternative Forms of Relief.* An filer may file motions, or responses, requesting alternative forms of relief as a single document.

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

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

(2 g) *Additional Requirements for Motions in the Superior Court.* Filers in the superior court must also submit motions in accordance with the following requirements for supporting material.

(4) *Supporting Material.*

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

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

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

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

- (i) be numbered sequentially so that the electronic and paper page references are consistent; and
- (ii) contain a table of contents listing the separate parts of the supporting material included, with references to the page of the document at which each part begins.

**(h g) Criminal History Information.** Criminal history information, filed in connection with a criminal case, must be separately efiled in the superior court in the following parts for which there is information:

- (1) Misdemeanor or felony convictions in Vermont courts and resulting sentences;
- (2) Misdemeanor or felony convictions in courts of other jurisdictions, including in federal court and resulting sentences;
- (3) Any other criminal history information.

### **Reporters Notes—2021 Amendment**

Rule 5 is amended in three respects in connection with the introduction of efilings in the Supreme Court.

First, subdivision (b)(4) is amended to make clear that an efiling of a notice of appeal cannot be rejected for failure to pay a required *entry* fee to the judiciary at the time the notice of appeal is filed, or for failure to file a request to waive the fee. See V.R.A.P. 3(b)(1)(a); 32 V.S.A. § 1431. Although V.R.A.P. 3(b)(1)(A) requires paying the filing fee with the filing of the notice of appeal, subparagraph (b)(1)(D) states that an appellant’s “failure to take any step other than a 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.” Thus, the validity of the notice of appeal cannot be affected by the failure to pay the entry fee. Note that the amendment relates to the filing of the appeal entry fee and not to any required payment to the efilings vendor.

New subdivision (e) is added to specify that court staff will perform clerk review for filings in the Supreme Court, to specify the permissible grounds for rejecting an efiling in the Supreme Court, and to provide for corrections of rejected efilings in the Supreme Court. The grounds for rejecting an efiling in the Supreme Court are limited and the decision

whether to reject an e filing is committed to the discretion of the staff reviewer. The process for correcting a filing is the same as for filings to the superior court. The rule does not apply to filings that are rejected by the e filing system for failure to comply with system requirements. In addition, the rule does not limit any remedy the Supreme Court may impose for violation of procedural requirements.

Former subdivision (e) is renumbered (f) and is divided into two parts, one applicable to motion e filings in both the Supreme and superior court and the other applicable only to superior court e filing. The requirements with respect to motions seeking multiple forms of relief are applicable in both the Supreme Court and the superior court. The terminology is explained in the original Reporter's Notes to 2020 V.R.E.F. 5(f)(1) & (2). The requirements enable the e filer to choose a proper description of the filing in the e filing system, supplementing it if necessary with an additional description of what is being filed. Note that V.R.A.P. 27(d)(2), as amended simultaneously with this rule, imposes the same requirements for motions seeking separate forms of relief in the Supreme Court, irrespective of whether filed electronically or on paper. In both the superior courts and Supreme Court e filers must separate responses from new motions. Also V.R.A.P. 27 and 32(g) impose additional content and formatting requirements for motions filed in the Supreme Court.

Other motion filing requirements related to supporting material in former subdivision (f), now (g), remain applicable only in the superior court. Motion practice in the Supreme Court is typically less complex than in the superior court, making it unnecessary to apply the additional requirements in the Supreme Court.

Third, the requirement in former subdivision (g), now (h), for separation of criminal history information that is e filed in a criminal case is made applicable only in the superior court. As the original Reporter's Notes to Rule 5(g) explain, the requirement is a placeholder for differential treatment of criminal history information with respect to public access. Since the separation, and public access classification, occur in the superior court, it is already part of the record if the case reaches the Supreme Court.

4. That Rule 6 of the 2020 Vermont Rules for Electronic Filing be amended as follows (new matter underlined; deleted matter stricken):

## **RULE 6. NONELECTRONIC FILINGS**

(a) **In General.** If nonelectronic filing of a document is permitted or required by these rules court staff will scan the document in PDF format, or other format specified by the Court Administrator, and include it in the electronic file.



(b) **Impermissible Nonelectronic Filing.** If a document that is required to be filed electronically is filed nonelectronically, it will not be accepted or scanned.

(c) **Court Staff Processing in the Superior Court.**

(1) *Court Staff Review.* After scanning, court staff will review filings for compliance with these rules and Rule 7(a)(1) of the Rules for Public Access to Court Records.

(2) *Accepting or Rejecting a Filing.* If a filing is rejected because it does not comply with these rules or the Rules for Public Access to Court Records, court staff will provide the filer with notice and the reason for rejection.

(3) *Correcting a Filing.* If a filing is rejected, the filer may submit a corrected filing within 7 days after receiving notice of the rejection. The filer must indicate it is a corrected filing. The court may extend the time for correction for good cause. If the filing is rejected for noncompliance with V.R.P.A.C.R. 7(a)(1), the procedure and time limits for correction will be determined in accordance with V.R.P.A.C.R. 7(a)(3) and (4).

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

(5) *Assigning a Case Number.* Court staff will provide a case number for a new filing that has been accepted. The assigned case number must appear on all subsequent filings pertaining to the case.

(d) **Court Staff Processing in the Supreme Court.**

(1) *Court Staff Review.* Court staff will review all nonelectronic filings for compliance with these rules, the Vermont Rules of Appellate Procedure, and Rule 7(a)(1) of the Rules for Public Access to Court Records.

(2) *Accepting or Rejecting a Filing.* If a filing is rejected, court staff will provide the filer with notice and the reason for rejection. Staff may reject a filing for noncompliance with Rule 7(a)(1) of the Vermont Rules for Public Access to Court Records, the applicable limit on the number of words in the brief as contained in V.R.A.P. 32(a)(4), the failure to include a word count in a brief as required by V.R.A.P. 32(a)(4)(D) or the failure to sign a document as required by these rules or the Vermont Rules of Appellate Procedure.

(3) *Correcting a Filing.* If staff rejects a filing pursuant to this subdivision, the filer may correct the filing as set forth in paragraph 6(c)(3) of this Rule and paragraph 6(c)(4) will apply to determine the filing date.

(4) *Limit of Review.* This rule does not limit the actions the Supreme Court may take for violation of these rules, the Vermont Rules of Appellate Procedure, or the Vermont Rules for Public Access to Court Records.

(5) Assigning a Case Number. Court staff will provide a case number for a new filing that has been accepted. The assigned case number must appear on all subsequent filings pertaining to the case.

~~(d e)~~ **Existing Nonelectronic Filings.** When electronic filing is commenced in accordance with a Court Administrator's directive under Rule 1, the Court Administrator may direct that court staff scan all or part of existing paper filings into the electronic case file.

### Reporter's Notes—2021 Amendment

This rule is amended in connection with the introduction of efilings in the Supreme Court.

New subdivision (d) addresses staff review of filings in the Supreme Court. In all relevant aspects the new subdivision (d) is identical to Rule 5(e) as added at the same time as the addition to this rule. See Reporter's Notes to 2021 Amendment to Rule 5.

Subdivision (d) is amended to authorize the Court Administrator to direct scanning into the electronic case file, or not, of preexisting paper filings in cases active in the Supreme Court on the date efilings is implemented. This authorization is identical to that for preexisting trial court records.

5. That Rule 7 of the 2020 Vermont Rules for Electronic Filing be amended as follows (new matter underlined; deleted matter stricken):

### **RULE 7. FORMAT OF DOCUMENTS**

(a) **Format Requirements for Electronic Documents.** An electronically filed document must:

(1) Be created saved as, or converted to PDF format as specified in (b), unless the court orders that it be filed in a different format;

(2) Comply with the size limit specified in the efilings instructions;

(3) Not contain a virus detected by the electronic filing system;

(4) Be consistent with Rule 5(~~f~~ g) and (~~g~~ h), if applicable;

(5) Be accompanied by a certification of compliance with the Rules for Public Access to Court Records by the method specified in those rules, ~~and~~;

(6) Not contain any password protection or other security device, and;

(7) Not contain an embedded hyperlink or internal bookmark.

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

(1) a document, other than those excluded in paragraphs (2) ~~or (3)~~ of this subdivision, that is efiled or submitted pursuant to Rule 1(f g) must be in the form of a text-searchable Portable Document Format (PDF) or a text searchable Portable Document Format/A (PDF/A) file and be directly converted to PDF rather than scanned if possible.

(2) a document that is an attachment or exhibit that is a scanned image of its original form may be in standard PDF format and need not be text searchable.

(c) **Format Requirements for Nonelectronic Documents.** A nonelectronically filed document must:

(1) be clearly legible, with all text visible and dark enough to be readable on a scanned image, and;

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

~~(3)~~ (2) contain a certification that it complies with Rule 7(a)(1) of the Vermont Rules for Public Access to Court Records.

(d) **Relation to Form and Formatting Requirements in Other Procedural Rules.** The formatting requirements in this rule are in addition to, and do not supplant, form and formatting requirements imposed by other procedural rules.

### **Reporter's Notes—2021 Amendments**

This rule is amended in connection with the introduction of efilings in the Vermont Supreme Court. Subdivision (a) is amended to modify the cross-reference to Rule 5 to reflect the relettering of the applicable sections and to make clear that the cross-reference to Rule 5 is only to subdivisions that apply to the efiler. It is also amended to reflect another system requirement that the document not contain an embedded or live hyperlink or internal document. The document may contain an internet path that is not live but can be used by copying it into an internet browser.

Subdivision (d) is added to make clear that the formatting requirements of this rule are additional to any form or formatting requirements imposed by other procedural rules. An example of such rules are the formatting requirements contained in the 2021 amendments to V.R.A.P. 32.

6. That Rule 10 of the 2020 Vermont Rules for Electronic Filing be amended as follows (new matter underlined):

### **RULE 10. PAYMENT OF COURT FEES AND EFILING FEES**

**(a) Paying Court Fee; Correcting Failure to Pay.**

(1) **Electronic Filing.** If an electronic filing requires payment of a court fee, an e filing fee, or both, the e filer must either pay the fee(s) on filing or file an application to waive filing fees and service costs. Court staff will reject an e filing that does not comply with this rule as set out in Rule 5(d) and (e). The procedures in Rule 5(d) for correcting a noncompliant e filing and determining the filing date apply. No advance deposit on account of future fees will be accepted.

(2) **Nonelectronic Filing.** If a nonelectronic filing requires payment of a court fee, the filer must either pay the fee on filing or file an application to waive filing fees and service costs. The consequences for noncompliance are as specified in the applicable rule of procedure.

(b) **Payment Manner.** Court fees for electronically and nonelectronically filed documents must be paid in a manner approved by the Court Administrator.

(c) **Applying to Waive Court Fees.** A party who wishes to waive court filing fees and service costs must comply with the provisions of the applicable rules of procedure.

(d) **Exemption from E Filing Fee.** E filing fees will not be applied in the following circumstances:

(1) Court staff and other persons who participate in court proceedings in an official judicial position are exempt from fees when they file pursuant to their judicial responsibilities.

(2) Whenever a statute exempts a particular filer from paying a court filing fee, that filer will also not be required to pay an e filing fee.

**Reporter's Notes—2021 Amendments**

Paragraph (a)(1) is amended to modify the cross-reference to Rule 5(d) and (e) to refer to both review in the superior courts and the Supreme Court.

7. That this rule, as amended, is prescribed and promulgated to become effective \_\_\_\_\_. The Reporter's Notes are advisory.

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

Dated in Chambers at Montpelier, Vermont this \_\_\_ day of \_\_\_\_\_, 2021.

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice

PROPOSED