

Paralegal Focus

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Paralegal Focus is the quarterly
newsletter of Vermont
Paralegal Organization, Inc.

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President's Message

By Laurie S. Noyes

My favorite time of year is here – summer! I love all things summer – camping, hiking, BBQ's, cornhole, bonfires, sunsets and sunrises, and everything in between. After a long cold winter, nothing warms my soul like the long days of summer. This year in particular, I really felt like I was counting down the days to its glorious arrival. Yet at the same time, I can hardly believe that half the year has already flown by. My hope for all of you is that you get time to enjoy all things summer as life continues to challenge us these days. I wish you all moments of summer joy and happiness, and time to stop and take in the beauty that surrounds us in our tiny little state during these short summer months.

Your VPO Board continues its efforts to move the paralegal profession forward and develop recognition within the legal community. As you may have seen, Carie Tarte, RP®, was again successful in getting Governor Scott to sign a proclamation dedicating May 18, 2022 as Paralegal Day in Vermont. In addition, several of the Board members attended NFPA's Joint Conference on leadership and regulation with the goal of bringing new ideas about both back to the organization.

Louise Reese and Carie Tarte, RP® also recently developed and delivered several successful CLE seminars to the VPO membership in our efforts to continue bringing relevant and timely content to our members at low cost. I hope that many of you were able to take advantage of those insightful seminars. Louise and Carie's efforts in that regard are greatly appreciated.

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The VPO's membership has been dropping recently, and the Board would appreciate input from any of our members about why that might be happening so we can understand the drivers behind members choosing not to renew or continue their membership in the VPO. We do know that some of our members recently moved, retired, or are no longer in the profession, but we have heard from other members that they don't feel they are receiving sufficient value from their membership. We want to hear from you as to why that might be, and what you would like to see the VPO do to provide additional benefit to you as a member. We value and appreciate your input, and I encourage you to reach out to me directly as the President if you are interested in sharing your thoughts about the organization with me, lnoyes@pfclaw.com.

I want to take a few moments to also thank one board member in particular who continues to take on additional duties as we have lost members of the Board – Melinda Siel! Melinda currently serves as the VPO's Vice President and the Membership Chair, but she also has been handling duties for website and social media content since that position became vacant. Melinda, we appreciate all your efforts. To that end, the Board is still seeking to fill vacant positions for Website Chair and Finance Chair. If you have any interest, please let us know!

Editor's Message

By Louise Reese

We have another meaty issue for you. I am grateful to all who contribute toward the newsletter each issue. It cannot be done without you, and we all have valuable information to share. In this issue, Tina Wiles has provided us with a NFPA update, Jennifer McGean has provided us with an article on probate matters, CATIC has provided us with two articles relating to cyber safety, and don't forget the hearty Did You Know segment.

Please continue to share your experiences and knowledge. I would love to hear from you!



As of May 2022, we have 63 active members: 46 voting; 5 associate; and 2 sustaining corporate.

With warmer weather on the way and hopefully a break in COVID numbers, we are looking into options for a few Lunch and Learns over the summer and are looking for input from members on what topics they would like to see. If you have any suggestions, please email membership@vtparalegal.org.

Please welcome our newest members: Aaron Kromash, a Boston University student, and Ryan Belliveau, a paralegal with the Vermont National Guard!

CLE News

By Louise Reese

Thank you to all who attended any of the four Spring CLE sessions offered by the CLE Committee in May. We cannot offer these without the support of our members and of the rest of the legal community who, without hesitation (most of the time), agree to present on various topics. Jim Knapp and Mike Kennedy are long-time supporters, but Renee Mobbs was a first-time presenter, and I truly appreciate the participation during her session. A special shout out to our very own Robyn Sweet, CRP™, RP®, ACP and Lucia White, CP for presenting about the virtual world, something that will likely remain a part of the legal arena. We can learn a great deal from each other, and I truly appreciate the time they took to share their knowledge and experience with us.

Our plan is to offer at least two more virtual CLEs in the fall. If you have any suggestions for topics, and presenters too, please contact me directly at lreese@dinse.com.



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NFPA News

By Tina Wiles

NFPA Primary Delegate

Robyn Sweet, CRP™, RP®, ACP

NFPA Secondary Delegate

The birds are chirping, the flowers are blooming, and I'm happy to welcome the warmer days ahead as I gear up and prepare for the upcoming obligations as the VPO Primary Delegate. In the past few months, Robyn Sweet, VPO Secondary Delegate, and I have attended several NFPA Board Meetings, the Region V Meeting, the NFPA Joint Conference on Leadership, Certification and Regulation, and the bi-monthly VPO Board meetings.

Robyn, as the VPO Secondary Delegate and as a CRP/RP®, had the pleasure of attending the Joint Conference in person as an attendee and as a speaker regarding Certification. The Joint Conference is an opportunity for leaders of all levels, including VPO individual members, to learn about how to increase/improve your leadership skills, the status of regulation across the country as well as the advocacy efforts taking place, and what the NFPA certification is all about: studying, testing, and marketing your certification credentials. If you didn't get to attend the Joint Conference this year, be sure to put it on your to-do list for next year.

The Region V Meeting was held virtually on April 23. During the Region Meeting delegates discussed the following: responsibilities of delegates; association membership; NFPA calendar of events and deadlines; the need for volunteers on NFPA committees; association succession planning; results of the delegate survey; nominations, or rather the lack of nominations, for the Director of Marketing; board nominations for election at 2022 convention; non-annual policy meeting; NFPA member benefits; nominations for NFPA Awards and scholarships to be presented at the 2022 convention; and strategic plan. The delegates also discussed presenting discussion topics to all association delegates relating to the (1) lack of paralegal programming; and (2) lack of nominations for NFPA board positions. It was decided that Region Meetings for Region V would occur quarterly in the future in either an in-person or virtual format.

Did you know that there are webinars and CLE's available to you on the NFPA Website for a nominal fee? These programs are well presented, topic specific, and can be done at your convenience, and are approved for use in connection with your CRP/RP® certifications. In addition, the programs are available to your co-workers, attorneys, and other support staff at a non-member nominal fee. If you want to learn about a different area of law, these webinars provided a good, inexpensive opportunity to do that.

Several NFPA committees are still looking for volunteers to assist with the various committee projects. If you are interested in volunteering with a committee, or you want to discuss how you can get involved on a national level, please feel free to reach out to Robyn or myself and we will get you in touch with the correct person.

Don't forget as a VPO member, you can register and attend the VPO and NFPA board meetings. To register for the NFPA Board Meetings, simply click the link in the News You Can Use email, complete the four registration questions, and you will receive a link to join the meeting via Zoom. I challenge the VPO membership to attend at least one (1) of the next three NFPA Board meetings. Attendance will give you an idea of what is happening within the paralegal profession on a national level.

VPO members may also register for and attend the following:

Sept. 15-18, 2022 NFPA ANNUAL CONVENTION of the NFPA Board and Delegates in Cleveland, Ohio. The meeting at this point is scheduled to be in-person, with a hybrid option for the continuing legal education opportunities to be held on Thursday, Sept. 15. Registration for Convention will be circulated once available.

As another reminder, if you enjoy writing, the National Paralegal Reporter could use some articles. If interested, contact the Director of Marketing at marketingdir@paralegals.org.

If any member has questions or concerns about issues affecting the paralegal profession on a local or national level, please feel free to contact me so that we can discuss how you may get more information or become involved in making a change.

Please Leave the Party: End of the Interested Party Status in a Probate Proceeding

By Jennifer McLean, CRP

The Vermont Probate Court form "List of Interested Persons" provides comprehensive instruction on who to name as an Interested Person (or Interested Party) when filing the initial Petition to Open Decedent's Estate. This form does not distinguish between those who are heirs at law in a testate or an intestate action, but instead all parties are named on the List of Interested Persons, including parties who are not named in the will (usually the heirs at law). This list is in effect an invitation to the cocktail hour.

The allowance of the will and appointment of executor can be compared to the end of the cocktail hour portion of a party. Some interested parties will remain on the list even though they technically no longer meet the definition of an Interested Party. There is currently no specific procedure on how to easily remove those interested parties from the Interested Person's List who were not named in the will. While there may be other reasons to remove an Interested Party during the probate proceedings, I am choosing to focus on those heirs at law who overstay at the cocktail hour of the probate proceedings. These former Interested Parties become what I call "Disinterested Parties."

What's the Problem?

Disinterested Parties can become a burden to a probate proceeding for several reasons. One reason is that once these individuals realize they will receive nothing from the estate, they are not motivated to sign and return their consents to Motions for Licenses to Sell or the Final Accounting or any other document they need to return. In effect, they have lost interest. The mail you send them with motions and consents to sign will sit untouched in their in-box. They will not return calls and emails from executors, legal staff, and sympathetic relatives. This adds burdensome time and expense to the estate proceedings.

Another reason Disinterested Parties are a burden is that they will have access to information of the decedent's possessions that would not be readily available to the public. The first document of concern is the inventory, which should be filed soon after the will is allowed and the executor appointed. The decedent has decided not to name this party in his or her will, so why should this Disinterested Party now have access to a list of the decedent's valuables and real estate holdings?

A final reason that Disinterested Parties are a burden, which may apply to other parties if named in a probate proceeding as well, is that they most likely do not have legal counsel but believe the executor's attorney also represents the Disinterested Party. Although you explain in writing that you do not represent them when you send them the initial documents to open the estate, this is usually a point that is either not understood or overlooked. This often leads to misunderstanding on their behalf later.

How Do You Solve This?

As I mentioned, there seems to be no exact court rule or statute that provides exact information on how to remove these individuals.

I would like to see Vt. R. Prob. P. 17(c) revised as follows:

(c) Cessation of party status after commencement. At all further stages of a probate proceeding, the following shall cease to be parties:

- (1) Persons who are heirs named as Interested persons for the initial probate proceedings and who are not named in the will. They shall cease to be parties when the will is allowed and the executor is appointed. They will receive no further notices for these proceedings.
- (2) Parties who have received all of the devise, legacy or interest to which they are entitled shall cease to be deemed parties. The executor, administrator, guardian or trustee shall submit to the court proof of such payment and delivery.

In addition, it would be helpful if there were a form to submit with the initial petition. I am not sure if this form should be filed with the initial proceeding or just after appointment, or even if the current form should be modified.

Conclusion

It would be great if the Vermont Probate Court had a procedure to gently escort the now Disinterested Parties out of the cocktail area while escorting the actual Interested Parties to the ballroom of the probate proceedings.



So... About Those Passwords of Yours...

We live in a world where we have a plethora of passwords tied to our various email, social media, business accounts, and others. Remembering passwords, or having different sets of credentials, in general, can be quite maddening. To try and combat this irksomeness, many people resort to saving their passwords in unprotected Excel/Word documents, within a notebook of some sort, or on that dreaded sticky note. Additionally, it is common for people to have only a few, easy-to-guess passwords that pertain to their child's name or favorite sport. In fact, it has been noted that 52% of people use the same password across multiple accounts. This poor password hygiene comes to light should one's account become compromised. For example, if your email account gets hacked, the criminals will then try your credentials on other platforms, such as Facebook or even a banking site, to further their destructive path.

Even more unsettling, threat actors have numerous tools and ways to obtain your passwords. We know that a common attack would be sending phishing emails, in which users receive a message about re-activating their O365 account. To re-activate the account, the users are asked to click on a link that brings them to a page to log in again. However, this login page, which looks strikingly similar to O365, is malicious. As soon as the person's password is entered, it gets stolen in the background.

Another straightforward way to obtain one's password is to simply guess it. Password guessing is nearly effortless, and if the login portal in question does not have rate throttling or account lockouts, threat actors can guess hundreds or thousands of passwords per minute. To put this daunting thought into perspective: if your password is 8 characters and it contains uppercase, lowercase, and numbers, it can take a threat actor 7 minutes to brute force your password. If that 8-character password contains symbols, then that 7 minutes becomes 39 minutes. However, if you create a password that is 13 characters long with uppercase, lowercase, numbers, and symbols, it could take 202K years to brute force it. In order to make your password strong, it is recommended that you consider the following:

- Use passphrases. With passphrases, your password could reach double digits, especially if it is something like: Iliketoeatcheesepizz@5!
- Use password managers. These managers can store, encrypt, and create 25-digit passwords without you having to remember any of them.
- Have MFA enabled on ALL accounts. Should your password get stolen, MFA can prevent the threat actors from getting beyond that login page, since they do not have a 6-digit code, or push notification on your phone, etc.

To read more about how threat actors get your passwords, refer to this article:
<https://blog.knowbe4.com/how-hackers-get-your-passwords-and-how-to-defend>.

Statistics were derived from knowbe4.com, hivesystems.io, and comparitech.com.

Holly Mendez, IT Security Analyst, CATIC
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QR Code Scam: The Square That Takes Your Money...

In the past, CATIC IT Security has discussed Google Voice scams and how people are being tricked into providing their authentication codes to a bad actor. Given similar attempts by criminals to manipulate basic technology, the FBI is issuing a warning about a steady rise in QR code scams. As most are aware, QR codes have become increasingly popular since the pandemic, as places of business try to limit the number of in-person interactions and contact with others. Unfortunately, this increased use of QR codes does not go unnoticed by the bad actors, who have decided to alter these codes in efforts to direct unsuspecting people to malicious websites.

More specifically, QR codes are effortless and quick to craft. When the bad actors create these tampered codes and get a user to scan the code via a phishing email, sticker, sign, etc., a bogus page emerges and prompts the user to enter login information and/or bank details. An example of this scam was recently seen on parking meters. It is typical for people to pay for parking, especially on city streets. When the QR code was scanned from the parking meter, it took the user to a site for “Quick Pay Parking,” which was not necessarily unusual since it is a common practice to use this method to pay for this commodity. Unfortunately, the user’s credit card information to “pay” for the parked car was stolen shortly after it was inputted into the malicious site.

To avoid possible QR code scams, please review the following tips:

- Be wary of codes that are embedded in emails. Often, those emails are suspicious, particularly if the message with the code requests login information to view certain documents.
- Review the QR code’s link. Most smartphone cameras, such as the iPhone’s, will allow a user to examine the actual URL as you begin to scan it. If the URL appears to be random, close out of the application immediately.
- Ensure that the QR code you are about to scan has not been modified in any way. For example, if you are trying to pay for a tab at a restaurant and notice a QR code on the table, make sure that the sticker has not been slapped on over the original and legitimate one.
- Do not download QR code scanner apps, as many of them are not verified or may contain malware, and most smart devices already have a built-in scanner through the camera.

Information was derived from threatpost.com and cnet.com

Holly Mendez, IT Security Analyst, CATIC
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Did you Know?

By Krista Cadieux, RP®

The Vermont Municipal Clerks' and Treasurers' Association has compiled a list of which towns/cities in Vermont have online land records. Visit <https://www.vmcta.org/> and click the link on the home page (and then bookmark it). The list is not always 100% up-to-date, so if you don't see your town listed, check its website. You might get a nice surprise!

And more...

The Vermont Secretary of State has extended the Emergency Administrative Rules for Notaries Public and Remote Notarization through 9/10/22.

Memo to Bar – April 18, 2022

b. *Promulgation Order Amending V.R.C.P. 68*

This Order was promulgated on **April 18, 2022, effective June 20, 2022.**

Rule 68 is amended to allow plaintiffs to make offers of judgment where the rule previously only allowed such offers by defendants. The change was initially adopted as part of Administrative Order 49 to make the practice more widely available at a time when in-person civil jury trials were largely on hold pursuant to Administrative Order No. 49, ¶ 24. The present amendment makes the change permanent.

c. *Promulgation Order Amending V.R.S.C.P. 7 and 8*

This Order was promulgated on **April 18, 2022, effective June 20, 2022.**

V.R.S.C.P. 7 is amended to address issues that have been plaguing the small claims docket. The amendments require personal service of judgments before financial disclosure hearings can be held and extend the time period between new financial disclosure hearings. The amendments also include some simple language changes to make the rules clearer. Simultaneously adopted amendments of V.R.S.C.P. 8 modernize and simplify the contempt process for failure to appear at a financial-disclosure hearing. The amendments clarify the basis for a contempt finding and narrow the remedies available for contempt. They also simplify the process for creditors seeking a contempt order.

e. *Promulgation Order Amending Rule 18(d)(2) of the Vermont Rules for Family Proceedings*

This Order was promulgated on **April 18, 2022, effective June 20, 2022.**

The amendment to Rule 18(d)(2) clarifies that mediation can take place either in person or using remote technology.

A.O. 49 was initially issued March 16, 2020, in response to the state of emergency resulting from the pandemic. Paragraph 13 of A.O. 49 authorized remote participation in mediation by video or telephone without a stipulation or court order. Further, in anticipation that at some point A.O. 49 would no longer be necessary, the Supreme Court requested that the Advisory Committee on Rules for Family Proceedings consider whether there should be a permanent change to Rule 18 related to remote participation. After considering responses from attorneys who practice family law to a Vermont Bar Association survey and responses from family mediators, the Committee concluded that both in person and remote participation in mediation should be permissible in family proceedings subject to V.R.F.P. 18 at the discretion of the mediator or by order of the court.

Memo to Bar – May 6, 2022

ODYSSEY FILE & SERVE—NOTICE TO LAWYERS FOR FINANCIAL INSTITUTIONS AND OTHER PLAINTIFFS WITH MULTIPLE CASES IN THE CIVIL DIVISION

Background

Lawyers who represent financial institutions and other plaintiffs with multiple cases in the civil division should be aware of a potential duplicative e-filing use fee charge (“e-filing fee”) that was discussed by the Supreme Court’s Special Advisory Committee on the Rules for Electronic Filing at its most recent meeting on April 22, 2022. This issue has arisen following the implementation of an Emergency Rule temporarily amending Rule 5(d) of the 2020 Vermont Rules for Electronic Filing (“Emergency Order”) in response to the decision and order of the U.S. District Court for the District of Vermont in Courthouse News Service et al. v. Patricia Gabel, et al., No. 2:21-cv-00132 on November 19, 2021 (“Federal Court Order”).

Under the 2020 Vermont Rules for Electronic Filing and the Vermont Rules for Public Access to Court Records, electronic filings undergo court staff review for compliance with rules and statutes. The Federal Court Order prohibits the Judiciary in certain kinds of civil cases from conducting this compliance review of complaints or other initiating documents submitted by lawyers (or self-represented litigants) to the Tyler Technologies File & Serve (“OFS”) electronic service before the filings are accessible publicly. Therefore, under the emergency rule and new protocol, the Judiciary reviews the initiating document(s) for compliance with law and rules after the electronic filing has already been entered into the Judiciary’s case management system and become a publicly available judicial record. This prohibition is only applicable to specific kinds of civil cases that are the subject of the CNS lawsuit.

Implementation of the emergency rule has been accomplished by using an “auto accept” protocol which makes electronic filings available immediately, prior to staff review for compliance with applicable rules and statutes.

In some cases, lawyers and self-represented litigants using the Tyler service are automatically and unintentionally being charged duplicate e-filing fees by Tyler due to the way the computer software operates under the “auto accept” process without the planned human review and verification of party information. This e-filing fee goes directly to Tyler for the use of OFS and is not part of the fee that litigants pay to initiate a case in the Judiciary’s case management system (“entry fee”).

Problem

The auto accept process implemented to comply with the Federal Order does not involve the integral step of verifying parties. It is important for court staff to properly verify parties so that all of a party's cases are connected for efficient and proper management by judges and staff. Also, it is crucial for a party to be recognized in the system as a single entity and have a single party ID number since a party ID is connected to the party's ability to access its cases on the public portal. If a litigant has more than one entity/ID which is then attached to different cases, the litigant will need to apply multiple times for elevated access to see all of its cases on the public portal. The combination of the one-time per party per case e-filing fee and the auto acceptance process, that skips the party verification step and creates an additional entity, has resulted in many filers getting double charged the \$14.00 e-filing fee paid to Tyler for the use of its OFS electronic system.

Current Remedy

While awaiting a permanent resolution of these issues, the Judiciary is working with Tyler to ensure that Tyler pays refunds for the duplicate charges.

Efilers charged by Tyler's service multiple times for the same initial case filing should submit an email containing the two (or more) envelope numbers charged to jud.efilesupport@vermont.gov. Judiciary personnel will then look up the envelope numbers in Tyler's OFS electronic system to verify that the e-filing fee was in fact paid more than once to Tyler. Tyler has requested that the Judiciary only submit one ticket per day for refunds as a batch, so the Judiciary tracks the requests on a spreadsheet. Judiciary personnel log into the Tyler Helpdesk at the end of each day to create a ticket that includes all of the refund requests to that point—attorney name, case number, and envelope numbers. At the current level of refunds, it is taking about ten hours per week of court staff time to manage refund applications.

Each refund is processed by Tyler through Chase bank and it is currently taking up to two months for each refund to be received. The Court Administrator's Office will continue to monitor and explore resolution of the OFS auto acceptance issues. The agenda for the next meeting of the Supreme Court's Special Advisory Committee on the Rules for Electronic Filing will include this issue, and Committee leadership may examine whether there should be additional potential rules amendment measures to accompany any technological and administrative measures to address the problems identified.

Memo to Bar – May 10, 2022

c. *Promulgation Order Making V.R.C.P. 80.11 Permanent*

This Order was promulgated on **May 9, 2022, effective July 11, 2022.**

Rule 80.11, which provides procedures for expedited actions, was originally adopted by the Supreme Court's order of June 15, effective August 15, 2016, with a sunset date of August 16, 2019. The rule is now made permanent.

By order of April 30, 2018, the Court ordered the rule, as amended, to be continued and directed the Advisory Committee on the Rules of Civil Procedure to continue to review its operation and to advise the Court whether it should be further revised or made permanent. The Committee

discussed the rule at several recent meetings. A Vermont Bar Association membership survey conducted on behalf of the Committee, indicated that, although the expedited action procedure provided by Rule 80.11 is not used extensively, it is generally viewed as useful and effective, with no significant suggestions for revision. After review and discussion of the survey results, the Committee voted unanimously to recommend to the Court that V.R.C.P. 80.11 as presently constituted be promulgated as a permanent rule effective not later than August 31, 2022.

d. *Promulgation Order Amending Rule 11(c) of the 2020 Vermont Rules for Electronic Filing*

This Order was promulgated on **May 9, 2022, effective September 6, 2022.**

The amendment to Rule 11(c) conforms the rule to simultaneous amendments to V.R.C.P. 5(b)(2) (D), which requires efilers to serve discovery using the electronic filing system, unless the parties agree on an alternative method of service.

e. *Order Amending Rule 6(e) of the Vermont Rules of Civil Procedure and Rule 26 and 31(a) of the Vermont Rules of Appellate Procedure*

This Order was promulgated on **May 9, 2022, effective September 6, 2022.**

V.R.C.P. 6(e) and V.R.A.P. 26(c) are simultaneously deleted. As most recently amended in 2018, Rule 6(e) provided:

(e) **Additional Time After Certain Kinds of Service.** When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2) (mailing), (3) (leaving with the clerk), or (4) (sending by electronic means), 3 days are added after the period would otherwise expire under Rule 6(a).

Deleting these provisions is overdue, given the general simplification of counting time that occurred when the “day is a day” method of counting was adopted in 2018 and the widespread use of service by electronic means, either through OFS or by email.

V.R.A.P. 26(d)(1) is amended to extend the maximum time limits to which filing times for briefs may be extended by stipulation. Under subparagraph (1)(A), the extension for the appellant’s principal brief is increased from 30 to 40 days. The extension for appellee’s principal brief is increased from 21 to 30 days, and that for reply briefs is increased from 14 to 21 days. These time limits are identical to those in the Federal Rules of Appellate Procedure, which were put in place when the federal three-day rule was eliminated for electronic filing. Now that electronic filing has been adopted for appeals to the Vermont Supreme Court, and the three-day rule is being eliminated by simultaneous deletion of V.R.C.P. 6(e) and V.R.A.P. 26(c), the longer time periods are appropriate for Vermont.

Rule 31(a) is amended to extend the serving and filing times for principal and reply briefs. Under paragraph (1), the time for the appellant’s principal brief is increased from 30 to 40 days. The time for appellee’s principal brief is increased by paragraph (2) from 21 to 30 days, and that for reply briefs is increased by paragraph (3) from 14 to 21 days.

f. *Promulgation Order Amending V.R.A.P. 25*

This Order was promulgated on **May 9, 2022, effective September 6, 2022.**

The amendment to V.R.A.P. 25 is made in conjunction with the amendments to V.R.C.P. 5 regarding email filing and service. V.R.A.P. 25(a)(1) and (2), regarding filing of documents, is deleted. Amended 25(a)(1) instead states that filing must be made as provided in V.R.C.P. 5(e) and the 2020 Vermont Rules for Electronic Filing. Incorporating the filing requirements of V.R.C.P. 5(e) will provide consistency across different dockets and predictability. The service requirements of V.R.C.P. 5 are already incorporated into the appellate rule.

The amendment also deletes V.R.A.P. 25(a)(2)(B), which previously provided: “A brief or printed case is timely filed if mailed or delivered to the carrier on or before the last day for filing.” Given the implementation of electronic filing in the Supreme Court and the concurrent implementation of filing by email, the provision is outdated. To the extent the purpose of the exception for briefs is to give parties the maximum time to complete their briefs, simultaneous amendments expand the deadlines for these filings from 30 to 40 days for an appellant’s principal brief, from 21 to 30 days for an appellee’s principal brief, and from 7 days to 14 days for a reply brief.

h. *Promulgation Order Amending V.R.C.P. 5, 6(a), 29, 79.1*

This Order was promulgated on **May 9, 2022, effective September 6, 2022.**

Rule 5(a) is carried forward and sets forth the service requirement for all documents subsequent to the summons and complaint or for which the rules may provide another mode of service. New Rule 5(b)(1) defines the five methods of service—using the efilings system, email, delivery, mailing, and leaving with the clerk. New Rule 5(b)(2) sets forth five required or permitted methods of service. Subparagraph (2)(A) makes clear that service between electronic filers must be made through the electronic filing system, or by another method agreed between the parties, as provided in Rule 11(d) of the 2020 Vermont Rules for Electronic Filing.

New Rule 5(b)(2)(B) delineates the methods of service for nonelectronic filers, which includes self-represented parties or other participants that have not elected or are not required to electronically file. Those individuals may serve or be served by delivery, mailing, or commercial carrier. Email service may be made in three circumstances. First, email service can be used if a self-represented party files a notice of appearance and provides both an email address and consent to be served at the email in accordance with simultaneously amended Rule 79.1(d). Second, the parties may agree to service by email in a signed writing filed with the court. Last, if a non-efiler does not have a valid physical or postal address, service can be made by email even if consent was not provided in the notice of appearance. The rule formerly allowed for service by leaving with the clerk where no address was known. Leaving with the clerk is now authorized by Rule 5(b)(2)(B)(iii) if no valid physical, postal, or email address is known. New Rule 5(b)(2)(D) pertains to service of discovery documents that are not filed with the court. Under this provision efilers must serve discovery documents by using the electronic filing system.

Revised Rule 5(e) has minor wording changes and is amended to allow unregistered self-represented parties and other participants to file by delivery, mail, commercial carrier, or email. There are standards for email filing in new Rule 5(e)(4). Rule 5(e)(5) specifies the filing date for documents depending on how they are filed.

New Rule 5(i) incorporates several definitions pertaining to filing and service from the 2020 Vermont Rules for Electronic Filing.

Rule 6(a)(4) is amended in conjunction with Rule 5(e)(5)(B) to specify that the last day for filing by email ends at midnight in the court's time zone.

Rule 29 is amended to conform to concurrent changes in Rule 5 regarding service of discovery materials. Under new Rule 5(b)(2)(D), discovery between electronic filers must be made by using the electronic filing system unless the parties consent to service by another method such as through email or file sharing. Discovery on or by nonelectronic filers is made by mailing or delivery. Again, email or another method can be used if the parties agree.

Rule 79.1 is amended to clarify what is required from a self-represented party. Rule 79.1(d) requires self-represented parties to file and sign a Notice of Appearance for self-represented party, which is available on the judiciary website, <https://www.vermontjudiciary.org/sites/default/files/documents/100-00265.pdf>. The form contains contact information to facilitate both service by other parties and notice by the court. The form also allows self-represented parties to consent to receive service by email. Even where a self-represented party does not consent to email service, the party may be served using an email provided on a pleading if there is no known physical or postal address. This conforms to a contemporaneous amendment to Rule 5(b)(2)(B)(ii). Rule 79.1(e) and (h)(4) are amended to replace the word "paper" with "document." Rule 5(i)(1) incorporates the broad definition of "document" from the 2020 Vermont Rules for Electronic Filing for purposes of filing and service. Rule 79.1(i), which required attorneys to provide an eCabinet registration number, is deleted as obsolete.



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