

STATE OF VERMONT
VERMONT SUPREME COURT
JANUARY TERM, 2026

**Order Promulgating Amendments to Rule 4(d)-(h)
of the Vermont Rules of Probate Procedure**

1. That Rule 4(d)-(h) of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 4. NOTICE; ~~PROCESS OF COMMENCEMENT OF PROCEEDINGS~~

(d) **Service of notice and petition**. The notice and, ~~where appropriate,~~ the petition shall be served together, sufficiently in advance of any hearing to satisfy the requirements of Rule 12(a), upon all persons who are parties at the commencement pursuant to Rule 17, including any person who has appeared under Rule 79.1, by one of the following methods:

(1) *Service by mail*. Except as otherwise ordered by the court, the notice and petition shall be served upon the party by restricted certified mail, with return receipt requested, upon all persons who are parties at commencement pursuant to Rule 17, including any person who has appeared under Rule 79.1. Restricted mail is defined as any method of delivery including the United States Postal Service or a commercial carrier requiring a receipt signed by the addressee or a member of the addressee's household. The mailing shall be addressed to the addressee recipient at the post office address given in the notice of appearance, if any, or at the recipient's addressee's office or place of residence.

(A) *Complete service by mail*. ~~Service by certified mail is complete when the mail is delivered and receipt signed or when acceptance is refused, provided that the petitioner or register shall file either upon the return receipt or, if acceptance was refused, an affidavit that upon notice of such refusal a copy of the notice and petition was sent to the party being served by ordinary mail.~~ upon an interested person if the following is filed with the court:

- (i) The receipt signed by the addressee or a member of the addressee's household;
- (ii) Any notice that delivery was refused and either an affidavit signed by the petitioner or the court record shows that the petition was also sent by ordinary first-class mail and the first-class mail was not returned or refused, together with evidence of mail tracking information; or
- (iii) If delivery is not refused but the receipt is not obtained, either an affidavit signed by the petitioner or the court record shows that the petition was also sent by ordinary first-class mail and the first-class mail was neither returned nor refused, together with evidence of tracking information.

(B) *Incomplete service by mail*. If service is not complete pursuant to subparagraph (d)(1)(A), then the petitioner shall utilize another method pursuant to these rules to complete service.

(2) *Personal service*. Alternatively, the notice and petition may be served upon any such persons personally, by any method provided in subdivision (d) or (e) of Rule 4 of the Vermont Rules of Civil Procedure for service of process in civil actions. ~~Service shall also be made by publication as provided in subdivision (e) of this rule upon any such person whose address or present whereabouts is unknown and cannot be ascertained by due diligence; in cases involving a~~

decedent's estate in which there is reasonable cause for doubt as to who the interested persons are; and, in other proceedings on order of the court, upon all unknown persons.

(3) Service by publication. The court on its own motion or for cause shown may order service by publication upon any such person whose address or present whereabouts or identity is unknown and cannot be ascertained by due diligence. The person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published in one or more newspapers of general circulation as ordered by the court. The publication of the notice shall be made within 21 days after the petition is filed or the order is granted. Service by publication is complete on the day of publication.

(4) Service by other means. The court on its own motion or for cause shown may order service to be made upon any party by a method other than those specified in this subdivision, so long as the method ordered is calculated to give actual notice to the party as any other method reasonably available under the circumstances. Alternative forms of service may include but are not limited to email, text message, and various forms of social media.

(2 5) Service upon minor. If a party to be served is a minor, copies of the notice and the petition shall also be served by the appropriate method upon the minor's guardian, if there is one within the state known to the party making service and, if not, then upon the minor's father or mother or other person having care or control or with whom the minor resides. If service cannot be made upon any of them, then it shall be made as provided by order of the court.

(3 6) Service upon incompetent person. If a party to be served is an incompetent person, copies of the notice and petition shall also be served by the appropriate method upon a court-appointed the guardian of the incompetent person, or a competent adult member of the family with whom the incompetent person resides or, an agent under a power of attorney or, if the incompetent person is living in an institution, then upon the director or chief executive officer of the institution. If service cannot be made upon any of them, then it shall be made as provided by order of the court.

~~(4) The court on its own motion or for cause shown may order service to be made upon any party by a method other than those specified in this subdivision, so long as the method ordered is as calculated to give notice to the party as any other method reasonably available in all the circumstances.~~

~~(e) Service by publication.~~ When service by publication is required by this rule or by order of the court, the person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published in a newspaper of general circulation in the probate district where the petition was filed, or such other location as the court may direct. The publication of the notice shall be made within 21 days after the petition is filed or the order is granted. Service by publication is complete on the day of publication.

~~(f)(e) Proof of notice; return of service.~~ The person responsible for service by mail or publication shall file an affidavit a certificate of service setting forth the name and address of each person served and the means by which service was made upon each person served, accompanied by any documentary evidence to show that service was completed. Depending upon the form of service used, documentary evidence could include a copy of an email, text message, social media post, or mail tracking evidence or the publication tear sheet. Where the notice is served personally, proof of service shall be made as provided for civil actions in Rule 4(i) of the Vermont Rules of Civil Procedure.

~~(g)(f) Amendment.~~ At any time in its discretion and upon such terms as it deems just, the court may allow any notice, process or proof of service thereof to be amended, unless it clearly appears

that material prejudice would result to the substantial rights of the party to whom the notice or process issued.

~~(h)~~(g) **Alternative provisions for service in a foreign country.**

(1) *Manner.* When service is to be effective upon a party in a foreign country, it is also sufficient if service of the notice and petition, if appropriate, is made:

(A) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) As directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or

(C) Upon an individual, by delivery to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or

(D) By any form of mail requiring a signed receipt, to be addressed and dispatched to the party to be served; or

(E) As directed by order of the court.

Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the court or by the foreign court. On request, the register shall deliver the notice or summons to the party making service for transmission to the person or the foreign court or officer who will make the service.

(2) *Return.* Proof of service may be made as prescribed by subdivision (f) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision (h), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Reporter's Notes—2026 Amendment

Rule 4(d) is amended to use the term restricted mail instead of certified mail to allow initial service by commercial carrier. It is clarified to reflect the expanding avenues for providing notice when restricted mail notice does not appear to be effective for a variety of reasons, including but not limited to evasive parties and unreliable or unknown mailing addresses. The rule recognizes that private commercial carriers provide similar safeguards for delivery as the United States Postal Service if a signature is required. Vermont law has recognized the use of commercial carriers in 1 V.S.A. § 134a by defining registered mail to “include any method of mail delivery requiring a signature of the addressee or his agent” when the term appears in the Vermont Rules of Civil Procedure or the Vermont Rules of Criminal Procedure. Moreover, if the restricted mail is refused or unclaimed, the rule enables the petitioner to utilize first-class mail service to circumvent evasive addressees.

In addition, V.R.P.P. 4(d)(4) specifies that service by other means may include email or other forms of social media such as Facebook, Facebook Messenger, or text message if ordered by the court. Service by these alternative means is gaining increasing acceptance. See, e.g., Baidoo v. Blood-Dzraku, 5 N.Y.S.3d 711 (Sup. Ct. 2015) (permitting service of process by Facebook in

divorce proceeding); Tex. Rule Civ. Pro. 106(b)(2) (permitting service of process by electronic means when ordered by court). When issuing such an order, the court should consider such factors as whether the social media account belongs to the party and is regularly used by the party. Rule 4(d) is also renumbered.

Service by publication is moved from 4(e) to 4(d)(3) and amended to provide the court with more discretion over the specifics of publication to ensure the best opportunity for actual notice. Under the prior rule the court could order publication in either the probate district where the petition was filed or in another location where the person was last known to reside. Depending upon the circumstances, it may make sense to require publication in both the probate district where the petition was filed and in a location where the person was last known to reside.

Rule 4(e) now pertains to proof of service and is modified to include requirements of proof with respect to the various forms of service.

Paragraphs 4(f)-(h) are relettered (e)-(g).

2. That these amendments be prescribed and promulgated effective **July 1, 2026**. The Reporter’s Notes are advisory.

3. 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 6th day of January, 2026.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice