

STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_ TERM, 2026

**Order Promulgating Amendments to Rule 5 of the  
Vermont Rules for Environmental Court Proceedings**

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

1. That Rule 5 of the Vermont Rules for Environmental Court Proceedings be amended as follows (new matter underlined; deleted matter struck through):

**RULE 5. APPEALS**

**(a) Applicability of Rules.**

(1) This rule governs appeals to the Environmental Court from an act or decision of an appropriate municipal panel pursuant to 24 V.S.A. §§ 4471, 4472; from an act or decision of the secretary of the agency of natural resources, or a commissioner or department of the agency, under the provisions of law listed in 10 V.S.A. § 8503(a); from a district commission, or from a district coordinator jurisdictional opinion, under 10 V.S.A., ch. 151; and from decisions of the secretary of the agency of agriculture, food and markets pursuant to 6 V.S.A. §§ 4855, 4861.

(2) Except as modified by this rule and by subdivisions (b)-(e) of Rule 2, the Vermont Rules of Civil and Appellate Procedure, so far as applicable, govern all proceedings under this rule.

**(b) Notice of Appeals, Cross-Appeals, and Statement of Questions.**

*(1) Filing the Notice of Appeal.*

~~(A) An appeal under this rule shall be taken by filing~~ To take an appeal, the appellant must file with the clerk of the Environmental Court a notice of appeal containing the items required in paragraph (3) of this subdivision within 30 days of the date of the act, decision, or jurisdictional opinion appealed from, ~~unless the court extends the time as provided in Rule 4 of the Vermont Rules of Appellate Procedure.~~ and The appellant shall pay to the clerk with the notice of appeal any required entry fee.

(B) If a notice of appeal is mistakenly filed with the tribunal appealed from, or the Natural Resources Board, or either of its panels or its predecessor boards, the appropriate officer of the tribunal, board, or panel shall note thereon the date on which it was received and shall promptly transmit it to the clerk of the Environmental Court, and it shall be deemed filed with the Environmental Court on the date so noted.

(C) Failure of an appellant to take any step other than the timely filing of the notice of appeal does not affect the validity of the appeal but is ground only for such action as the court deems appropriate, which may include dismissal of the appeal.

(2) *Cross- or Additional Appeals.* If a timely notice of appeal is filed, any other person entitled to appeal may file a notice of appeal within 14 days of the date the notice of appeal and on which the statement of questions are served is required to be filed pursuant to Rule 5(f), or within the time otherwise prescribed by this rule, whichever period last expires, unless the court extends the time as provided in Rule 4 of the Vermont Rules of Appellate Procedure.

(3) *Contents of Notice of Appeal.* 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. The notice of appeal must:

(A) specify the party or parties taking the appeal and the statutory provisions under which each party claims party status;

(B) ~~must~~ designate the act, order, or decision appealed from;

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

(D) ~~and must~~ be signed by the appellant or the appellant's attorney; ;

(E) ~~In addition, the notice of appeal must~~ (A) advise all interested persons that they must enter an appearance in writing with the court within 21 days of receiving the notice, or in such other time as may be provided in subdivision (c) of this rule, if they wish to participate in the appeal, and

(B) (F) give the address or location and a description of the property or development with which the appeal is concerned and the name of the applicant for any permit involved in the appeal. ~~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.~~

(4) *Extending Appeal Period.* The court may extend the appeal period for an appeal, subsequent appeal, or cross-appeal as provided in Vermont Rule of Appellate Procedure 4.

(5) *Filing the Statement of Questions.*

(A) Requirement. The appellant and any cross-appellant must file a statement of the questions that the appellant or cross-appellant desires to be determined. The effect of the statement is provided in subdivision (f).

(B) Timing. The statement of questions must be filed at the same time the notice of appeal or cross-appeal is filed.

(C) Response. No response to the statement of questions may be filed.

(4) (6) *Service of Notice of Appeal and Statement of Questions.*

(A) *Appeal from an Appropriate Municipal Panel.* Upon the filing of a notice of appeal from an act or decision of an appropriate municipal panel, the appellant must at the same time mail a copy of the notice of appeal and statement of questions to the clerk or other appropriate officer of the panel and serve the applicant using a method of delivery that requires a signature by the addressee or an agent of the addressee by certified mail. Upon receipt of the copy of the notice of appeal, the clerk or other officer shall, within 7 days, provide to the appellant a list of interested persons, with instructions to serve a copy of the notice and statement of questions upon each of them using a method of delivery that requires a signature by the addressee or an agent of the addressee by certified mail. ~~A copy of the notice shall thereupon be served by the appellant~~ The appellant must serve the notice of appeal and statement of questions on by certified mail upon each interested person using a method of delivery that requires a signature by the addressee or an agent of the addressee.

(B) *Appeal from the Secretary of the Agency of Natural Resources, a District Commission, or a District Coordinator.* Upon the filing of a notice of appeal from an act or decision of the secretary of the agency of natural resources, a district commission, or a district coordinator, the appellant shall serve a copy of the notice of appeal and statement of questions in accordance with Rule 5 of the Vermont Rules of Civil Procedure upon the secretary, district commission, or district coordinator as appropriate and upon any party by right as defined in 10 V.S.A. § 8502(5), the Natural Resources Board, and every other person to whom notice of the filing of an appeal is required to be given by 10 V.S.A. § 8504(c) or (e), as appropriate. In addition, if the appeal is from an act or decision of the secretary or a district commission, the appellant shall publish a copy of the notice of appeal not more than 14 days after serving the notice as required under this subparagraph, at the appellant's expense, in a newspaper of general circulation in the area of the project which is the subject of the act or decision appealed from.

(C) *Appeal from the Secretary of Agriculture.* If the appeal is from a decision of the secretary of the agency of agriculture, food and markets under 6 V.S.A. § 4855, the appellant shall serve a copy of the notice of appeal and statement of questions upon the secretary. If the appeal is from a decision or ruling of the secretary under 6 V.S.A. § 4861, the appellant shall serve a copy of the notice and statement of questions upon the secretary, the applicant if other than the appellant, and any person entitled under rules adopted by the secretary to receive individual notice of an animal waste permit hearing pursuant to 6 V.S.A. § 4858.

(c) **Appearance.** An appellant enters an appearance by filing a notice of appeal as provided in subdivision (b) of this rule. Any other person may enter an appearance within 21 days after the date on which notice of filing of the last notice of appeal to be filed was served, or, if necessary, published pursuant to subparagraph (b)(4 ~~6~~)(B) of this rule, by filing a written notice of appearance with the clerk and by serving the notice of appearance in accordance with Rule 5 of the Vermont Rules of Civil Procedure; provided that any person enumerated in 10 V.S.A. § 8504(n)(1)-(3) may file and serve an appearance in a timely fashion. Any other person who has

not previously entered an appearance as provided in this paragraph may enter an appearance by filing a timely motion to intervene. ~~Attorneys shall comply with Civil Rule 79.1(i).~~

**(d) Claims and Challenges of Party Status.**

(1) *Appeals of Interlocutory District Commission Party Status Decisions.* Any party in a proceeding before a district commission, or any person denied party status in such a proceeding, may move in the Environmental Court for an appeal of an interlocutory decision of the district commission granting or denying party status pursuant to 10 V.S.A. § 6085(c). The motion, together with a notice of appeal, must be filed and served as provided in subdivision (b) of this rule within 14 days after the decision of the district commission appealed from, except that the motion and notice need not be served by publication. The court may grant the motion and hear the appeal if it determines that review will materially advance the application process before the district commission. The court shall expedite hearing and determination of the motion and appeal. The provisions of Rule 2 apply to appeals under this paragraph only as ordered by the court.

(2) *Claims and Challenges of Party Status in an Appeal from a Final Decision.* An appellant who claims party status as a person aggrieved pursuant to 6 V.S.A. § 4855 or 10 V.S.A. § 8504(a) and is not denied that status by 10 V.S.A. § 8504(d)(1), or an appellant who claims party status as an interested person pursuant to 10 V.S.A. § 8504(b)(1), will be automatically accorded that status when the notice of appeal is filed unless the court otherwise determines on motion to dismiss a party. An appellant who claims party status under 10 V.S.A. § 8504(b)(2), (d)(2), or (e)(2) and who has not sought interlocutory relief pursuant to paragraph (1) of this subdivision must assert that claim by motion filed not later than the deadline for filing a statement of questions on appeal. Any other person who appears as provided in subdivision (c) of this rule will be accorded party status unless the court otherwise determines on its own motion, on motion to dismiss a party, or on a motion to intervene.

(e) **Stay.** Unless the act or decision appealed from is automatically stayed pursuant to 10 V.S.A. § 8504(f)(1) by the filing of the appeal or a stay has been granted by the district commission pursuant to 10 V.S.A. § 6086(f), the court, after the notice of appeal has been filed may, on its own motion, or on motion of a party, stay the act or decision and make such other orders as are necessary to preserve the rights of the parties upon such terms and conditions as are just. When the appeal is from the issuance of a permit pursuant to 24 V.S.A. § 4449, unless the decision appealed from is automatically stayed pursuant to 10 V.S.A. § 8504(f)(1)(B), the permit shall not take effect until the earlier of 14 days from the date of filing of the notice of appeal or the date of a ruling by the court under this subdivision on whether to issue a stay.

(f) **Effect of Statement of Questions.** ~~Within 21 days after the filing of the notice of appeal, the appellant shall file with the clerk of the Environmental Court a statement of the questions that the appellant desires to have determined. The statement shall be served in accordance with Rule 5 of the Vermont Rules of Civil Procedure. No response to the statement of questions shall be~~

~~filed.~~ The appellant may not raise any question on the appeal not presented in the statement as filed, unless otherwise ordered by the court in a pretrial order entered pursuant to subdivision (d) of Rule 2. The statement is subject to a motion to clarify or dismiss some or all of the questions.

(g) **Trial De Novo; Pretrial Order.** All appeals under this rule shall be by trial de novo, following a pretrial conference and order issued pursuant to subdivision (d) of Rule 2, except as provided in subdivision (h) of this rule. In an appeal by trial de novo, all questions of law or fact as to which review is available shall be tried to the court, which shall apply the substantive standards that were applicable before the tribunal appealed from.

(h) **Appeals to the Environmental Court on the Record.**

(1) *From an Appropriate Municipal Panel.*

(A) An appeal from an appropriate municipal panel from which appeals may be on the record pursuant to 24 V.S.A. §§ 4471 and 4472 shall be governed by the Vermont Rules of Appellate Procedure, so far as applicable and except as modified by this rule. The record on appeal shall consist of the original papers filed with the municipal panel; any writings or exhibits considered by the panel in reaching the decision appealed from; and a written transcript of the proceedings, whether recorded electronically or stenographically, certified by the presiding officer of the municipal panel as the full, true and correct record of the proceedings. Within 30 days after the filing of the notice of appeal, the clerk or other appropriate officer of the municipal panel shall transmit the papers and exhibits filed to the clerk of the Environmental Court in the manner provided in Rule 11(b) of the Rules of Appellate Procedure.

(B) Within 14 days after filing the notice of appeal, appellant shall send to the municipal panel an order for a transcript of all proceedings, unless all parties involved in the appeal stipulate to a transcript of less than all proceedings. A copy of the order shall be served on the clerk of the Environmental Court and all persons upon whom copies of the notice of appeal have been served pursuant to subdivision (b) of this rule. It shall thereupon be the responsibility of the municipal panel to cause a transcript to be made by a Court-approved transcription service pursuant to V.R.A.P. 10(b)(1) and (2). Appellant shall pay to the municipal panel at the time of ordering the deposit amount required under V.R.A.P. 10(b)(7). Before the transcription begins, the municipal panel shall pay the transcription service a deposit pursuant to that provision.

(C) In cases where the proceedings before the appropriate municipal panel were recorded electronically, the court, on motion of the appellant and a showing of financial hardship or other good cause made before a transcript has been ordered, may allow the electronic recording to be accepted as part of the record in place of a transcript. If the court grants the motion, the appellant must order copies of the electronic recording from the clerk or other appropriate officer of the municipal panel, who shall send one copy to the clerk of the environmental division, one to the appellant, and one to every other party, billing the appellant for the copies.

(2) *From the Commissioner of Forests, Parks, and Recreation.* An appeal from a decision of the commissioner of forests, parks, and recreation under 10 V.S.A. § 2625(f) shall be on the record of the proceedings before the commissioner. Within 30 days after the filing of the notice of appeal, the commissioner shall transmit the papers and exhibits filed to the clerk of the Environmental Court in the manner provided in Rule 11(b) of the Rules of Appellate Procedure. If those proceedings have been electronically recorded, the provisions of paragraph (1) of this subdivision concerning electronic recording apply.

(i) **Remand for Reconsideration.** At the request of the tribunal appealed from, the court, at any time prior to judgment, may remand the case to that tribunal for its reconsideration.

(j) **Judgment.** The order of the court may affirm, reverse, or modify the decision of the tribunal appealed from, may remand the case for further proceedings consistent with the order of the court, and may expressly set forth conditions and restrictions with which the parties must comply.

(k) **Appeals to the Supreme Court.**

(1) *Rules Applicable.* Except as modified by this subdivision, the Vermont Rules of Appellate Procedure, so far as applicable, shall govern all proceedings under this subdivision.

(2) *Filing and Service.* An appeal from a decision in a proceeding in the Environmental Court under this rule shall be taken by filing with the clerk of the Environmental Court a notice of appeal in the form provided in paragraph (3) of this subdivision within 30 days of the date of the decision appealed from, unless the Environmental Court extends the time as provided in Rule 4 of the Rules of Appellate Procedure. The appellant shall pay to the clerk of the Environmental Court any required entry fee with the notice of appeal. The appellant shall serve a copy of the notice upon the clerk of the Supreme Court and upon counsel of record of each person that appeared in the Environmental Court and held party status at the time when the decision appealed from was rendered.

(3) *Contents of Notice of Appeal.* The notice of appeal must specify the party or parties taking the appeal; must designate the judgment, order, or part thereof appealed from; must name the court to which the appeal is taken; and must be signed by the appellant or the appellant's attorney. In addition, the notice of appeal must give the address and a description of the property or development with which the appeal is concerned and the name of the applicant for any permit involved in the appeal and must set forth facts showing that the appellant is entitled to appeal pursuant to 10 V.S.A. § 8505(a)(1) or (2) or shall be accompanied by a motion requesting the Supreme Court to allow the appeal on the grounds specified in 10 V.S.A. § 8505(a)(3).

(4) *Issues on Appeal*. An objection that was not raised before the Environmental Court may not be considered by the Supreme Court, unless the failure or neglect to raise that objection is excused by the Supreme Court because of extraordinary circumstances.

(5) *Interlocutory Decisions*. An appeal from a decision of the Environmental Court granting or denying party status as provided in subdivision (d) of this rule or issuing a stay pursuant to subdivision (e) of this rule may be taken before final judgment as provided in Rule 5 of the Vermont Rules of Appellate Procedure.

### **Reporter's Notes—2026 Amendment**

Rule 5 is amended to eliminate delays experienced in proceedings before the Environmental Division by requiring that parties file and serve their statement of questions at the same time as filing and serving the notice of appeal or cross appeal. Under the existing rule, the statement of questions must be filed 21 days after the notice of appeal is filed. A party's failure to file or serve a statement of questions with the notice of appeal does not impact the validity of the appeal, but could be grounds for court action. Under 24 V.S.A. § 4466, the notice of appeal does not include the statement of questions. Moreover, Rule 5(b)(1) specifies that a party's failure to take any step "other than the timely filing of the notice of appeal does not affect the validity of the appeal but is ground only for such action as the court deems appropriate, which may include dismissal of the appeal."

Rule 5(b) is generally reorganized to provide headings and structure for ease of reading and clarity. The title of Rule 5(b) is amended to indicate that it addresses Appeals, Cross-Appeals, and the Statement of Questions. Existing (b)(1) is rewritten for clarity and reorganized into subparagraphs. The language in (b)(1) indicating the time for an appeal may be extended as provided in V.R.A.P. 4 is now in new (b)(4).

Rule (b)(2) addresses cross-appeals and additional appeals. Under the amended language, a cross-appeal must be filed within 14 days of the date the notice of appeal and statement of questions are served on the party or within the time otherwise set by the rule, whichever is later. In other words, if an appellant files and serves a notice of appeal and statement of questions two days after judgment is entered, a cross-appeal may be filed up until 30 days after judgment since the 30-day appeal period is later. On the other hand, if an appellant files and serves a notice of appeal and statement of questions 30 days after judgment, a cross-appeal may be filed up to 14 days after that. The rule makes the filing of a cross-appeal

contingent on service of both the notice of appeal and statement of questions because the decision of other parties regarding whether to appeal may depend on what issue the appellant is raising.

Rule (b)(3) addresses the contents of the notice of appeal and is reorganized into subparagraphs to clarify each required element. The changes are not intended to alter the substance of the rule.

New (b)(4) provides that the time period to file an appeal, subsequent appeal, or cross-appeal may be extended by the court as provided in V.R.A.P. 4. This language was in former (b)(1) and (2).

New (b)(5) addresses the filing of the statement of questions. Under (b)(5), the statement of questions must be filed at the same time that the notice of appeal or cross-appeal is filed. Previously, the statement of questions was required to be filed 21 days after the filing of the notice of appeal. It is expected that requiring the statement of questions at the time the appeal or cross-appeal is filed will eliminate some delays in these cases. The effect of the statement of questions continues to be addressed in subdivision (f).

Former Rule 5(b)(4) is renumbered (b)(6) and provides the service requirements for the notice of appeal and statement of questions. Because the statement of questions must be filed at the same time as the notice of appeal, it is also incorporated into the service requirements in subparagraphs (A), (B), and (C). Rule 5(b)(6)(A) replaces the requirement of service by certified mail with service “using a method of delivery that requires a signature by the addressee or an agent of the addressee.” This allows for more flexibility in the method of service, including service by registered mail, certified mail, commercial carrier, or in-hand delivery.

Rule 5(c) is amended to remove an obsolete reference to Civil Rule 79.1(i), which previously required attorneys to provide their eCabinet registration number in all filings and was deleted in 2022.

2. That these Rules, as amended, are prescribed and promulgated to become effective \_\_\_\_\_ . The Reporter’s Notes are advisory.

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

Dated in Chambers at Montpelier, Vermont this \_\_\_\_ day of \_\_\_\_\_ 2026.

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Nancy J. Waples, Associate Justice

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Christina E. Nolan, Associate Justice

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Michael P. Drescher, Associate Justice