STATE OF VERMONT
VERMONT SUPREME COURT
MAY TERM, 2022

Order Promulgating Amendments to Rules 5, 6(a)(4), 29, and 79.1 of the Vermont Rules of Civil Procedure

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 of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER DOCUMENTS ~~PAPERS~~

(a) **Service: When Required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every ~~paper~~ document relating to discovery required to be served upon a party unless a Superior Judge otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar ~~paper~~ document shall be served upon each of the parties. No service need be made on parties in default for failure to appear except as provided in Rule 62(b) and except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) **Same: How Made.** Whenever under Rule 5(a) or 77(d) service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. ~~Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney or party's last known address or, if no address is known, by leaving it with the clerk of the court.~~

(1) *Methods of Service of Documents Defined*. Within this rule, the following definitions apply.

(A) *Using the Electronic Filing System*. Using the electronic filing system means using the Judiciary's electronic filing system to transmit documents by choosing File and Serve or Serve and selecting the party's contact from the Public List to serve other registered users with public service contacts as required or permitted by the 2020 Vermont Rules for Electronic Filing. Service is complete upon transmission by the electronic filing system to the other party unless the sender learns that it did not reach the person to be served.

(~~1~~ B) *Delivery.* Delivery ~~of a copy within this rule~~ means: handing ~~it~~ to the attorney or to the party; or leaving ~~it~~ at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving ~~it~~ in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving ~~it~~ at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(~~2~~ C) *Mailing.* Mailing ~~of a copy within this rule~~ means: sending by ordinary first-class mail~~;~~ or ~~sending~~ by ~~third-party~~ commercial carrier~~; or, if required or permitted by paragraph 4, sending by electronic means~~. Service by mail or by commercial carrier is complete upon

mailing or delivery to the carrier.

~~(3) *Leaving with the Clerk.* Leaving a copy with the clerk of the court within this rule means delivering or mailing the copy to the clerk by any means permitted or required for the filing of papers with the clerk under subdivision (e) of this rule.~~

(~~4~~ D) *Email* ~~*Sending by Electronic Means.*~~ Email means sending an attachment to the email address or addresses of the person to be served with the case title and number in the subject line. Service is complete upon sending unless the sender learns that it did not reach the person to be served. ~~For units and divisions in which the Court Administrator has not directed that electronic filing be implemented under 2020 Vermont Rule for Electronic Filing 1(d), this paragraph applies.~~

~~(A) Documents must be sent by electronic means if required by the 2010 Vermont Rules for Electronic Filing.~~

~~(B) Documents may be sent by electronic means when not required by the 2010 Vermont Rules for Electronic Filing if the sending and receiving parties agree to electronic transmission in a writing filed with the court that specifies the type of electronic transmission to be used.~~

~~(C) The sender of any document by electronic means under this rule must follow any applicable standards regarding electronic transmission of confidential documents.~~

~~(D) Any e-mail address or addresses used under subparagraph (A) or (B) must match those that the attorney or party has registered under the judiciary's electronic filing system, and the registration information must be provided in all pleadings and other papers served or filed by the attorney or party.~~

~~(E) All attorneys and parties must immediately notify other attorneys and parties of any e-mail address change during the pendency of the action or proceeding.~~

~~(F) Service by electronic means is complete upon transmission, provided that such service is not effective if the party making service learns that the attempted service did not reach the party to be served.~~

~~(5) *Service by Electronic Means.* For units and divisions in which the Court Administrator has directed that electronic filing be implemented under 2020 Vermont Rule for Electronic Filing 1(d), if the 2020 Vermont Rules of Electronic Filing require a method of service for the document being filed, the filer must use that method of service and not the methods of service specified in paragraph (4).~~

(E) *Leaving with the Clerk.* Leaving with the clerk means filing the document with the clerk using a method allowed by subdivision (e) along with a statement that the filer is prevented by rule or court order from contacting the party or knowing the party's contact information.

(2) *Service Requirements*. The methods of service to be used are as follows:

(A) Electronic Filers. Service of electronic filings between electronic filers with service contacts must be made by using the electronic filing system in accordance with 2020 V.R.E.F. 11(d)(1), or by another method agreed on as provided in 2020 V.R.E.F. 11(d)(2).

(B) Non-electronic filers (Self-represented party or other participant who is not required and has not elected to electronically file in the case).

(i) Service by or on non-efilers may be made by delivery or mailing.

(ii) Service by or on non-efilers may be made by email if (a) a non-efiler has filed a notice of appearance that provides an email address and consent to receive service by email at that address, (b) the parties agreed to service by email in a signed writing filed with the court, or (c) no valid physical or postal address is known and there is no consent or

agreement to service by email, but the non-efiler has provided an email address on a court filing.

(iii) If the filer is prevented by rule or court order from contacting the other party or receiving the other party's contact information, the filer may serve by leaving with the clerk.

(C) Service of nonelectronic filings between efilers and service on efilers without service contacts may be made by delivery, by mailing, or by email or other method agreed to by the parties in a signed writing filed with the court.

(D) Service of Discovery Documents.

(i) An efiler must serve discovery requests or responses on an efiler using the service function of the electronic filing system unless the parties agree on an alternative method of service.

(ii) Service by or on non-efilers may be made by mailing, by delivery, or by email or other method if the parties agree.

(c) **Same: Numerous Defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) **Filing.** All ~~papers~~ documents after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, except that all requests for discovery under Rules 26-34 and 36 and answers and responses thereto shall not be filed unless on order of the court or for use in the proceeding. If a ~~paper~~ document is not to be filed, the party serving it shall file instead a certificate that each deposition has been completed and sealed pursuant to Rule 30(f) or that each request, interrogatory, answer or response has been served in accordance with this rule.

(e) **Filing With the Court Defined.**

(1) *In General.* The filing of documents with the court as required by these rules shall be made by filing them with the clerk of the court, except that a judge may agree to accept a document for filing and must then note the filing date on the document and promptly send it to the clerk ~~permit them to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk~~.

(2) ~~Filing may be accomplished by delivery; by sending the papers by ordinary first-class mail or by third-party commercial carrier addressed to the clerk; or by sending by electronic means, if required or permitted by the 2010 or 2020 Vermont Rules for Electronic Filing or, if not required or permitted by those rules, with the court's prior approval.~~ *Filing by Electronic Filers.* Any attorney, self-represented party, or other participant in the proceeding who is required or has elected to electronically file must use the court's electronic filing system to file documents pursuant to the 2020 Vermont Rules for Electronic Filing and subject to the exceptions set forth in those rules.

(3) *Filing by Non-Electronic Filers.* Self-represented parties and other participants in the proceeding, who are not required and have not elected to electronically file, and attorneys who are permitted to use a method other than electronic filing may file with the court by delivery, by mailing or commercial carrier addressed to the clerk, or by email.

(4) *Standards for Email Filing.* Any document filed by email must conform to the following:

(A) The filing must be sent to the email account for the court where the filing is made.

(B) The filing must be sent as an attachment in PDF format or other readily accessible document type.

(B) The subject line must identify the case number and the court where the filing is made.

(C) A signature block containing the filer's typed-in name preceded by "/s/," or an electronic facsimile of the filer's signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), will serve as a party's signature on pleadings, motions, and other documents that must be filed with a signature.

(~~3~~ 5) *Filing Date.*

(A) The date of filing by mailing, delivery, or commercial carrier is the date received at the clerk's office if received before the office is scheduled to close ~~or commercial carrier shall not be timely unless the material filed is received within the time fixed for filing~~.

(B) The date of email filing is the date submitted if submitted prior to midnight on that date, unless the party making the filing learns that the attempted filing did not reach the court. An email filing may be submitted on any day, including holidays and weekends, and at any time.

(C) The date of filing by delivery to a judge is the date received as noted by the judge ~~Filing with a judge may be accomplished by any method permitted by the judge~~.

(D) The date and time of electronic filing is the date and time of initial submission if the filing is accepted initially or after timely correction under V.R.E.F. 5(c) and (d). An electronic filing may be submitted on any day, including holidays and weekends, and at any time.

(~~4~~ 6) *Filing by Inmate.* A document filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement accompanying the document stating the date the document was deposited in the institution's internal mailing system. The notarized statement establishes a presumption that the document was deposited in the institution's internal mailing system on the date shown in the statement. The presumption may be rebutted by documentary or other evidence. Nothing in this rule precludes other evidence of timely filing such as a postmark or an official date stamp showing the filing date of the document. An inmate may file and serve documents by email, as set forth in subdivisions (b) and (e) of this rule.

(~~5~~ 7) *Denial for Lack of Form Prohibited.* Unless otherwise provided in the ~~2010 or~~ 2020 Vermont Rules for Electronic Filing, the clerk shall not refuse to accept for filing any document presented for that purpose solely because it is not presented in proper form as required by these rules.

(f) **Form of ~~Papers and~~ Documents.**

(1) Nonelectronically Filed Documents. All ~~original papers~~ paper documents ~~shall~~ must be eight and one-half by eleven inches in size, indorsed with the name and ~~docket~~ case number ~~of the case~~, the court and county where pending, the name of the paper document, and the name and address of the person or attorney filing it.

(2) Electronically Filed Documents. All electronically filed documents must ~~and shall~~ comply with applicable format provisions of the ~~2010 or~~ 2020 Vermont Rules for Electronic Filing.

(g) **Separation of Nonpublic Data.** The filer must separate nonpublic data as required by Vermont Rule for Public Access to Court Records 7.

(h) **Certificate of Service.** Except as provided in any applicable provision of the 2020 Vermont Rules for Electronic Filing, every document filed with the court after the complaint, and required

by this rule to be served upon a party, must be accompanied by a certificate of service. The certificate may be incorporated into the final page of the document being served, or may be on a separate form. It need not be in any special format so long as it contains all the required information. Multiple documents may be filed with one certificate of service. The certificate must meet the following requirements:

(1) *Signing.* The certificate must be signed by the party's lawyer or an authorized employee of the lawyer, or by a self-represented party, subject to the obligations of Rule 11.

(2) *Contents.* The certificate must:

(A) certify that the document has been served upon every other party to the case;

(B) state the manner of service (mail, personal delivery, or other service authorized by this rule);

(C) state the name and address of each person or entity served; and

(D) state the date of the mailing or other means of delivery.

(3) *Noncompliance.* If a document that requires a certificate of service is filed without one, the judge may issue an order:

(A) suspending the running of the time for response by the other party or parties until the filing of a proper certificate of service,

(B) declining to act on the filing until a proper certificate is filed; or

(C) ordering that the filing will be deemed withdrawn if no certificate is filed by a date certain. The lack of a certificate of service shall not be a basis for the clerk or the judge to refuse to accept the filing, or to return the document to the filer.

(i) **Definitions**. For purposes of filing and service, the following terms have the same meaning as provided in Rule 2 of the 2020 Vermont Rules for Electronic Filing:

(1) Document means a related and paginated grouping of information items that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(2) Electronic Filer or "efiler" means an attorney, who is required to electronically file, and any other person who is permitted or required to file electronically in a case.

(3) Electronic Filing or "efiling" means the process of transmitting a document from an electronic filer, using the Judiciary's electronic filing system, to the Judiciary's electronic case file.

(4) Electronic Filing System or "efiling system" means the Judiciary's Internet-accessible efiling and service system.

(5) Nonelectronic Filing means any method of filing a paper document with the court.

(6) Service Contact means a person for whom an email address and other identifying information has been entered into the efiling system as a designated recipient of service on case filings from other parties through the efiling system.

(7) Public Contact. A Public Contact is a Service Contact listed on the Public List for purposes of electronic service that other electronic filers must use for service.

Reporter's Notes—2022 Amendment

Rule 5 is amended at the request of the Supreme Court to make permanent certain provisions of Administrative Order 49 that permit filing and serving documents by email in certain circumstances. See A.O. 49, ¶ 6.

Rule 5(a) is carried forward. It 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.

The amendments to Rule 5(a) are part of a comprehensive change to replace "paper" with "document" throughout the rule. This change is made in the title and in Rule 5(a), (d), and (f). Under Rule 5(i), the broad definition of document is incorporated from the 2020 Vermont Rules for Electronic Filing. Note that Rule (f)(1), which relates to documents filed not using Odyssey File and Serve, refers to "paper documents," which is also defined in Rule 5(i).

The initial sentence of Rule 5(b), requiring service on the attorney of a represented party unless otherwise ordered, remains in effect. However, the list in the second sentence of the traditional service methods of delivery, mailing, or leaving with the clerk, together with the detailed provisions of former Rule 5(b)(1)-(3) defining those methods, are now found in amended Rules 5(b)(1) and (2).

New Rule 5(b)(1) defines the five methods of service. Subparagraph (b)(1)(A) defines service using the electronic filing system by reference to applicable provisions of the 2020 Vermont Rules for Electronic Filing and adds that such service is complete upon transmission unless the sender learns that it was not received. Subparagraphs (1)(B), (C), and (E), as noted above, carry forward with minor alterations the language of former Rule 5(b)(1)-(3). Subparagraph (1)(D) defines service by email. Former Rule 5(b)(4), providing for email service in units and divisions in which electronic filing under the 2020 Vermont Rules for Electronic Filing had not yet been implemented, has been deleted as obsolete. Former Rule 5(b)(5), regarding service by electronic means, is superseded by new Rule 5(b)(1)(A).

New Rule 5(b)(2) states when the five methods of service are required or permitted. 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 filed. 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, even if consent was not provided in the notice of appearance, a non-efiler can be served at an email address provided on a pleading if a non-efiler does not have a valid physical or postal address. The rule formerly allowed for service by leaving with the clerk where no mailing address was known. Leaving with the clerk is now authorized by Rule 5(b)(2)(B)(iii) only where a party is prevented from knowing the other party's address by law or court order. This occurs most frequently when there is an abuse-protection order in place or requested.

New Rule 5(b)(2)(C) addressed efilers who have not properly created a service contact on the public list as required by Rule 4(b) of the 2020 Vermont Rules for Electronic Filing. In that instance, other efilers cannot serve by using the electronic filing system. The rule allows service by delivery or mailing, or by email if agreed by the parties in a writing filed with the court.

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. Service by or on non-efilers may be made by mailing or delivery. In either case, the parties can agree on a different method of service. Because service of discovery documents is less formalized, the agreement is not required to be signed or filed with the court, in contrast to agreements for alternate service of documents filed with the court.

Rules 5(c) (Numerous Defendants) is carried forward without change. Rule 5(d) is amended to replace "paper" with "document."

In Rule 5(e), subtitles have been added to the numbered paragraphs for clarity. Rule5 (e)(1) (filing with clerk or judge) is carried forward with minor wording change. Rule 5(e)(2) is amended to make clear that all attorneys and all self-represented parties or other participants in the proceeding registered as efilers must use the court's electronic filing system. Under new Rule 5(e)(3), unregistered self-represented parties, other participants, and attorneys who are permitted to do so by the 2020 Vermont Rules for Electronic Filing may file by delivery, ordinary mail, commercial carrier, or email. The standards for email filing are in new Rule 5(e)(4). The filing must be sent to the email address for the court where the filing is made, which can be found on the Judiciary website at https://www.vermontjudiciary.org/court-divisions/court-email-addresses. The filing must be sent as an attachment, preferably in PDF format. The rule allows the

attachment to be in another "readily accessible document type" to provide self-represented parties with some flexibility in submitting documents by email. Documents sent in a proprietary file type or not easily opened by court staff may need to be filed by another means. The email subject line must identify the case number and the court where the filing is made. When an email is sent to multiple courts, it is important for the filer to identify which court the document is meant to be filed in. The rule provides the different methods for signing a document sent by email.

Rule 5(e)(5) specifies the filing date for documents depending on who they are filed. New Rule 5(e)(5)(A) caries forward the provision of former 5(e)(3) that when documents are filed by mailing, delivery, or commercial carrier, the date of filing is the date the filing is received by the clerk's office if received before the office is scheduled to close. Under subparagraphs (e)(5)(B) and (D), filings made by email and using the electronic filing system are filed on a date if submitted before midnight. A simultaneous amendment to Rule 6(a)4) specifies that the last day for filing by email ends at midnight in the court's time zone. Subparagraph (3)(5)(C) carries forward former 5(e)(3), that filings to a judge are dated when the judge receives it.

Rule 5(e)(6) carries forward former Rule 5(e)(4), with a sentence making clear that, if it is available, an inmate may file and serve by email as provided for other litigants.

Rule 5(e)(7) carries forward former Rule 5(e)(5) with the elimination of a reference to the 2010 Vermont Rules for Electronic Filing, which are obsolete.

Rule 5(f) (renamed Form of Documents) is carried forward with minor amendments and broken into two paragraphs to address nonelectronically and electronically filed documents separately.

Rules 5 (g) (Separation of Nonpublic Data), and (h) (Certificate of Service) are carried forward without change.

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

2. That Rule 6(a)(4) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

RULE 6. TIME

(a) **Computing Time.** The following rules apply in computing any time period specified in these rules, in any court order, or in any applicable statute that does not specify a method of computing time.

(4) *"Last Day" Defined.* Unless a different time is set by a statute or court order, the last day ends:

(A) for email and electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

Reporter's Notes—2022 Amendment

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.

3. That Rule 29 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined):

RULE 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE

(a) **General Procedure**. Unless a Superior Judge orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

(b) **Service of Discovery Materials**. All discovery materials must be served on the other parties as provided in Rule 5(b)(2)(D).

Reporter's Notes—2022 Amendment

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.

4. That Rule 79.1 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 79.1 APPEARANCE AND WITHDRAWAL OF ATTORNEYS AND SELF-REPRESENTED PARTIES

(a) **Appearance: In General.** Upon the filing of an action or appeal the name of the attorney of the plaintiff or appellant shall be entered on the docket. If any party changes an attorney pending the suit, the name of the new attorney shall be substituted on the docket for that of the former attorney. Until notice of the change of an attorney, all notice given to or by the attorney first appointed shall be considered in all respects as notice to or from the client, except in cases in which by law the notice is required to be given to the party personally. Nothing in these rules shall be construed to prevent any party in a suit from appearing for himself or herself, in which case the party so appearing shall be subject to the same rules that are or may be provided for attorneys in like cases, so far as the same are applicable.

(b) **Appearance of an Attorney** ~~**Same: Form; Service.**~~ An attorney's signature to a pleading shall constitute an appearance. Otherwise, an attorney who wishes to participate in any action must appear in open court, or file notice in writing with the clerk, which shall be served pursuant to Rule 5. Appearances entered in open court shall be confirmed in writing and served within 7 days. An appearance, whether by pleading or formal written appearance, shall be signed by an attorney in the attorney's individual name and shall state the attorney's ~~office~~ postal address and email address.

(c) ~~**Same:**~~ **Multiple Parties.** In entering appearance for defendants, attorneys shall specify, and the clerk shall enter upon the docket, for whom they appear, if there is more than one defendant. An appearance for the plaintiffs or the defendants, as the case may be, where there are several, shall be deemed to be an appearance for all, unless stated to be for one or more only, and so entered upon the docket by the clerk.

(d) **Appearance by Self-Represented Parties** ~~**Appearing Pro Se.**~~ When a party who is not an attorney is self-represented ~~of the court prosecutes or defends in the party's own proper person~~, the party must complete and sign a notice of appearance form for self-represented parties, providing a telephone number, street address, and mailing address if different ~~shall comply with subdivision (b) of this rule~~. The party must provide an email address if the party has one and indicate if the party consents to receive service by email at that address. Even if a self-represented party has not consented or agreed to service by email, if the self-represented party has no valid physical or postal address, the self-represented party may be served by email at any email address that the party has provided in a court filing.

(e) **Attorneys Not Admitted to Practice in Vermont.** Any member in good standing of the bar of any other state or of the District of Columbia who has filed a pro hac vice licensing statement form with the Court Administrator and who has paid the required fee, in accordance with Administrative Order No. 41, § 16, may, in the discretion of the court on motion by a member of the bar of this state who is actively associated with that attorney in a particular action, be admitted to practice in that action. The motion shall designate which attorney will serve as lead counsel. The court may at any time for good cause revoke such admission. An attorney so admitted to practice in a particular action shall at all times be associated in such action with a member of the bar of this state, upon whom all process, notices and other ~~papers~~ documents shall be served and who shall sign all ~~papers~~ documents filed with the court and whose attendance may be required by the court.

(f) **Withdrawal: In General.** When an attorney has entered an appearance, the attorney shall remain as counsel until the attorney has been granted leave to withdraw by the court. Such leave shall be granted as a matter of course after a judgment becomes final. Leave to withdraw after a case has been set for trial will be granted only for good cause shown and on such terms as the court may order. No motion to withdraw shall be considered by the court until the party has been given notice of the motion and the date and time of hearing thereon by the clerk. The only exceptions to this shall be (1) when the attorney includes in the motion an affidavit that after diligent search the attorney cannot determine the present address of the party, and (2) when other counsel has entered an appearance for the party.

(g) **Same: Notification of Party.** When an attorney has been granted leave to withdraw the attorney's appearance, the clerk shall notify the party forthwith~~, electronically if the party is a registered filer under the 2010 Vermont Rules for Electronic Filing, otherwise~~ by mail, of such withdrawal, and inform said party that unless the party enters a notice of appearance to be self-represented or appears ~~pro se or~~ by attorney within thirty days after receipt of such notification, the action will be dismissed or defaulted, as the case may be.

(h) **Limited Appearance.**

(1) An attorney acting pursuant to an agreement with a client for limited representation that complies with the Vermont Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes on behalf of a client who is ~~pro se~~ self-represented and who has entered, or will enter, a general appearance:

(A) Filing a complaint or other pleading.

(B) Filing or arguing a specific motion or motions.

(C) Conducting one or more specific discovery procedures.

(D) Participating in a pretrial conference or an alternative dispute resolution proceeding.

(E) Acting as counsel for a particular hearing or trial.

(F) Taking and perfecting an appeal.

(G) With leave of court, for a specific issue or a specific portion of a trial or hearing.

(2) An attorney who wishes to enter a limited appearance shall do so by filing with the clerk and serving pursuant to Rule 5 a written notice of limited appearance as soon as practicable prior to commencement of the appearance. The purpose and scope of the appearance shall be specifically described in the notice, which shall represent that the client is ~~pro se~~ self-represented and has entered, or will forthwith enter, a general appearance. The attorney's name and a brief statement of the purpose of the limited appearance shall be entered upon the docket. The notice and all actions taken pursuant to it shall be subject to the obligations of Rule 11.

(3) An attorney who has entered a limited appearance shall be granted leave to withdraw as a matter of course when the purpose for which the appearance was entered has been accomplished. An attorney who seeks to withdraw before that purpose has been accomplished may do so only on motion and notice, for good cause and on terms, as provided in Rule 79.1(f).

(4) Every ~~paper~~ document required by Rule 5 to be served upon a party's attorney that is to be served after entry of a limited appearance shall be served upon the party and upon the attorney entering that appearance unless the attorney has been granted leave to withdraw pursuant to paragraph (3) of this subdivision.

~~(i) **Attorney License Number; eCabinet Registration Number.** Any document that constitutes a first appearance of an attorney shall contain, in addition to the name of the appearing attorney, the eCabinet registration number assigned to that attorney on registering an e-mail address pursuant to Rule 3 of the 2010 Vermont Rules for Electronic Filing.~~

Reporter's Notes—2022 Amendment

Rule 79.1 is amended to clarify what is required from a self-represented party. The title of the rule is amended to indicate that it contains provisions related to self-represented parties. The headings of subdivisions (b), (c), and (d) are amended for clarity. Subdivision (b) is amended to make the contact information on a notice of appearance the same as for Rule 11(a).

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.

5. That these amendments be prescribed and promulgated, effective on September 6, 2022. The Reporter's Notes are advisory.

6. 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 9th day of May, 2022.

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

Signed by the Vermont Supreme Court

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William D. Cohen, Associate Justice

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Nancy J. Waples, Associate Justice