**STATE OF VERMONT**
**VERMONT SUPREME COURT**
**JULY TERM, 2020**

**Emergency Order Amending Rules 3(b) and 4 of the 2020 Vermont Rules for Electronic Filing**

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

1. That the Rule 3(b) of the 2020 Vermont Rules for Electronic Filing be amended to read as follows (new matter underlined; deleted matter struck through):

## RULE 3. REQUIRED ELECTRONIC FILINGS; EXCEPTIONS

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

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

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

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

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

(~~4~~ 5) a filer in a particular case is excused from electronic filing in that case by the court when exceptional circumstances make electronic filing not feasible;

(~~5~~ 6) nonelectronic filing is expressly permitted by these rules or an applicable rule of procedure;

(~~6~~ 7) an item cannot reasonably be scanned and filed electronically because of its size, shape, or condition; or

(~~7~~ 8) the electronic filing system is unavailable when the filer seeks to make an electronic filing, despite reasonable efforts to make a filing or in the case of a preannounced system outage.

### Reporter's Notes—2020 Amendments

Rule 3(b)(1) is amended to clarify that government agencies, which are required to submit reports and other case documents such as Department of Corrections (presentence investigation reports) and Department for Children and Families (disposition reports) and law enforcement entities must efile and are not excepted from efiling as self-represented litigants. The concluding phrase of paragraph 3(b)(1) is modified slightly to clarify that the provisions of subdivision 3(d) are applicable to responsibilities and rights of self-represented litigants who elect to efile in a specific case.

New paragraph 3(b)(4) is added to clarify that nonelectronic filing may be permitted by the court for documents such as a handwritten or edited stipulations, agreements, or other case documents that are created or finalized by parties and/or counsel who are present at court premises for related proceedings, including proceedings such as scheduled case-manager conferences. Such nonelectronic filings (which are then scanned into the electronic case record per V.R.E.F. 12) often provide the basis for court orders in final resolution of a case, or a significant issue therein, and immediate filing of the "paper" document is highly advisable to render the case outcome operative without delay. This amendment specifically authorizes such filings, subject to court approval, as in effect a variant of the "good cause" exception of the existing paragraph (b)(4). Existing paragraphs (4)-(7) are renumbered as (5)-(8).

2. That Rule 4 of the 2020 Vermont Rules for Electronic Filing be amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 4. REGISTERING PROCESS; RESPONSIBILITIES**

(a) **Registration Process.** A person must register to electronically file and serve documents through the electronic filing system, and choose the appropriate type of registration—independent user, or user with an existing firm.

(b) **Obligations and Responsibilities.**

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(4) An attorney may permit an associated attorney or other person authorized by the attorney to file and view documents ~~under the attorney's efiling account~~ on the attorney's behalf. The attorney is responsible for all such filings and for any misuse of documents that are viewed or downloaded.

(c) **Registration To View Documents That Are Not Publicly Accessible.** To view nonpublicly accessible portions of the electronic case file or documents not accessible over the internet, persons—including those with specific rights of access pursuant to Rule 5 of the Rules for Public Access to Court Records—must separately register with the public-access portal, providing verification of their specific right of access.

**Reporter's Notes—2020 Amendments**

Subdivision (a) is amended to conform the text of the rule to actual practice in the Odyssey efiling system. In Odyssey, in contrast to an Independent (self-represented) User, a "Firm" registers, which includes solo practitioners, as well as government agencies. The Firm Administrator authorizes access for all user

accounts in that firm. More information on how to register is provided in judiciary and vendor manuals.

The amended language in paragraph (b)(4) addresses how others inside a firm may be authorized to file and view on an attorney's behalf.

Subdivision (c) is amended to further clarify the process to secure elevated access to case documents not publicly accessible via the internet. Registration in the efiling system provides access to documents filed by the efiler. To view other documents in the case, including those filed by another party, the filer must register with the public access portal, and receive authorization. This is a one-time process for each portal user, which provides ongoing access for all subsequent cases in which the user is involved. See also V.R.P.A.C.R. 5 (governing specific rights of access by attorneys, parties, and others, to case records that are not otherwise publicly accessible).

3. That these rules as amended are prescribed and promulgated effective immediately. The Reporter's Notes are advisory.

4. That the Court finds that this emergency amendment must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11 because the amendment seeks to provide necessary clarifications as to procedures for electronic filing and electronic access to case records in the judiciary's electronic filing and case-management systems which are being implemented in the Windham, Orange, and Windsor Units and the Judicial Bureau, and are scheduled to be phased into all other units.

5. That the Court Administrator is directed to send these rules as amended out for comment pursuant to Administrative Order 11, with comments to be made to the Special Advisory Committee on the Rules for Electronic Filing. The Advisory Committee is directed to review any comments received and advise the Court whether the amendments should be revised or made permanent.

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 15th day of July, 2020.

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Signed by the Vermont Supreme Court

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice