STATE OF VERMONT
SUPREME COURT
MARCH TERM, 2021

Emergency Order Abrogating 2010 Vermont Rules for Electronic Filing and Amending Administrative Orders 44 and 45

Pursuant to the Vermont Constitution, Chapter II, §§ 30, 31, and 37, it is hereby ordered:

1. That the 2010 Vermont Rules for Electronic Filing be abrogated.

Reporter's Notes—2021 Abrogation

The 2010 Vermont Rules for Electronic Filing were enacted to coincide with the implementation of eCabinet in Vermont in 2010. That electronic filing system is now replaced by Odyssey file and serve, which is implemented throughout the state and uses the updated 2020 Vermont Rules for Electronic Filing.

2. That Administrative Order No. 44, be amended to read as follows (deleted matter struck through; new matter underlined):

REGISTRATION FOR RECEIPT OF COURT NOTICES, ORDERS, CALENDARS, AND OTHER DOCUMENTS BY ELECTRONIC MAIL

§ 1. **Registration Requirement for Attorneys.**
(a) Registration Requirement. All attorneys licensed to practice law under Administrative Order No. 41 on active status or pro bono emeritus status under §§ 8 and 11, or~~, including attorneys~~ admitted pro hac vice under § 16, must ~~shall~~ register one or more e-mail addresses in the eCabinet system. ~~pursuant to Rule 3 of the Vermont Rules for Electronic Filing on or before the effective date of this order~~.
(b) Exceptions. Attorneys ~~This order does not apply to attorneys~~ who are in inactive or judicial status under §§ 9 and 10 of Administrative Order No. 41 are not required to register.
(c) New Attorneys or Change in Licensing Status. Any attorney who~~, after the effective date of this order,~~ becomes licensed under Administrative Order No. 41 on active status, pro bono emeritus status, or pro hac vice ~~shall~~ must register one or more e-mail addresses pursuant to this order within 24 hours of the receipt of an attorney license number, including the receipt of a reinstated license number held in the past, or before appearance as an attorney in any court proceeding, whichever is earlier.
(d) Affirmation. Registration under this order is a condition of attorney licensing and affirmation of registration ~~shall~~ must be made on each licensing statement pursuant to § ~~2~~ 4 of Administrative Order No. 41.

§ 2. **Reporting Obligation and Sufficiency of Notice**. Attorneys are responsible for updating their email addresses in the eCabinet registration system. Notice sent to a registered address is sufficient even if not received by the attorney due to a failure to update an email address.

~~The Court Administrator shall notify each licensed attorney of the effective date of this order by e-mail at the address specified in compliance with § 4 of Administrative Order No. 41. The Court Administrator shall also use other available methods, including the Judiciary website, for publicizing this date.~~

Reporter's Notes—2021 Amendment

Administrative Order No. 44 is amended to clarify and update its registration requirement consistent with the implementation of an electronic case management system and electronic filing throughout Vermont. The original Administrative Order was enacted to conform to the 2010 Vermont Rules for Electronic Filing. Simultaneously with these amendments to A.O. 44, the 2010 Vermont Rules for Electronic Filing are abrogated. Amended § 1 requires all attorneys on active and pro bono emeritus status and those admitted pro hac vice to register and maintain up to three email addresses in the eCabinet system. Newly admitted attorneys and attorneys who change to active or pro bono emeritus status must also register. As detailed in A.O. 45, the superior courts, the Supreme Court, the Judicial Bureau, and the judicial boards are authorized to use these email addresses to send notices, orders, and other documents to attorneys. Under § 2, attorneys are obligated to keep this information updated and notice provided using these addresses is deemed sufficient.

3. That Administrative Order No. 45, be amended to read as follows (deleted matter struck through; new matter underlined):

DELIVERY OF NOTICES OF HEARING AND OTHER COURT DOCUMENTS BY E-MAIL

§ 1. Authorization for Delivery to Attorneys by Superior Courts.
Pursuant to V.R.C.P. 77(d), V.R.Cr.P. 56(d), ~~and~~ V.R.P.P. 77(d), and other rules incorporating those requirements, all units and divisions of the superior courts are authorized to send hearing notices, orders, and other documents to attorneys using the email addresses registered under Administrative Order 44. ~~the Court Administrator is authorized to allow the superior court to send designated types of documents to lawyers who are appearing for a client in specified units and divisions of the court, and to persons specified in §§ 5 and 6 of this order, by electronic mail (e-mail). The order applies to the Family and Environmental Divisions by virtue of the incorporation of V.R.Cr.P. 56(d) in V.R.F.P. 1(a) and the incorporation of V.R.C.P. 77(d) in V.R.F.P. 2(a), 4(a), and V.R.E.C.P. 4(a), 5(a). The expectation is that all units in all divisions will send specified documents to lawyers by e-mail where technologically possible by January 1, 2013. E-mail delivery of documents will occur under §§ 2, 5, and 6 of this administrative order.~~

§ 2. Authorization for Delivery to Attorneys by Judicial Bureau and Supreme Court.

The Supreme Court and the Judicial Bureau are authorized to send hearing notices, orders, and other documents to attorneys using the email addresses registered under Administrative Order 44.

~~To authorize a unit and division of the superior court to use e-mail delivery of one or more types of documents to lawyers, the Court Administrator shall issue a directive that specifies the court, unit and division of the superior court, the types of documents that will be delivered by e-mail, and the date range within which e-mail delivery will start. Thereafter, the Court Administrator will give a week's notice by e-mail to all lawyers appearing in open cases within the specified court of the effective date for the start of e-mail delivery within that unit and division.~~

~~A. Notice of the directive shall be given in the following manner and to the following effect:~~

~~(1) Prior to the first date in the date range specified in the directive, it will be placed on the website of the Vermont Judiciary and a copy of it will be sent to each lawyer who is then appearing in an open case in the unit and division designated.~~

~~(2) The notice will be sent to a lawyer registered under V.R.E.F. 3 at the e-mail address or addresses provided under V.R.E.F. 3(b) or (c). The notice will be sent to a Vermont-admitted lawyer not registered under V.R.E.F. 3(b) at the e-mail address of the lawyer as specified in the licensing statement filed pursuant to § 7 of Administrative Order No. 41. The notice will be sent to a lawyer from another jurisdiction appearing pro hac vice and not registered under V.R.E.F. 3(c) at any e-mail or postal address provided in the case by that lawyer.~~

~~(3) The notice to any unregistered lawyer then appearing in an open case in the unit and division will include a statement that the lawyer must register under V.R.E.F. 3(b) or (c) as appropriate if he or she wishes to receive further notices from the court in the case. All other lawyers must register under V.R.E.F. 3(b) or (c) before their appearance in a case will be accepted under the applicable procedural rule in the unit and division covered by a directive pursuant to this administrative order.~~

~~(4) As of the effective date of the directive, V.R.E.F. 11(b) or any other contrary rule notwithstanding, all documents covered by the directive will be delivered to lawyers solely by e-mail to the address or addresses provided pursuant to V.R.E.F. 3(b) or (c). In the event of failure or unavailability of the electronic filing system or any of its subsystems, documents covered by the directive may be delivered by electronic means other than e-mail or by the most expeditious nonelectronic means permitted under § 3 of this order.~~

~~(5) Lawyers are responsible for maintaining one or more registered, effective e-mail addresses at all times to obtain court documents specified in the directive. Failure of the lawyer to receive a document delivered by e-mail shall not render the delivery ineffective unless so ordered by the court based on a showing of good cause. However, if the court or the Court Administrator receives notice by electronic means that a delivery was entirely ineffective, the Court Administrator will so notify the court, and the court or the Court Administrator will attempt to deliver the content of the document by another means.~~

~~B. The Court Administrator will include with the copy of the directive sent to each lawyer pursuant to § 2.A(1) and (2) contact information for the judiciary help desk from which lawyers may receive training to assist them in registering and using the electronic filing system.~~

~~C. A document delivered in the body of an e-mail, or as an attachment to an e-mail, pursuant to this administrative order shall be presumed to be delivered when the e-mail is sent from the~~

~~court. The judiciary shall maintain an electronic record showing the content of any e-mail or attachment delivered pursuant to this administrative order, the time it was sent, and the recipients to whom it was sent.~~

§ 3. Authorization for Delivery to Attorneys by Judicial Boards.
The judicial boards, including the Professional Responsibility Board, the Board of Bar Examiners, and the Judicial Conduct Board, and panels of those boards, are authorized to send hearing notices, orders, and other documents to attorneys using the email addresses registered under Administrative Order 44.

~~In any unit or division for which a directive has not been issued pursuant to § 2 of this order, notice required under V.R.C.P. 77(d), V.R.Cr.P. 56(d), V.R.P.P. 77(d), or rules incorporating those rules shall be given by the appropriate method provided under V.R.C.P. 5(b)-(c) as incorporated in V.R.Cr.P. 49(b), V.R.F.P. 2(a), 4(a), and V.R.E.C.P. 4(a), 5(a), or under V.R.P.P. 5(b)-(c).~~

§ 4. Other Individuals and Self-Represented Litigants.
The Superior Court, the Supreme Court, the Judicial Bureau, and the judicial boards may send notice by electronic mail to self-represented litigants and other individuals, such as interpreters, guardians ad litem, masters, receivers, neutrals, and governmental units, if the self-represented litigant or other individual registers with eCabinet and provides written notice to the court in a particular case. Attorneys, who are required to register under Administrative Order 44, may be sent notice by electronic mail under §§ 1-3 even if the attorney is proceeding as a self-represented litigant in a particular case.

~~The Court Administrator is authorized to issue a directive allowing the Supreme Court and the Judicial Bureau to send designated types of documents to lawyers, and persons specified in §§ 5 and 6 of this order, by electronic mail (e-mail). E-mail delivery of documents will occur under §§ 2, 5, and 6 of this administrative order. In the Supreme Court or the Judicial Bureau, in the absence of a directive, notice shall be given as if this administrative order had not been issued.~~

§ 5. Presumption of Delivery.
A document delivered in the body of an email, or as an attachment to an email, pursuant to this administrative order is presumed delivered when the e-mail is sent from the court.
~~The Court Administrator may provide in a directive issued under this administrative order that the designated types of documents will be sent by e-mail to specified persons in addition to lawyers appearing for parties. These persons may be interpreters, guardians ad litem, masters, receivers, neutrals, governmental units and/or their employees and others providing a service with respect to a case. Except as inconsistent with this section, § 2 shall apply to these persons as if they are lawyers appearing for a client. Any such persons who are involved with an open case in a court designated in a directive shall register one or more e-mail addresses pursuant to Rule 3 of the Vermont Rules for Electronic Filing within 30 days of the date of the directive and notify the court of the number assigned on registration. Any such persons who are involved with a case that is opened after the date of the directive in a court designated in a directive shall register and provide notice to the court of the registration number before receiving the designated types of documents. Notification is specific to the court, unit or division involved; if the person is involved in a different court, unit or division, the person shall give notice of the registration~~

~~number to that court, unit or division. The notices specified in § 2 and 2.A.(1) shall be provided by first class mail to such persons and shall explain the requirements of this section. Unless the court orders otherwise based on a determination of good cause, all documents covered by the directive will be delivered to such persons solely by e-mail at the address or addresses provided pursuant to V.R.E.F. 3(b) or (c) for cases opened after the date of the directive, or for preexisting cases, after 30 days after the date of the applicable directive.~~

~~§ 6. The Court Administrator may provide in a directive issued under this administrative order that the designated types of documents will be sent by e-mail to self-represented litigants in one or both of the following circumstances: (a) the litigant has agreed to receive the designated documents by e-mail or (b) the case in which the litigant is involved was filed after the date of the directive. In either circumstance, the self-represented litigant shall register one or more e-mail addresses pursuant to Rule 3 of the Vermont Rules for Electronic Filing and notify the court of the number assigned on registration. Notification is case-specific; the self-represented litigant who is involved in one or more additional cases shall notify the applicable court, unit or division of the number assigned at registration for each case. Delivery of designated documents by e-mail may commence as of the date of notification. Except where inconsistent with this section, § 2 shall apply to self-represented litigants as if they are lawyers appearing for a client. For good cause, the clerk of a court subject to a directive that requires self-represented litigants to receive designated documents by e-mail may exempt a self-represented litigant from this requirement. After the exemption, the litigant shall receive the designated documents as if the directive was not in effect. A litigant who has agreed to receive designated documents by e-mail may revoke the agreement at any time.~~

Reporter's Notes—2021 Amendment

Administrative Order No. 45 is amended to update its provisions consistent with the implementation of the Odyssey electronic case management and electronic filing system throughout Vermont. Section 1 authorizes the superior courts to deliver all notices, orders, and other documents by email to attorneys using the email address(es) registered under Administrative Order 44. The order applies to all divisions and units of the superior court. The order applies to the Family and Environmental Divisions by virtue of the incorporation of V.R.Cr.P. 56(d) in V.R.F.P. 1(a) and the incorporation of V.R.C.P. 77(d) in V.R.F.P. 2(a), 4(a), and V.R.E.C.P. 4(a), 5(a). The amended order also allows email delivery of court documents by the Supreme Court, the Judicial Bureau, and the judicial boards. Under § 4, the courts may send notices and orders by email to other entities and self-represented litigants if those entities or litigants elect for electronic notice in a particular proceeding. Section 4 clarifies that attorneys, who represent themselves in a particular proceeding, are subject to §§1-3 and not to § 4. Section 5 provides that documents are presumed delivered when sent.

4. That this order becomes effective on March 15, 2021. The Reporter's Notes are advisory.

5. That the Court finds that this emergency amendment must be promulgated without resort to the notice and comment procedures set forth in Administrative Order 11 to continue to require attorneys to register in eCabinet after the 2010 Efiling Rules become obsolete on March 15, 2021 with the final roll out of Odyssey File and Serve.

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 8th day of March, 2021.

Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice