STATE OF VERMONT
SUPREME COURT
APRIL TERM, 2020

Order Promulgating Amendments to Administrative Order No. 49

Pursuant to the Vermont Constitution, Chapter II, § 30 and Administrative Order No. 48, it is hereby ordered:

1. That ¶ 6 of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

6. Email filings and service:

a. In Superior Court divisions and units where either the 2010 Vermont Rules for Electronic Filing or the 2020 Vermont Rules for Electronic Filing apply and require electronic filing through another mechanism (eCabinet or Odyssey File and Serve), or electronic service through a specified means, those rules must be followed.

b. In Superior Court divisions and units where there is no electronic filing or for litigants that are not required to electronically file, notwithstanding the provisions of V.R.C.P. 5(e) (incorporated by reference in V.R.Cr.P. 49, V.R.F.P. 4.0(a)(2)(A), V.R.E.C.P. 3, 4(a), 5(a)(2)) and V.R.P.P. 5(f), or any other rule, parties may file documents with the court using email, subject to the following requirements if a party opts to file by email.

i. Filings must be sent as an attachment to the email account for the unit where the filing will be made. The subject line must indicate the division where it is being filed and the case docket number.

ii. Further details concerning the method of filing by email will be posted on the vermontjudiciary.org website, and may change from time to time. Parties and lawyers should check the guidance on the website before filing by email.

iii. 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. This exception does not apply to affidavits, verified pleadings, or other signatures that must be notarized by statute.

c. In Superior Court divisions and units where there is no electronic filing rule that requires a specified means of service, notwithstanding the requirements of

V.R.P.P. 5(b) and V.R.C.P. 5(b) (incorporated into other divisions by V.R.A.P. 25, V.R.Cr.P. 49, V.R.F.P. 4.0(a)(2)(A), and V.R.E.C.P. 3, 4(a), 5(a)(2)), until the conclusion of this judicial emergency or further amendment to this Administrative Order, service of pleadings and other papers (other than process) must be made by the following means:

i. Where service is made by an attorney on an attorney, service must be made by email unless the attorneys mutually agree otherwise.
    1. In all pleadings or other papers served or filed, attorneys must provide up to three email addresses at which they agree to accept service. Any email addresses provided must match those that the attorney has registered pursuant to the requirements of Administrative Order 44, § 1. The sending attorney should make service on the receiving attorney by email to each of the listed addresses, attaching the document or documents to be served. (Attorneys who have not yet provided an email address or email addresses on any pleadings or filings should promptly notify one another of the email addresses to which service should be directed.)
    2. Attorneys may agree to make service by other means, such as paper or alternate electronic means. Any such agreement must be reduced to writing.

ii. Where service is made by or to a self-represented party, service may be made by electronic means by mutual agreement between the sending and receiving parties. The parties are not required to enter into such an agreement. If the parties agree to service by electronic means, they must document their agreement to electronic transmission in a writing filed with the court. The written agreement must describe with specificity any email addresses, digital storage systems, or other means the parties agree to use.

iii. Where service is made by electronic means pursuant to this emergency order, the following applies:
    1. The sender of any document by electronic means must follow any applicable standards regarding electronic transmission of confidential documents.
    2. The parties must mutually agree in writing to any changes in the method of service, and parties must immediately notify one another of any changes that affect the method of service, including changes in email addresses.
    3. Service by email to an email address provided pursuant to this emergency order is complete upon transmission, provided that

such service is not effective if the sending party learns that the attempted service did not reach the receiving party.

4. Any certificate of service filed with the court must indicate the method by which the document was served. If the document was served by email, the certificate of service should specify the email address or addresses to which it was sent.

d. In the Supreme Court, notwithstanding the provisions of V.R.A.P. 25, V.R.C.P. 5, and any other rules relating to the filing of motions, documents, and briefs with the Supreme Court:

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~~d.~~ e. ~~The rules regarding service of filed documents in the Superior Court and the Supreme Court remain in effect and are unaffected by this order.~~ In the Supreme Court, parties must serve motions and filings other than briefs and printed cases pursuant to the requirements of 6(c) above. Briefs or printed cases must be served on the other parties to the appeal as required by the appellate rules. In particular, pursuant to V.R.A.P. 31(b), an electronic version of the brief must be served on each party to the appeal, except that a paper copy must be served on any self-represented party unless the parties agree otherwise.

~~e.~~ f. Filings sent by email will be considered filed on that date if the email is received before 4:30 p.m.

2. That the following Explanatory Note be added:

Explanatory Note—April 13, 2020 Amendment

By amendment to ¶ 6 dated April 13, the Court has suspended some court rules regarding service of pleadings and other documents in Superior Court proceedings to require that lawyers serve documents on one another by email, and to allow by voluntary agreement service on or by self-represented parties by electronic means. This amendment follows from the Governor's March 24 Addendum 6 to Executive Order No. 01-20, which called for Vermonters to stay at home or in their place of residence, leaving only for essential reasons. Because many lawyers and parties are properly remaining in their homes during this time, many do not have regular access to their incoming paper mail and thus may fail to satisfy deadlines for responding to documents served by mail. Many also lack access to copiers, postal meters, and administrative support necessary

for sending pleadings and other papers by mail. The rule does not mandate service by email by or to self-represented parties, who may not have email addresses or ready access to one another's email addresses, but does allow service by email or other electronic means by mutual agreement. The amendment requires an agreement for service to or from a self-represented party to be in writing and filed with the court.

This amendment does not apply to service of process governed by V.R.C.P. 4, or analogous rules in other divisions, and does not apply where applicable electronic filing rules require other means of electronic service. Nor does it alter any rules or statutes concerning when and to whom service of such documents is required. It only addresses the means of serving documents where required by V.R.P.P. 5(b) and V.R.C.P. 5(b) (incorporated into other divisions by V.R.A.P. 25, V.R.Cr.P. 49, V.R.F.P. 4.0(a)(2)(A), and V.R.E.C.P. 3, 4(a), 5(a)(2)), or other provisions of law regarding service other than initial service of process.

To facilitate mandatory email service, attorneys must provide an email address on all documents filed with the court or served on another party. Pursuant to Administrative Order 44, attorneys in active status are already required to register up to three email addresses in eCabinet for purposes of receiving notices of hearing and other documents. Attorneys may include staff email addresses among those addresses registered in eCabinet. Because attorneys may not have listed their eCabinet email addresses on documents filed or served as of the effective date of this amendment, the amendment requires attorneys to promptly notify one another of the email addresses at which they will receive service if they have not included this information in any pleadings or filings. Although this amendment establishes email as the default means of service between attorneys, they may agree in writing to alternative methods of service, including service by mail or other electronic means such as a shared digital storage system. This agreement must be made in writing. Any change to the means of service, whether indefinite or for the purpose of serving a specific document, must be documented in writing.

Where a party makes service to the email address provided by the other party pursuant to this rule, or as otherwise provided in the parties' agreement, service is complete upon transmission. However, if the sending party learns that the attempted service did not reach the party to be served, service is not complete.

The April 13 amendment provides that motions and filings in the Supreme Court must be served in the same manner as service of pleadings and other papers in the Superior Court, as outlined in paragraph 6(c). In particular, lawyers must serve one another by electronic means as set forth above, unless they mutually agree otherwise. Self-represented parties may

agree to send and/or receive service by email, as described above, but are not required to. The April 13 amendment recognizes that under existing rules briefs are served on represented parties electronically. Self-represented parties may agree to service by electronic means, but the default remains paper service.

3. That this order is effective immediately and extends until May 31, 2020, unless extended by order of this Court.

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

Done in Chambers at Montpelier, Vermont this 13th day of April 2020.

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice