

Changes in Vermont Rules Regarding Email Filing, Email Service, and Appellate Filing Periods

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On September 6, 2022, several rule changes will go into effect related to email filing, email service, and time deadlines.

Email Filing

Email filing was first implemented in Administrative Order 49 as an interim measure in response to the COVID-19 pandemic to make it easier for attorneys and the public to transmit documents to Vermont courts without physically going to the post office or to the courthouse. This practice proved to be very popular with filers and court staff and the Court directed the advisory rules committees to incorporate the process into the permanent rules. Those committees are commended for their diligent work to create uniform processes across all divisions and the Supreme Court.

The rule change will go into effect September 6, 2022. The rule states that individuals who are not required to and choose not to file electronically through Odyssey File & Serve (OFS) may file documents with the court by email. V.R.C.P. 5(e)(3), V.R.P.P. 5(e)(3). Since email filing began, OFS, the Judiciary's electronic filing system, rolled out across the state and it became mandatory for attorneys to file documents with courts through OFS, with some limited exceptions. Therefore, the primary users of email filing under the permanent rule are self-represented parties. To properly file by email, the filing must be sent to the email account for the court where the filing is made, the filing must be sent as an attachment, the subject line must provide the case number and court, and the filing must be signed. V.R.C.P. 5(e)(4). The email addresses for the courts are on the Judiciary website. [Court Email Addresses | Vermont Judiciary](#)

A filing submitted prior to midnight is considered filed on that date even if processed by court staff the following day. V.R.C.P. 5(e)(5), V.R.P.P. 5(e)(5), V.R.C.P. 6(a)(4)(A), V.R.P.P. 6(a)(4)(A).

Email Service

Email service also became much more popular during the pandemic when people were working from home and were avoiding going to the post office, going into the office to print documents or check mail, and hand delivering documents to one another. Electronic filers are required to serve each other using OFS and therefore email service between attorneys is limited. The amended rule allows self-represented parties, who are not required to use OFS, to use email to serve other parties in the case and to be served by email. The rule provides that service may be made on a party by email if the self-represented party has filed a notice of appearance and has consented to receive service by email. V.R.C.P. 5(b)(2), V.R.P.P. 5(b)(2). The parties can also agree in writing to serve each other by email. A certificate of service is required to inform the court of how service was accomplished. V.R.C.P. 5(h). The civil rule applies to civil, family, criminal, environmental, and appellate proceedings and the probate rule has equivalent requirements.

Time Deadlines

In addition to the new rules on email filing and service, some amendments were made to the rules around time deadlines. One major change applicable across all divisions and the Supreme Court is the

end of the so-called three-day rule. This rule allowed an additional three days to file documents where the deadline to file was triggered by service of a document. See V.R.C.P. 6(e), V.R.Cr.P. 45(e), V.R.A.P. 26(c). For example, because the time for filing a response to a motion is triggered by service of the motion, under the prior rule three days were added to the time for filing the response. The additional time was based on the assumption that filings were served on the other parties by regular mail and that it took an average of three days for the document to be actually received by the other side. Over the years, as more immediate forms of service have become widespread, the original rationale for the rule has been weakened. As explained above, many forms of service now do not involve the delay that occurred with service by mail. Service between electronic filers happens through OFS and documents can often be served on and by self-represented parties by email. In addition, parties can view the filings in their case on the Vermont Judiciary Public Portal.

To compensate for the loss of the three-day rule, some appellate filing times are extended. The timelines for serving and filing appellate principal and reply briefs are extended to match the time periods in the Federal Rules of Appellate Procedure. Under amended V.R.A.P. 31(a), the times for filing are increased as follows:

- the time for filing appellant's principal brief is increased from 30 to 40 days
- the time for filing appellee's principal brief is increased from 21 to 30 days
- the time for filing reply briefs is increased from 14 to 21 days

The maximum times to extend the briefing time periods by stipulation are also increased under V.R.A.P. 26(d)(1).

The promulgated orders delineating the changes are available on the Judiciary website at the following address: <https://www.vermontjudiciary.org/attorneys/rules/promulgated>