


# **Impact Assessment of Amendments to Select Civil and Criminal Rules (on track to become effective December 1, 2018)**

At its September 2017 meeting, the Judicial Conference approved amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure. The amendments were adopted by the Supreme Court and transmitted to Congress on April 26, 2018. The amendments are on track to become effective December 1, 2018. A complete set of the amendments is available [here](#).

This document provides a review of select amendments to the Federal Rules of Civil and Criminal Procedure identified as having possible impact on filers in the District of Vermont. This information is not intended to identify all possible issues implicated by all of the pending Rule amendments, but rather to provide helpful guidance to litigants as they assess how the amendments impact their document preparation, filing, and service requirements.



Federal Rules of Civil Procedure

Rule	Description of Amendment	Text of Amendment	District of Vermont Impact
<b>Rule 5: Serving and Filing Pleadings and Other Papers</b> ( <a href="#">link to current version</a> )			
Rule 5(b)(2)(E) <i>Service: How Made – Service in General</i>	<ul style="list-style-type: none"> <li>a party who is a registered CM/ECF user would now be subject to electronic service via CM/ECF without consent, unless the court provides otherwise</li> <li>consent would still be required for service of a party via electronic means <u>other than</u> CM/ECF</li> </ul>	<p>(b) <b>Service: How Made.</b></p> <p style="text-align: center;">* * * * *</p> <p>(2) <i>Service in General.</i> A paper is served under this rule by:</p> <p>(A) handing it to the person;</p> <p style="text-align: center;">* * * * *</p> <p>(E) sending it <u>to a registered user by filing it with the court’s electronic-filing system or sending it by other electronic means if that</u> the person consented <u>to</u> in writing—in <u>either of</u> which events service is complete upon <del>transmission</del><u>filing or sending</u>, but is not effective if the <del>serving party</del><u>filer or sender</u> learns that it did not reach the person to be served; or</p> <p style="text-align: center;">* * * * *</p> <p><del>(3) <i>Using Court Facilities.</i> If a local rule so authorizes, a party may use the court’s transmission facilities to make service under Rule 5(b)(2)(E).</del> <u>[Abrogated (Apr. __, 2018, eff. Dec. 1, 2018).]</u></p>	The Electronic Case Files (ECF) Registration form has been amended to remove “In accordance with the provisions of Fed .R. Civ. P.5 (b)(2)(E), I agree service may be given to me by electronic means” from section 2.

**Federal Rules of Civil Procedure**

<b>Rule</b>	<b>Description of Amendment</b>	<b>Text of Amendment</b>	<b>District of Vermont Impact</b>
Rule 5(d)(1)(B) <i>Filing – Certificate of Service</i>	<ul style="list-style-type: none"> <li>eliminates the requirement for a certificate of service where service is made via CM/ECF</li> </ul>	<p><u>(B) Certificate of Service. No certificate of service is required when a paper is served by filing it with the court’s electronic-filing system. When a paper that is required to be served is served by other means:</u></p> <p><u>(i) if the paper is filed, a certificate of service must be included with it or filed within a reasonable time after service, and</u></p> <p><u>(ii) if the paper is not filed, a certificate of service need not be filed unless filing is required by local rule or court order.</u></p>	<p>The Certificate of Service example provided on the CM/ECF Help Desk site has been modified to remove service by CM/ECF.</p> <p>Section (G)(3) <i>Certificate of Service Required</i> has been removed from the Administrative Procedures for Electronic Filing.</p>
Rule 5(d)(3)(A) <i>Filing – Electronic Filing, and Signing – By a Represented Person—Generally Required; Exceptions</i>	<ul style="list-style-type: none"> <li>makes electronic filing generally mandatory for a person represented by an attorney with exceptions for good cause or by local rule</li> </ul>	<p><u>(A) By a Represented Person—Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.</u></p>	<p>Electronic filing in the District of Vermont will remain voluntary under Local Rule 5(a).</p>

Federal Rules of Civil Procedure			
Rule	Description of Amendment	Text of Amendment	District of Vermont Impact
Rule 5(d)(3)(C) <i>Filing – Electronic Filing, and Signing – Signing</i>	<ul style="list-style-type: none"> <li>person’s name on a signature block along with CM/ECF user name/password serves as signature</li> </ul>	<p><u>(C) Signing. An authorized filing made through a person’s electronic filing account, together with the person’s name on a signature block, constitutes the person’s signature.</u></p>	Section (J)(1) and Section (J)(2) of the Administrative Procedures for Electronic Filing have been modified to remove the “/s/” requirement for electronic signatures.

Federal Rules of Criminal Procedure			
Rule	Description of Amendment	Text of Amendment	District of Vermont Impact
<b>Rule 49: Serving and Filing Papers (<a href="#">link to current version</a>)</b>			
<p><b>General Note:</b> Currently, the Criminal Rules incorporate by reference the Civil Rules provisions on filing and service (<i>i.e.</i>, requiring service and filing in the “manner provided for a civil action”). The amendments to Criminal Rule 49 set out standalone rules on filing and service that are more tailored to criminal cases. With the exceptions discussed below, the amendments are intended to carry over the applicable existing law on filing and service from the Civil Rules as well as the related amendments to Civil Rule 5 discussed above.</p>			

Federal Rules of Criminal Procedure			
Rule	Description of Amendment	Text of Amendment	District of Vermont Impact
Rule 49(a)(1) <i>Service on a Party – What is Required</i>  and  (a)(2) <i>Serving a Party's Attorney</i>	<ul style="list-style-type: none"> <li>removes the general incorporation to Civil Rules for service requirements</li> <li>language revised to reflect the requirement that nonparties must also serve certain filings on all parties as provided more specifically in new Rule 49(c) (a prior amendment had inadvertently removed the rule's application to nonparties)</li> </ul>	<p><b>Rule 49. Serving and Filing Papers</b></p> <p>(a) <u>Service on a Party.</u></p> <p><u>(1) What is When Required.</u> A party must serve on <del>every other party</del> <u>Each of the following must be served on every party:</u> any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper.</p> <p><del>(b) How Made. Service must be made in the manner provided for a civil action.</del></p> <p><u>(2) Serving a Party's Attorney.</u> Unless the court <u>orders otherwise,</u> <del>When</del> these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party, <del>unless the court orders otherwise.</del></p>	Criminal Local Rule 1(b) has been modified to remove language of Civil Rule incorporation.