

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE
MINUTES FOR MEETING OF MARCH 1, 2024**

The Civil Rules Committee met virtually at 9:00 a.m., Friday, March 1, 2024.

Attendees: Allan R. Keyes, Chair, with the following Committee members present: Bonnie Badgewick, the Hon. David Barra, Merrill Bent, Jim Dumont, David Koeninger, Karen McAndrew, and Greg Weimer. Also present were the Hon. Harold Eaton, Supreme Court liaison; Teri Corsones, State Court Administrator; attorney Alexander LaRosa; and Pamela Vesilind, Reporter.

The meeting began at 9:04 AM.

The Committee welcomed its newest member, attorney Merrill Bent.

1. Approval of draft minutes – January 5, 2024 meeting

This item was deferred to the May 3 meeting.

ACTION ITEMS

2. #23-15 and #23-13. Proposed Orders Amending Rule 28(g)(1) of the Vermont Rules of Appellate Procedure and Rule 9(b)(2) of the Vermont Rules of Small Claims Procedure.

Summary of amendments:

23-15: The [proposed amendment to V.R.C.P. 28\(g\)\(1\)](#) updates its cross-reference to the word-count limits in Rule 32 from former Rule 32(a)(7) to (a)(4).

#23-13: The [proposed amendment to V.R.S.C.P. 9\(b\)\(2\)](#) updates a reference to Form 34 of the Vermont Rules of Civil Procedure. The list of exemptions that appeared in that form are now in a form approved by the Court Administrator and available on the Judiciary website.

The comments period for these amendments end on March 15. A motion was made by Ms. McAndrew and seconded by Judge Barra to submit both recommendations to the Supreme Court contingent upon receiving no substantive comments by March 18, 2024. If Chair Keyes receives a comment that merits continued review of these amendments, he will inform the Committee. The motion carried.

3. # 20-13. Proposed Order Amending V.R.C.P. 4(c)-(f); V.R.C.P. 55; V.R.C.P. 62(b); and V.R.C.P. 80.1(f).

Proposed Order.

The Committee discussed the most recent comments received. No specific drafting changes were proposed.

Mr. Dumont reminded the Committee that the practical effect of the amendments to Rule 55 and Rule 62(b) is to enable a defaulting party to file a Rule 60 motion for excusable neglect. Mr. Dumont suggested the addition in Rule 55(d)(1) of “promptly” before “serve the judgment on the defaulted party”

Ms. Bent objected to what she views as a repetitive requirement that provides more Due Process than is necessary. Mr. Dumont, Mr. Koeninger, and Ms. Bent will work on a proposed redrafting that would restrict Rule 55(d)(1) to money judgments and possibly to writs of possession.

4. #22-10. Proposed Order Amending V.R.A.P. 3(e) and V.R.A.P. 27(a)(3) re: docketing statements and motion practice.

Proposed Order

V.R.A.P. 3(e) – clarifying the option to file docketing statements; timing for filing.

V.R.A.P. 27(a)(3) – allowing a party to file a reply in support of a motion; timing for filing.

A motion was made by Ms. McAndrew, seconded by Ms. Badgewick, to approve the minor change from “of” to “after” in Rule 3(e), as recommended by Ms. Asay at the January 5 meeting. The motion carried. A recommendation will be submitted to the Supreme Court for possible promulgation on July 1.

5. #23-6. Proposed Order Amending V.R.C.P. 11(a) re: telephone numbers on pleadings.

Summary of amendment: requiring an attorney to provide their telephone number along with other information required under Rule 11(a). This proposed order was submitted for comments and presented that the Vermont Bar Association meeting in January, 2024. No comments were received.

Ms. McAndrew moved to submit the recommendation of this amendment to the Supreme Court for possible July 1, 2024 promulgation. Mr. Dumont seconded the motion, and the motion carried.

To promote consistency, Ms. Vesilind will contact Ms. Wetherell (e-Filing) about the electronic rule’s requirement of telephone numbers.

**SUGGESTED AMENDMENTS FOR COMMITTEE CONSIDERATION
AS PROPOSED RULES**

6. #23-8. Updating Rules to Allow for Declarations Substitution

Summary: [4 V.S.A. § 27b](#) now allows, with limited exceptions, the use of a declaration on any document that would otherwise require the approval or verification of a notary.

The initial proposal (January 5, 2024 meeting) was to amend [V.R.C.P. 11\(e\)](#). The Committee is contemplating whether a more appropriate rule for this is [V.R.C.P. 43 – Evidence](#). Under consideration now:

- striking V.R.C.P. 11 subdivision (e) in its entirety;
- adding V.R.C.P. 43 subdivision (h). There are several versions of draft language being considered.
- amending V.R.C.P. 56 to include “declarations” – in 2012, references to a “declaration were removed from V.R.C.P. 56(c)(4); (d); and (h).

Mr. Dumont expressed a preference for version two of Chair Keyes' proposal (in Vesilind memo), with the suggestion that "and" replace "or" at the end of the declaration language. Mr. Dumont and Ms. Vesilind agreed to work on the proposed amendment and reporter's notes, for discussion at the next meeting.

7. #23-5. Suggested Amendment to V.R.C.P. 79.1 to Provide Client Contact Information with Motion to Withdraw (from Civil Division Oversight)

The amendment would require lawyers seeking withdrawal to provide client contact information in the form of a mailing address; will assist clerks in providing client notice and hearing information.

Ms. Vesilind's memo compared Rule 79.1 with Family Proceedings Rule 5(f) and (g) and offered draft language consistent with that rule. The Committee suggested two changes to the draft language, observing that consistency across divisions is generally preferred. Mr. Koeninger moved that the draft language and Reporter's Notes be submitted to the Committee at the May meeting for a vote to send out for comment. Ms. Badgwick seconded. The motion carried.

8. #23-16. Rule 4(c) - Service by any adult not a party. (Senator Hasim)

Summary: [Rule 4\(c\)](#) currently permits service of process by "a sheriff or deputy sheriff, by a constable or other person authorized by law, or by some indifferent person specially appointed for that purpose by any superior judge, or a judge of the court to which it is returnable . . ." Should this rule be amended to conform to Fed. R. Civ. P 4(c), which allows service of process by any person at least 18-years-old who is not a party to the case?

Mr. Koeninger briefed the Committee on his feedback from the legal helpline and Legal Aid, and his own research about service rules in Michigan, Ohio, and Illinois. (See attachments 4 and 5). Mr. Dumont reported that upon consideration of Mr. Koeninger's memo weighing the benefits and risks of expanding Rule 4(c); his own difficulties in obtaining timely service; and feedback from the Sheriff's Association and the Vermont Association of Investigative and Security Services ([VAISS](#)), he concluded that "substantial changes to current practice would create opportunities for unjust outcomes that outweigh the benefits of the change."). Mr. Dumont recommended that, instead of expanding the scope of process servers allowable without leave of court, Rule 4(c) be amended to speed up the process of appointments by the court, and make special appointment a matter of routine.

Ms. McAndrew moved to accept Mr. Dumont's draft; the motion was seconded and carried. For review by the Committee in the May meeting, with reporter's notes, and possible vote to send out for public comment. Chair Keyes to update Senator Hasim.

1. Message from Senator Hasim to Chair Keyes
2. Response from Vermont Association of Investigative and Security Services ([VAISS](#))
3. Response from Vermont Sheriff's Association
4. Memo from Mr. Koeninger to Chair Keyes and Mr. Dumont (Feb. 1, 2024)
5. Service of process rules in Michigan, Ohio and Illinois
6. Dumont email to Committee (Feb. 29, 2024)

9. #23-17. Environmental Rule 5(b)(4)(A) Appeal from an Appropriate Municipal Panel
(Suggestion of Atty. LaRosa)

Summary of issue in [Environmental Court Proceedings Rule 5 \(Appeals\)](#): In zoning cases, issues of delay and confusion re: identifying, serving, and documenting service on applicants and participating parties entitled to notice of appeal to Environmental Court. Alexander LaRosa spoke to the Committee about problems that frequently arise in the appeals process under Rule 5.

Applicants not receiving timely notice of an appeal. Mr. LaRosa suggested that Rule 5(b)(4)(A) be amended to require the party or person filing an appeal to the environmental court send notice to the applicant by certified mail. This should not be burdensome; nearly always, the applicant's address is found in the application.

Difficulty determining the "interested parties" required to receive notice by appellant. Under Rule 5(b)(4)(A), within seven days, the clerk is directed to send the appellant a list of "interested parties" that appellant is required to send notice by certified mail. But the term is undefined and there appears to be no standard practice, so appellants rarely receive a complete list, within or after the seven-day period. If "interested parties" includes those who attend municipal proceedings, an additional challenge may arise when the proceeding includes online access. Online attendees may only be identified by the title they choose for their account (i.e., "Jane 802").

Lack of reliable transcripts from municipal proceedings. Because these are not court proceedings, transcripts are typically generated by an AI service that cannot compensate for volume fluctuations and crosstalk. Transcripts take a long time to be produced and they're often wrong. Hybrid and online proceedings also contribute to the problem of identifying interested parties,

A motion was made and seconded to include the words "and to the applicant" in the first sentence of Rule 5(b)(4)(A). The motion carried. Ms. Vesilind will write reporter's notes. Ms. Bent and Mr. Dumont agreed to consider other possible amendments to address these issues.

10. #24-1. Rule 80.1 Foreclosure Answer Form (from Civil Division Oversight Committee)

Summary: The Civil Division Oversight Committee is creating a verified answer form for use in foreclosure cases. V.R.C.P. 80.1(c) requires that, to avoid default judgment, defendant's answer must be verified. The Civil Rules Committee has been asked to amend V.R.C.P. 80.1 to require service of this new form, once approved, in place of a generic answer form. It is also suggested that the Committee consider modifying V.R.C.P. 4(b) to alert plaintiffs to this new form. Rule 4(b) requires service of Answer and Notice of Appearance forms "conforming substantially to the forms that the Court Administrator has approved for this purpose and posted on the Judiciary website."

Mr. Koeninger agreed to work up a proposal for the May, 2024 meeting.

11. #22-6. Rules 16.2, 16.3, 26(f), AO 39 and the standard case management order.
(from Civil Division Oversight)

Summary: Civil Oversight recommends amendments to AO 39 and [V.R.C.P. 16.3 \(Mediation\)](#) that would be more in line with practice. Suggested amendments to Rule 16(b)(3) involve the use of telephone or

“remote video technology” in mediation. Rule 16(b)(4) and (c)(1)(B) applies to county referral lists of mediators. Suggested changes to [AO 39](#) eliminate references to arbitration/arbitrators, alternative dispute resolutions, and neutral evaluators. [V.C.R.P. 26\(f\)](#) allows a court to combine a Rule 26(f) discovery conference with a Rule 16 pretrial conference.

For consideration by Committee: whether the [Discovery - Alternate Dispute Resolution Stipulation form](#) be revised and [V.R.C.P. 16.2 \(Scheduling Orders\)](#) be amended. Possible additions to the form:

- a provision for electronic discovery;
- to paragraph seven -- agreements concerning payment of mediator fees and expenses;
- whether remote or hybrid attendance will be used for mediation;
- anything from New York form

Mr. Weimer will suggest changes to be discussed at the May, 2024 meeting.

OTHER SUGGESTED AMENDMENTS FOR POSSIBLE FURTHER REVIEW.

12. **#24-2. Remote hearing rules – [V.R.C.P. 43.1 \(Remote Hearing Procedures\)](#) and [AO 47 \(Technical Standards for Remote and Hybrid Hearings\)](#)** (effective October 2, 2023)

Ms. Badgewick and Ms. Vesilind shared comments they received from the Civil Rules Update presentation at the January Midwinter Thaw meeting of the VBA. They agreed to forward notes to Mr. Dumont. The Committee will continue to revisit this discussion in future meetings.

13. **#23-7. Rule 54 & 58 entry of judgment and taxation of costs.**

Tabled because Judge Hoar not in attendance. To be discussed at May, 2024 meeting.

14. **#23-1. Remote Deposition oaths; V.R.C.P. 28(a).**

Chair Keyes announced that the OPR will be extending for another year the temporary regulations allowing notaries in Vermont to administer oaths to remotely-located individuals also in Vermont. Whether permanent rules will permit administering the oath to out-of-state individuals remains to be seen. This impacts [V.R.C.P. 28\(a\) \(Persons before whom depositions maybe taken\)](#), which currently does not allow Vermont notaries to swear in deponents outside Vermont. Former extension: [Emergency Administrative Rules for Notaries Public and Remote Notarization \(Eff. 9/5/2023; Expired 3/3/2024\)](#).

OTHER REPORTS, NEWS, AND TRAILING AGENDA ITEMS

15. **#23-2.1. Amendment deleting Rule 9.2(c) (special eviction procedures).**

[Promulgated on February 5, 2024, for effect on July 1, 2024.](#)

16. **#23-2.2. Abrogating V.R.C.P. 9.3 (special foreclosure procedures).**

[Promulgated on February 5, 2024, for effect on July 1, 2024.](#)

17. ## News from E-filing, Civil Oversight, or Evidence Rules Committees.

Mr. Koeninger (E-Filing) reported that:

- [Rule 5 of the Vermont Rules for Electronic Filing](#) went into effect on January 8, 2024. Sections (b), (d), (e), and (g) were amended to address issues related to rejected filings. Ms. Corsones reported that there have been no appeals of rejected filings so far.
- The [proposed amendments to V.R.E.F. 2\(c\) and V.R.E.F. 8\(c\)](#) have been issued for comments. “The proposed amendment to Rule 2(c) clarifies that the electronic case file includes items in the Judiciary’s case management system. The proposed amendment to Rule 8(c) addresses digital evidence exhibits that cannot be filed through the electronic filing system.” The comments period ends April 26, 2024.
 - Of possible interest to the Civil Rules Committee: One commenter asked whether there was, or should be, a timeline by which documents should be e-filed prior to a hearing. For example, should it be two days, five days, or two weeks in advance of the hearing? Should this be address in the civil procedure rules?
- The committee is conducting a survey of pro se Odyssey users. The intent is to learn more about their experiences with electronic filing, and to find ways to increase usage.

Ms. McAndrew (Evidence) reported that no recent work of the committee effects the civil procedure rules. She noted that the committee had eliminated references to the special foreclosure statements required in pleadings.

18. # 23-2.3. [CARES ACT notice] Rule 9.2(b) expires September 30, 2025

[Public Law No. 116-136, 15 U.S.C. § 9058\(c\)\(1\)](#). Rule 9.2(b) implements the federal requirement of at least 30 days’ notice of termination of certain residential tenancies. Section 4024(c)(1) of the federal Coronavirus Aid, Relief, and Economic Security Act Public Law No. 116-136, 15 U.S.C. § 9058(c)(1). We are monitoring the operation of this Rule and any changes in the federal law or its interpretation and need to advise the Court sufficiently in advance of **September 30, 2025**, whether to make Rule 9.2(b) permanent. Chair Keyes reported the status is unchanged.

19. New Business for May Agenda. None at this time.

DATE OF NEXT MEETINGS: May 3; June 7 (if necessary); September 6; November 1; January 3; March 7.

ADJOURN. The meeting adjourned at 11:37 a.m.