

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE  
MINUTES FOR MEETING OF JANUARY 5, 2024**

The Civil Rules Committee met virtually on Friday, January 5, 2024. The meeting came to order at 9:02 a.m.

**Attendees**

Allan R. Keyes, Chair, with the following Committee members present: Bridget Asay, Bonnie Badgewick, Anne Damone, the Hon. David Barra, Jim Dumont, the Hon. Samuel Hoar, David Koeninger, Karen McAndrew, Greg Weimer. Also present were the Hon. Harold Eaton, Supreme Court liaison; Teri Corsones, State Court Administrator; and Pamela Vesilind, Reporter.

- 1. Appreciation and congratulations to former Committee member the Hon. Navah Spero**, recently nominated, approved, and sworn in as a Vermont Superior Court Judge. The Committee enthusiastically celebrates Judge Spero’s appointment and thanks her for her many contributions to the Committee’s work.

Following this was a discussion about a search for an attorney in southern Vermont to fill Judge Spero’s position for the unexpired term until June 30, 2024, followed by reappointment for a three-year term.

**ACTION ITEMS**

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

- 2. #23-9.1. Suggested amendment of V.R.C.P. 6(e), restoring the “3-day rule,” due to delays in service by regular mail** (Judge Tomasi).

Judge Hoar reported that the consensus of the Civil Oversight Committee was that V.R.C.P. 6 should not be amended to restore the 3-day rule. Chair Keyes reported that the committees on Criminal Rules, Family Rules, and Probate Rules had not yet met to discuss the matter. Federal Rule of Civil Procedure 6(d) provides a 3-day grace period for filings served by mail, Fed. R. Civ. P. 5(b)(2)(C), or by leaving the filing with the clerk, Fed. R. Civ. P. 5(b)(2)(F), or by “other means consented to.” Ms. Damone reported that other clerks she has conferred with are not in favor of the change. She noted that there were concerns about reconciling the reinstated 3-day rule with Odyssey.

Committee discussion:

Whether the 14-day deadline in V.R.C.P. 12(a)(3) is strictly enforced as a practical matter, or whether the answer to that question should be a relevant deciding factor. The Committee lacks data regarding how many parties use the mail system, or how often parties request more time to respond due to delays in the mail.

Judge Hoar made a motion that the Committee vote to take no action at this time. Judge Barra seconded the motion. There was no further discussion. The motion passed.

**3. # 23-8. Updating Declarations, V.R.C.P. 11.**

[Act No. 46](#), Sec. 4 amends 4 V.S.A. § 27b (formerly “Electronically Filed Verified Documents,” changed to “Self-Attested Declaration In Lieu Of Notarization”) to remove the limitation that only registered electronic filers may use declarations. The authorization to use a declaration now applies to the filing of “any document,” with limited exceptions. Current V.R.C.P. 11(e), *Use of Declaration in Place of Notarization*, specifically “does not apply when an oath, affidavit, or notarization is required by statute.”

Mr. Dumont offered suggested revisions to Rule 11 to conform to the new statute. Ms. Vesilind agreed to review and propose draft and reporter’s notes for the March meeting.

**4. #23-5. Suggested Amendment to V.R.C.P. 79.1, to provide client contact information with motion to withdraw.**

Proposal of Civil Oversight Committee suggesting amendment to require lawyers who seek to withdraw provide client contact information so they may be sent hearing notices directly. V.R.C.P. 79.1.

Chair Keyes presented two possible options for the Committee to consider: (1) would limit the amendment to reflect the current Family Rule 15(f)(4), by requiring the lawyer furnish the clerk the party’s last known mailing address; (2) is a more extensive amendment.

It was agreed that “last known address” should be changed to “last known mailing address.”

The Committee continued its discussion on privacy issues related to public records of client mailing addresses. Amended Rule 79.1 would not be the only rule that places client address information in the public record. For example, pro se parties are required to disclose a mailing address, and if an attorney includes a mailing address or email address in a motion, it will become part of the public record. It was suggested that address information under Rule 79.1 should be redacted or made “confidential” under the general public access rule.

Ms. McAndrew suggested that people have the option to use a post office box instead.

Judge Hoar said that he requires moving counsel to certify service of the motion and notice of hearing on the client, and that at least one other judge does the same. The client’s address does not become part of the record. Ms. Asay said that adopting this practice in Rule 79.1 would still need to require the attorney to provide the clerk with the client’s last known contact information so that the clerk could provide client notice. Ms. Damone added that if the clerk entered the client’s address, it would become part of public record.

Mr. Dumont wondered about the Family Court’s experiences with 15(f)(4) regarding disclosure of addresses and noted that sometimes addresses are filed under seal. Judge Barra suggested that if a specific confidentiality issue exists, the address should be filed under seal, but as a matter of course it

should not. Chair Keyes proposed that he discuss the question with Judge Tomasi, chair of the Advisory Committee on Rules of Public Access to Court Records. Judge Hoar and Mr. Dumont agreed that if Family Rule 15(f) also requires the attorney to provide notice to the client, then the civil rule should do the same. Ms. Vesilind agreed to review the two proposals and compare them to Family Rule 15(f).

Chair Keyes said he had spoken with Vermont Bar Counsel, Michael Kennedy, about the implications of this amendment to the attorney's duty of confidentiality under Rule 1.6. Mr. Kennedy advised that a comment to Rule 1.6 creates an exception for when disclosure is required by statute or rule. Therefore, the Committee needs to consider that it will be creating an exception to the duty of confidentiality rule.

**5. # 23-16. V.R.C.P. 4 - Service by any adult not a party.**

The Committee discussed reasons for supporting or opposing an amendment to V.R.C.P. 4 that would allow service by an adult who is not a party. There was a general sense that Rule 4(c)'s requirements for service were causing delays. Mr. Koeninger noted this is especially problematic for eviction cases. Ms. Damone reported that there have been some issues in Family Court. Mr. Weimer asked what is meant by "other person authorized by law," to which Chair Keyes responded municipal police officers.

Chair Keyes asked what other states have done to prevent fraud. Mr. Dumont suggested an amendment to allow licensed private investigators to serve process. A motion was made that Mr. Dumont would contact the Association of Sheriffs and the Association of Private Investigators to solicit their input. Ms. Asay seconded the motion. The motion passed by unanimous vote.

**6. #23-15. V.R.A.P. 28 cross reference error.**

Rule 28(g)(1) has an obsolete cross-reference to Rule 32(a)(7) instead of current Rule 32(a)(4) (as reorganized and amended 2021). Proposed draft of V.R.A.P. 28.

A motion was made by Judge Hoar to propose the amended rule as drafted. Mr. Dumont seconded the motion. Ms. Wetherell was asked whether the July 1 timing would be acceptable. She said there was no need to expedite this proposal. The motion carried by unanimous vote.

**7. # 23-13. Obsolete reference in V.R.S.C.P. 9 (Suggestion by Jessica Van Buren)**

V.R.S.C.P. 9 refers to a now-abrogated form that was in the V.R.C.P. Appendix of Forms. The committee briefly discussed and agreed to recommend that corrected reference. Ms. McAndrew moved for a vote to recommend the amendment to the Supreme Court. Judge Hoar seconded the motion. The motion passed by unanimous vote.

**OTHER SUGGESTED AMENDMENTS FOR POSSIBLE FURTHER REVIEW.**

**8. # 22-6. Rules 16.2, 16.3, 26(f), AO 39 and the standard case management order.**  
(Proposal of Civil Division Oversight Committee, Judge Toor)

The Committee considered two questions:

- (1) Should AO 39 (Alternative Dispute Resolution Civil Actions) be updated?; and
- (2) Should pretrial-conference, mediation, and meet-and-confer rules be updated to conform to current practice, and to simplify and streamline the so-called “Discovery - Alternate Dispute Resolution Stipulation”? Issues of scheduling of trial-readiness, close of discovery, and summary judgment under discussion.

Ms. Badgewick reported that she was working on a proposal with input from Ms. Damone. Ms. Damone surveyed the counties to learn more about who is using this list. Under consideration: how to register mediators; whether the lists of mediators should be maintained by individual counties.

The sample form being used is obsolete and needs reworking. See Greg’s proposal for the form. Mr. Wiemer proposed that the underlying V.R.C.P. 16.2 be amended to conform with practice. Chair Keyes proposed that the Committee begin by developing recommendations for amending the form and submitting them to the Civil Oversight Committee and the Court Administrator.

Ms. Damone observed that there were three important dates to consider: the date when mediation is to be completed (#8); the ready for trial date; and the number of days needed for..... Mr. Dumont suggested a change to the wording about paying mediator fees. Mr. Weimer agreed to take work on this.

Regarding VRCP 16.2, it was recommended that the romanettes be eliminated, and that the language be changed to “on stipulation *or* after hearing (per Mr. Weimer’s memo)

#### [AO 39, Discovery - Alternate Dispute Resolution Stipulation](#)

Civil Oversight referral; Report to Advisory Committee, Mr. Weimer; *Scheduling and Mediation Order* form.

### **9. # 23-7. Rule 54 & 58 entry of judgment and taxation of costs.**

Ms. Badgewick observed that Rules 54 and 58 are unclear in their directions, and in practice the process can vary by attorney and judge. How can the process be streamlined? Judge Hoar wondered how the rules would read if they were drafted “by scratch.”

#### [Rule 54](#)

**(e) Taxation of Costs.** Costs shall be taxed by the clerk, and upon notice when the adverse party has appeared in person or by attorney. A party objecting to the clerk's taxation may appeal to the Presiding Judge, setting forth in writing the items objected to, with the party's objections.

#### [Rule 58](#)

**(c) Cost or Fee Awards.** Entry of the judgment shall not be delayed, nor the time for appeal extended, for the taxing of costs or the award of attorneys' fees, except that, when a timely motion for attorneys' fees is made under Rule 54(d)(2), the court, before a notice of appeal has been filed and has become effective, may order

that the motion have the same effect under Rule of the Vermont Rules of Appellate Procedure as a timely motion under Rule 59.

The only costs that appear routinely in the record are filing fees and Odyssey surcharges, and these are knowable in advance. Service of process fees are sometimes known in advance, but not always. No other costs are known in advance. Mr. Weimer asked why there is no deadline for billing costs, and if this is due to charges coming in late. Ms. Damone replied that usually the attorney is waiting on a bill from another party.

It was suggested that Rule 58 should require attorneys to submit a bill of costs, which the clerk could use to enter the tax without requiring the judge to sign off on it. On the other hand, the Civil Oversight Committee may determine that this calculation should fall to the court, not the clerk.

Judge Hoar agreed to review the issue and submit a proposal for the March 1 meeting.

**10. #23-14. V.R.S.C.P. 4 - Motions in Small Claims Court** (Suggestion of attorney John Serafino)

Should [Small Claims Rule 4](#) state how and when to oppose a motion? Should the rule conform to practice, or to V.R.C.P.?

Mr. Dumont cited Small Claims Rule 13 and its reference to the Rules of Civil Procedure:

When matters arise that are not covered by these rules, the court will proceed by analogy to any applicable provision of the Vermont Rules of Civil Procedure that is consistent with these rules, including the provisions of V.R.C.P. 11, and with the objective of securing a simple, informal, and inexpensive disposition of the claim.

It was noted that although side judges are authorized to hear small claims cases, currently this is not the practice. The Committee agreed to defer to the Civil Oversight Committee on this matter.

**11. #23-17. Environmental Rule 5(b)(4)(A) Appeal from an Appropriate Municipal Panel**  
(Suggestion of Atty. A.J. LaRosa)

Issues of delay and confusion re: identifying, serving, and documenting service on applicants and on participating parties entitled to notice of appeal to Environmental Court in zoning cases.

This Committee has not reviewed the environmental court rules in at least a decade. This will remain a trailing agenda item while the Committee waits for input from the environmental bar.

## PROPOSED RULES

The comment period expired December 12, 2023. These proposed rules will be presented for any additional comments at the January 2024 Vermont Bar Association meeting.

**12. # 22-10. Proposed Order Amending V.R.A.P. 3(e) and 27(a)(3).**  
[PROPOSED-VRAP3\(e\)27\(a\)\(3\)--FORCOMMENT.pdf](#)

The proposed amendment to V.R.A.P. 3(e) makes the appellee’s docketing statement optional. In many appeals, the appellee’s docketing statement is cumulative and not necessary for the Court or parties. Although the filing is no longer mandatory, as a matter of practice an appellee should consider whether filing one is useful in a particular case.

The proposed amendment to V.R.A.P. 27(b)(3) allows a reply in support of a motion. This is consistent with the federal appellate rule, as is the time allowed for the reply—7 days after service of the response unless otherwise ordered. The time to reply is kept short to avoid delay in resolution of motions but can be extended under V.R.A.P. 26(b). This proposed amendment does not affect V.R.A.P 27(b)(1), which allows the Court to act on a motion for a procedural order without notice to, or response from, other parties.

Ms. Asay suggested revision to the proposed rule to clarify the timing: change “of” to “after.”

Comments received:

- Ellie Bertwell 11/16/2023 (suggesting clarification of the docketing statement due date)
- Eleanor L.P. Spottswood 3/3/2023 (enthusiastic support)
- Benjamin D. Battles 10/18/2023 (provide clarity that will benefit the bench and bar, particularly pro se litigants and those who infrequently practice at the Supreme Court)

**13. # 23-6. Proposed Order Amending V.R.C.P. 11(a).**

[PROPOSED-VRCP11\(a\)--FORCOMMENT.pdf](#)

The proposed amendment Rule 11(a) requires every pleading, written motion, and other document requiring a signature include the signer’s telephone number. The primary purpose of this change is to assist self-represented litigants who wish to contact an opposing attorney by phone. No comments were received.

**14. # 20-13. Proposed Order Amending V.R.C.P. 4(c), (d), (e), and (f); 55; 62(b); 80.1(f).**

[PROPOSED-VRCP4\(c\)\(d\)\(e\)\(f\) 55 62 80.1\(f\)--FORCOMMENT.pdf](#)

The proposed amendments to the caption and text of Rules 4(d) and 4(e) delete the references to “personal” service. Proposed Rule 4(d)(2) is amended to aggregate into a single subdivision the methods of service on the State of Vermont or any agency or officer thereof. Former Rule 4(f)(2), relating to mail service on an officer of the state as a statutory process agent, is moved to Rule 4(d)(2). The existing provision of Rule 4(d)(2), for service in false claims actions, is reworded for clarity with no change of meaning intended.

The proposed amendment recaptions Rule 4(f) to “Service by Mail Outside the State.” The text is reorganized to clarify each step in the mail service process and, in some cases, to modify the requirements of the existing rule.

Proposed Rule 55(d) is added to require service of a default judgment against a party who has not appeared in the case. New proposed Rule 55(c)(8) is added to allow the court to include in a default judgment the projected cost of service required by Rule 55(d).

The proposed amendment to Rule 62(b) states that execution against a party who has not appeared is stayed until the party to whom judgment was awarded serves the default judgment pursuant to new proposed Rule 55(d), which now specifies the method of service.

The proposed amendment to Rule 80.1(f) allows the court to include in a default judgment the projected cost of service required by Rule 55(d). The cost of initial service of the summons and complaint is presumptively a reliable measure of the projected future cost of service of the default judgment.

Comments received:

- Merrill E. Bent, Esq. October 13, 2023: The proposed rule change would impose additional burdens on parties who are doing the correct thing by seeking relief through the courts (as opposed to self-help). This would make it harder and more expensive when litigation is already prohibitively expensive for many, and access to the courts is a real concern for people without substantial means. If a Defendant does not want to be found—which is often the case—Plaintiff will have to go through the burden of attempting service, and then the expense of filing a motion for alternative service, even though the Defendant already has received due process with service of the complaint. And of course, that expense would be multiplied if there is more than one defendant. The change would provide for more process than is due.
- Rachel (Jones) Ljunggren. February 11, 2022: The proposed rule will increase the cost of the residential foreclosure process and will result in additional delay. Amendments to V.R.C.P. 80.1 should be made to allow the reasonable costs incurred in effectuating service of process of the default judgment to be collected by the Plaintiff. The Committee should also consider adopting service of a notice by mail in place of service by a process server. Several states have adopted such process with success.
- Cabot Teachout, December 27, 2021: The proposed amendments to V.R.C.P. 55 impose undue and unfair burdens on plaintiffs in default judgment cases.
- Brice Simon, December 15, 2021: making it a requirement to serve it regardless of whether it is being enforced at that time is a good idea.

**15. # 23-2.1. Proposed amendment to delete Rule 9.2(c) (eviction).**

[PROPOSED-VRCP9.2-9.3--FORCOMMENT.pdf](#)

Rule 9.2(c) currently provides that the court may take appropriate action when there is sufficient evidence that a tenant has applied for funds from the Vermont Emergency Rental Assistance Program (VERAP). When all applications for this program are processed or funds exhausted the rule will be obsolete. Action deferred last meeting, when a few appeals remained to be processed and Due to some continued processing of applications, the Agency decided to release another “last” check run for VERAP on November 15.

Chair Keyes asked the Committee if it wanted to recommend to the Supreme Court now with the effective date of July 1, or take swifter action. Judge Hoar agreed to seek feedback at the VBA meeting from attendees with CARES Act experience.

Judge Barra moved that the Committee submit the recommendation to the Supreme Court for its next conference. Ms. Asay seconded the motion. The motion passed.

**16. # 23-2.2. Proposed amendment to delete notice requirement of Rule 9.3(b) (foreclosure and replevin), and separate Proposed Order Abrogating V.R.C.P. 9.3.**

[PROPOSED-VRCP9.2-9.3--FORCOMMENT.pdf](#)  
[PROPOSED-VRCP9.3--FORCOMMENT.pdf](#)

Rule 9.3(b) requires the plaintiff in certain foreclosure and replevin actions to provide notice to homeowners of the availability and purpose of funds from the Vermont Homeowner Assistance Program (VHAP) on a form that includes sample request for stay.

Deletion of noticed requirements and abrogation of entire Rule 9.3 deferred at last meetings. Applications are closed and the Agency expects to continue to process applications through January or February 2024.

Chair Keyes updated the Committee and sought input about whether to vote on the proposal in this meeting of the March meeting. There are no more applications pending and it is predicted that by the end of this month there will be no more applications. The Joint Committee on Judicial Rules has received information on this proposal.

Ms. Asay – moved to recommend to the Court to abrogate 9.3(b) on an emergency basis. Judge Barra seconded the motion. The motion passed unanimously.

The question was raised about whether the entire rule should be abrogated at the same time. Ms. Asay amended her previous motion to apply to the entire Rule 9.3. Judge Barra seconded the motion. The motion carried.

The next Supreme Court conference is February 5, 2024. The proposal must be submitted to the Supreme Court by January 26, 2024.

**OTHER REPORTS, NEWS, AND TRAILING AGENDA ITEMS**

**17. Saturday, January 13, 2024 “Winter Thaw” Seminar on Civil Rules in Montreal.**  
Bonnie Badgewick, Bridget Asay, Judge Hoar, and Pamela Vesilind are participating.

**18. News from other committees.**

E-Filing Committee: Mr. Koeninger reported that new rule will be taking effect on Monday (January 8, 2024) that will address questions about appeals and the number of motions per package.

Evidence Rule Committee: Ms. McAndrew reported that the evidence rules were de-gendered. The committee has another meeting within a couple of weeks; she expects to have more news to report in the March meeting.

Civil Oversight Committee: Judge Hoar reported that the committee is preparing to review post-conviction relief cases, including procedures and authority. A working group has been established, with representation of prisoner’s rights, the Attorney General’s office, the State’s Attorneys office, civil practitioners, and the Criminal Division Oversight Committee (Judge Treadwell). This process will take some time. Judge Hoar will report on its progress.

Judge Hoar delivered a request from the Civil Division Oversight Committee to address Rule 80.1's requirement of a verified answer. Judge Hoar agreed to submit the request to Chair Keyes via email.

**19. # 23-1. [Tabled] Remote Deposition oaths.**

The OPR Emergency Administrative Rules for Notaries Public and Remote Notarization have again been extended. [Emergency Administrative Rules for Notaries Public and Remote Notarization \(Eff. 9/5/2023; Expires 3/3/2024\)](#). The Committee is waiting to see whether permanent rules still in development will allow notaries in Vermont to administer oaths to individuals located outside the state. See V.R.C.P. 28(a) (persons before whom depositions may be taken) does not include Vermont notaries where the deponent is outside the state.

**20. # 23-2.3. [CARES ACT notice] Rule 9.2(b) expires September 30, 2025.**

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). (The lessor of a covered dwelling unit "may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate.")]

The Committee is monitoring the operation of this rule, including any changes in the federal law or its interpretation, and the need to advise the Court sufficiently in advance of **September 30, 2025** whether to make Rule 9.2(b) permanent.

[Public Law No. 116-136, 15 U.S.C. § 9058\(c\)\(1\)](#).

**NEW BUSINESS**

**21. Any new business for March agenda.**

Chair Keyes discussed the appointment of a new member.

**DATE OF NEXT MEETINGS:** March 1, May 3, June 7, September 6, November 1

**ADJOURN.**

The meeting adjourned at 12:09 PM.