

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE  
MINUTES FOR MEETING OF MAY 3, 2024**

The Civil Rules Committee met virtually at 9:00 a.m. Friday, May 3, 2024.

**Attendees:** Allan R. Keyes, Chair, with the following Committee members present: Bridget Asay, Bonnie Badgewick, the Hon. David Barra, Merrill Bent, Anne Damone, Jim Dumont, the Hon. Samuel Hoar, Karen McAndrew, and Greg Weimer. Also present were Teri Corsones, State Court Administrator; Laura Rowntree, Attorney General's designee; and Pamela Vesilind, Reporter.

The meeting began at 9:01 AM.

The Committee expressed its gratitude for the service of David Koeninger and wished him all the best. The Committee also thanked Karen McAndrews for her years of service and high standards for the quality of the work produced by the Civil Rules Committee and the Rules of Evidence Committee.

**1. Approval of draft minutes** for the meetings of January 5, 2024 and March 1, 2024.

The Committee approved the minutes without edits.

**ACTION ITEMS**

**2. # 20-13. Proposed Order Amending V.R.C.P. 4(c), (d), (e), and (f), 55, 62(b), 80.1(f).**

**Rule 4(c), (d), (e)**

The Chair requested comments from the Committee regarding Judge Toor's recommendation against using US Mail for service. Although none were immediately forthcoming, Mr. Dumont also suggested that the Committee add concerns about first class mail service as an agenda item to research. Ms. McAndrews wondered whether first class mail service is as unreliable as the conversation suggested. Ms. Bent responded that it has been extremely unreliable at times.

Mr. Dumont moved for a vote on recommending the proposed changes to Rule 4. Judge Hoar seconded the motion. The motion passed unanimously.

**Rule 55**

Ms. Bent elaborated on her submitted comments questioning whether the proposed service requirements for default judgment were necessary, and whether Rule 60(b) provides a suitable option in cases where service was improper.

Mr. Dumont observed that motions for reconsideration under Rule 60(b) are subject to a one-year limitation from the entry of judgment. He further noted that the request for the higher service standard was submitted by the Civil Oversight Division; that it has been on the Committee's agenda for over two years; and that the recommended amendments would be particularly beneficial to legal aid clients. Judge Hoar further elaborated on this last point.

After extensive committee discussion, Judge Hoar raised a motion to table any amendments to Rule 55 and Rule 62 and to give further consideration to perhaps resolving inherently confusing language in Rule 62. Ms. Bent seconded the motion. Chair Keyes requested the motion include the Rule 80.1 amendments. Judge Hoar agreed to the motion as amended; Ms. Bent seconded the motion as amended. The motion passed unanimously.

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

**3. #24-1. Rule 80.1 Foreclosure Answer Form (Request of Civil Division Oversight)**

A sentence is added to Rule 80.1(b)(3) that reads the plaintiff must also include with the summons a blank, foreclosure verified answer form and a blank notice of appearance form conforming substantially to the forms that the court administrator has approved for this purpose and posted on the Judiciary website. The Civil Oversight Division developed this form and suggested this amendment.

Ms. Asay moved that the proposed amendment to Rule 80.1 be issued for comment. Ms. Bent seconded the motion. The motion carried unanimously.

**4. #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 email of 6/9/2022

[16.2, 16.3, 26\(f\), AO 39](#)

[Discovery - Alternate Dispute Resolution Stipulation](#)

**Rule 16.2 and 26(f)**

The Committee discussed at length various edits to the two rules. At the end, Judge Barra moved that the Committee recommend the proposed changes be reflected in the rules, with minor changes to the Reporter's Notes. Ms. McAndrews seconded the motion. The motion carried unanimously.

**5. # 23-7. Rule 54 & 58 entry of judgment and taxation of costs.**

Rule 58(b) – re: prevailing party to submit form of judgment

Rule 54(e) – re: taxation of costs by the court.

Judge Hoar research, memo, and recommendation (attached).

After some discussion, Mr. Dumont moved to accept the changes to Rules 54(e); Mr. Weimer seconded the motion. The Committee agreed to revisit the discussion about amendments to Rule 58(b). Drafts of the amendments will be reviewed by the Committee at the September 6, 2024 meeting.

**6. #23-8. Updating Declarations, Rule 11**

[Act No. 46](#)

- Mr. Dumont and Ms. Vesilind to report with proposed amendment and reporter’s notes, for discussion
  - deleting V.R.C.P. 11(e) subdivision (e) in its entirety;
  - adding new V.R.C.P. 43 (h) authorizing declarations.
  - amending V.R.C.P. 56 to refer to “declarations” as well as affidavits.

Due to time constraints, this item was deferred to the September meeting.

**7. #23-5. Suggested amendment to V.R.C.P. 79.1 - to provide client contact information with motion to withdraw.** (Proposal of Civil Oversight Division)

- Prof. Vesilind to submit modified draft language and add Reporter’s Notes for potential vote as proposed rule for public comment
- For continued discussion and action.

Due to time constraints, this item was deferred to the September meeting.

**8. #23-16. Rule 4 – Service by any adult not a party.** (Suggestion by Senator Hasim)  
Alternative suggestion to expedite special appointments discussed at last meeting.

- Prof. Vesilind to submit draft language with Reporter’s Notes amending Rule 4(c) as for potential vote as proposed rule for public comment
- For continued discussion and action

Due to time constraints, this item was deferred to the September meeting.

**9. # 23-17. Environmental Rule 5(b)(4)(A) - Appeal from an Appropriate Municipal Panel**  
(Suggestion of Atty. LaRosa email of December 7, 2023)

- Prof. Vesilind to submit draft language and Reporter’s Notes amending Rule 4(c) to include the words “and to the applicant” in the first sentence of Rule 5(b)(4)(A)
- Ms. Bent and Mr. Dumont to report on other possible amendments to address issues of determining the “interested parties” required to receive notice, and the lack of reliable transcripts from municipal proceedings.
- For continued discussion and action

Due to time constraints, this item was deferred to the September meeting.

**OTHER SUGGESTED AMENDMENTS FOR POSSIBLE FURTHER REVIEW**

**10. #24-2. Remote hearing rules**

- Continued roundtable discussion

Due to time constraints, this item was deferred to the September meeting.

**11. #24-3. Rule 4(e) – citation of legal authority for out-of-state service.** (Judge Toor)

**Rule 4(e)** allows service outside the state in “any manner in which service may be effected under the laws of the state in which the person is served.” The Rule requires an affidavit of stating the time, manner, and place of service. -- Judge Toor suggests the rule be amended to require citation of the out-of-state rule or statute that permits the type of service used.

- For discussion

Due to time constraints, this item was deferred to the September meeting.

## REPORTS, NEWS, AND TRAILING AGENDA ITEMS

### 12. #23-15 and #23-13. V.R.A.P. 28(g)(1) and V.R.S.C.P. 9(b)(2)

- Promulgation Order corrective amendments, effective July 1, 2024.

[https://www.vermontjudiciary.org/PROMULGATED-VRAP28\(g\)\(1\)--STAMPED](https://www.vermontjudiciary.org/PROMULGATED-VRAP28(g)(1)--STAMPED)  
[https://www.vermontjudiciary.org/PROMULGATED-VRSCP9\(b\)\(2\)](https://www.vermontjudiciary.org/PROMULGATED-VRSCP9(b)(2))

Due to time constraints, this item was deferred to the September meeting.

### 13. #22-10. V.R.A.P. 3(e) and V.R.A.P. 27(a)(3) – docketing statements and motions practice.

- Promulgation Order amending these rules effective July 1, 2024.

<https://www.vermontjudiciary.org/PROMULGATED-VRAP3%28e%2927%28a%29%283%29--STAMPED>

Due to time constraints, this item was deferred to the September meeting.

### 14. #23-6. V.R.C.P. 11(a) – telephone number on pleadings

- Promulgation Order amending Rule 11(a) effective July 1, 2024.

<https://www.vermontjudiciary.org/PROMULGATED-VRCP11%28a%29--STAMPED>

Due to time constraints, this item was deferred to the September meeting.

### 15. ## News from e-Filing, Civil Division Oversight, or Evidence Rules Committees

- Mr. Koeninger, Ms. Damone/ Judge Hoar, Ms. McAndrew to report.

Due to time constraints, this item was deferred to the September meeting.

### 16. #23-1. [Tabled] Remote Deposition Oaths.

- OPR Emergency Administrative Rules for Notaries Public and Remote Notarization have again been extended. [Emergency Rules for Remote and Electronic Notarial Acts \(Eff. 3/4/2024\)](#) (defines “Remotely Located Individual” as an individual or individuals located in Vermont who are not in the physical presence of the notary public who perform(s) a notarial act.) V.R.C.P. 28(a) (persons before whom depositions may be taken) does not include

Vermont notaries to administer oaths to deponents outside of the State of Vermont. The Committee is waiting to see whether permanent rules still in process will allow this.

Due to time constraints, this item was deferred until the September meeting.

**17. #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 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.

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

Due to time constraints, this item was deferred to the September meeting.

**NEW BUSINESS**

**18. New or pending legislation that may need our attention?**

**19. Any new business for the next agenda?**

**20. Committee Vacancy**

To include consideration of "[t]he needs of the committee with respect to subject-matter expertise or practice-area representation, as well as the goals of geographic and demographic diversity."

**DATES OF NEXT MEETINGS:** September 6, November 1, January 3, March 7, May 2.

**ADJOURN:** The meeting adjourned at 12:03 pm.