

**VERMONT SUPREME COURT**  
**ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE**

2024 Annual Report

January 13, 2025

I. Summary

The Advisory Committee on the Rules of Civil Procedure submits this report to the Vermont Supreme Court pursuant to Administrative Order No. 17, § 5. This report covers the Committee's activities in 2024.

The Committee met five times — in January, March, May, September and November 2024 — to consider amendments or other matters pertaining to the Vermont Rules of Civil Procedure, the Vermont Rules of Appellate Procedure, the Vermont Rules for Environmental Court Proceedings, and the Vermont Rules of Small Claims Procedure and to review comments on proposed amendments concerning those rules.

Jean Murray succeeded David Koeninger as a member at large, effective July 1, 2024. Laura Rountree succeeded Karen McAndrew as a member at large, effective July 1, 2024, and resigned effective December 31, 2024, having been appointed Superior Judge. Bonnie J. Badgewick resigned effective December 31, 2024, also appointed Superior Judge.

The Committee thanks all four former members for their collegiality and active service to the Committee, congratulates our two new judges, and recognizes particularly Karen McAndrew who was a decades-long member of the Committee who always kept us on course.

II. Amendments Promulgated by the Court on the Committee's Recommendation

- 1) **New § 9** was added to **Administrative Order No. 11** provide guidance regarding the effective date for rules. Section 9 provides that ordinarily rules will be adopted with an effective date at least 60 days from the date of promulgation and with an effective date of either July 1 or January 1. The regularized effective date was prompted by a suggestion to the Advisory Committee on the Rules of Civil Procedure by a member of the bar regarding the difficulty of following rule changes and the varied effective dates. The civil rules committee, with agreement from the criminal, probate, family, evidence, public access, and electronic filing committees, requested that the Court adopt regularized effective dates. This Order was promulgated on October 10, 2023; effective January 1, 2024.
- 2) **Rule 64(b)(1)** was amended to delete an obsolete reference to a District Judge. The amendment to Rule 64(b)(2), (3) and (i) also deletes an obsolete requirement of a finding “that the amount of the valuation is within the jurisdiction of the superior court.” This Order was promulgated on October 10, 2023; effective January 1, 2024.

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- 3) **Appellate Rule 30** was amended to make a printed case a requirement for most appeals even where there is an appeal volume. Rule 30(d)(2)(A) was amended to require the index to the printed case to contain the page in the appeal volume where the document is located, in addition to the page in the printed case. Appellate Rule 28(e)(1) was amended to require a citation to the location of the document in the appeal volume if there is no printed case or a document is not in the printed case. This Order was promulgated on October 10, 2023; effective January 1, 2024.
- 4) **Rule 9.2(c)** was deleted. Rule 9.2(c) provided that the court could take appropriate action when there was sufficient evidence that a tenant had applied for funds from the Vermont Emergency Rental Assistance Program. This Program closed to new applications on October 1, 2022. By January 1, 2024, all pending applications were processed, and available funds exhausted. Therefore, Rule 9.2(c) was deleted as obsolete. This Order was promulgated on February 5, 2024, effective July 1, 2024.
- 5) **Rule 9.3** was abrogated. This rule, entitled “Special Procedures in Certain Home Foreclosures and Mobile Home Replevin Actions”, required notice to certain homeowners who suffered a financial hardship related to the COVID-19 pandemic of possible help available from the Vermont Homeowner Assistance Program (VHAP) and allowed a stay of proceedings while the VHAP processed applications for assistance. The VHAP closed to new requests for assistance in August 2023 and completed processing of all pending applications as of January 31, 2024. Because the program closed, Rule 9.3 was abrogated as obsolete. This Order was promulgated on February 5, 2024, effective immediately.
- 6) **Appellate Rule 3(e)** was amended to make the appellee’s docketing statement optional. This Order was promulgated on April 1, 2024, effective July 1, 2024.
- 7) **Appellate Rule 27(b)(3)** was amended to allow a reply in support of a motion. This 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. This Order was promulgated on April 1, 2024, effective July 1, 2024.
- 8) **Appellate Rule 28(g)(1)** was revised to update its cross-reference to the word-count limits in Rule 32. This Order was promulgated on April 1, 2024, effective July 1, 2024.
- 9) **Small Claims Rule 9(b)(2)** was revised to update its reference to the location of the list of exemptions that formerly appeared as Form 34 of the Vermont Rules of Civil Procedure. This Order was promulgated on April 1, 2024, effective July 1, 2024.
- 10) **Civil Rule 11(a)** was amended to require every pleading, written motion, and other document that requires a signature to include the signer’s telephone number. This Order was promulgated on April 1, 2024, effective July 1, 2024.
- 11) **Civil Rule 4** was amended to update its provisions to current practice and terminology. The amendment to the caption and text of Rule 4(d) and (e) deletes the references to “personal” service. The amendment to Rule 4(d)(2) aggregates into a single subdivision the methods of service on the State of Vermont or any agency or officer thereof. The existing provision of

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Rule 4(d)(2), for service in false claims actions, is reworded for clarity. Rule 4(f) is recaptioned “Service by Mail Outside the State” and reorganized to clarify each step in the mail service process and, in some cases, to modify the requirements of the existing rule. The amendment to Rule 4(f)(2) changes the requirement to use “registered or certified mail, with restricted delivery and return receipt requested” to any mail delivery method that “requires a signature by the addressee or by the agent of the addressee for receipt of mail.” The amendment to Rule 4(f)(3) clarifies when service by first-class mail under Rule 4(f) is permitted and how it is completed. This Order was promulgated on June 3, 2024, effective January 1, 2025.

- 12) **Civil Rule 80.1(b)(3)** was amended to require service of a blank Verified Answer - Foreclosure Case form and a blank Notice of Appearance for Self-Represented Litigant form. Rule 4(b) already requires service of a blank answer and a blank notice of appearance forms. The amendment specifies that the answer form served in a foreclosure case be a verified answer form conforming substantially to the form for that purpose approved by the Court Administrator. This Order was promulgated on October 8, 2024, effective January 1, 2025.
- 13) **Civil Rules 16.2 and 26(f)**, related to scheduling and discovery orders, were amended to state that a scheduling order may be issued on stipulation of the parties, without the necessity of a hearing or conference. A date for the close of all discovery and “other appropriate matters” was added to the list of contents of a scheduling order. The amended rule also updates and re-organizes the language of the rule for clarity. The amendment to Rule 26(f) clarifies that the plan and schedule for discovery to be established following a Rule 26(f) discovery conference will be a scheduling order under Rule 16.2 and that, if Rule 16.3 requires mediation, the discovery conference order must include a date for completion of mediation. Rule 26(f) was amended to delete an existing provision about altering or amending a discovery order. This Order was promulgated on December 16, 2024, effective July 1, 2025.

### III. Pending Proposed Rules

As of January 1, 2025, five proposed rules had been sent out for public comment and not yet acted upon by the Committee:

- 1) Proposed Order Amending **Rule 4(c)** of the Vermont Rules of Civil Procedure. This proposal streamlines the existing option to seek court approval for service by an “indifferent person.” The proposed added language adds “good cause” as a reason for using alternative service.
- 2) Proposed Order to Make Permanent Amendments to **Rule 9.2** of the Vermont Rules of Civil Procedure. This Rule implements the eviction notice requirements of the CARES Act), 15 U.S.C. § 9058(c)(1). The Rule will expire September 30, 2025. The Proposed Order makes Rule 9.2, as amended July 1, 2024, permanent.
- 3) Proposed Order Deleting **Rule 11(e)**, Amending **Rules 43 and 56** of the Vermont Rules of Civil Procedure. This proposal replaces V.R.C.P. 11(e) with new V.R.C.P. 43(h) to broaden the

authorization for declarations in place of an affidavit or statement under oath; and amends V.R.C.P. 56 to refer to “declarations” as well as affidavits.

4) Proposed Order Amending **Rules 3, 4(a)(2), (d)(6)(A), and (e)(5), 5(a)(2), (b)(1), (c), (f), (h)(1)(A) and (k)(1)** of the Vermont Rules for Environmental Court Proceedings. This proposal deletes references to the now-abrogated 2010 Vermont Rules for Electronic Filing.

5) Proposed Order Amending **Rule 5(b)(4)(A)** of the Vermont Rules for Environmental Court Proceedings. This proposal requires service of the notice of appeal on the applicant immediately after an appellant file the notice of appeal. The purpose of this proposed amendment is to provide sufficient notice to applicants and mitigate delays while appellants are in the process of identifying other interested persons to notify.

#### IV. Actions Not Taken

The Committee received a number of requests and suggestions that, on consideration, did not involve a rules problem or warrant a rule change. Among these was a proposal sent out for public comment to amend Rules 62 and 55 to require routine service of default judgments and to update and clarify the existing method of service of default judgments. Discussion of this proposal was tabled at the March 2024 meeting and has not been revived.

#### V. Matters Remaining on Committee’s Agenda

The following matters remain on the Committee's agenda as of January 1, 2025, for further consideration:

#23-1. Rule 28(a)(2) - Remote Deposition oaths. (Whether pending changes to notary regulations, when adopted, will permit a rule amendment to allow Vermont notaries to administer remote out-of-state depositions.)

#23-5. Rule 79.1 - Suggested amendment to provide clerk with client contact information with motion to withdraw. (Proposal of Civil Division Oversight to facilitate notice of hearing)

#23-7. Rule 54(e) – Taxation of costs by the court; and Rule 58(b)&(d) –form of judgment. (Suggestion of Judge Hoar to relieve clerks of the burden of taxing costs and preparing judgments)

#24-3. Rule 55 – Citation of legal authority for out-of-state service. (Suggestion of Judge Toor to require citation of the out-of-state rule or statute that permits the type of out of state service used)

#24-6. Rule 65 (b)(1) - Application for Preliminary Injunction only by motion. (Suggestion of Judge Toor to delete the provision of Rule 65 that allows a preliminary injunction to be requested in the complaint)

#24-9. Rule 79.1. - Substitution of Counsel without notice and motion. (Suggestion of Judge Hoar)

#24-10. Post-conviction relief (Proposed of Civil Division Oversight for new Rule 80.12)

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- #24-11. Rule 4 (d)(1)(ii). Service on an incompetent person. (Inquiry of Probate Rules Committee re: amendments under consideration to V.R.P.P. 4.4 (6))
- #24-12. Rules 5(a) and 77(d). Service and notification of parties who have not appeared. (Inquiry of Judge Spero)
- #24-14. Rule 5(h) / 2020 V.R.E.F. 11(g). Electronic certificate of service. (Suggestion of Judge Toor to abandon the electronic certificate of service and require an individually created certificate of service with each electronic filing)
- #24-15. Appellate Rule 30 – (corrective amendment to restore filing deadline for printed case).

The Chair wishes to thank all the members of the Vermont bench and bar, the members of the Legislative Committee on Judicial Rules and others who have participated in the rule-making process through their thoughtful suggestions and comments. The Committee depends on this input in its mission to develop fair procedures and clear, readable rules that avoid technicalities and eliminate unjustifiable expense and delay.

Respectfully submitted,

*/s/Allan R. Keyes*

Allan R. Keyes, Chair

For the Committee:

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