

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE
MINUTES FOR MEETING OF March 7, 2025**

The Civil Rules Committee met virtually at approximately 9:00 a.m., Friday, March 7, 2025.

Attendees: Chair Allan Keyes; Bridget Asay; the Hon. David Barra; Merrill Bent; James Dumont; the Hon. Judge Hoar; Jean Murray; John Rose; Lisa Shelkrot; and Gregory Weimer. Also in attendance were Anne Damone, the Hon. Justice Eaton, and Pamela Vesilind, Reporter.

Chair Keyes began the meeting by welcoming new members of the Committee, Jonathan Rose, and Lisa Shelkrot.

1. Approval of draft minutes of January 3, 2025, meeting.

The Committee approved the draft minutes, with minor edits suggested by Ms. Corsones.

2. Reconsider Recommendation to make Rule 9.2 permanent.

Summary: The Committee voted to reconsider its recommendation of January 3, 2025 to make Rule 9.2 permanent. Discussion ensued as to whether to recommend the Court abrogate, extend, modify, or make permanent Rule 9.2. The Rule expires September 30, 2025. A subcommittee of Judge Hoar, Ms. Asay, and Ms. Murray will report at the May 2 meeting.

Discussion:

- Ms. Murray recommended against reconsidering the recommendation, observing that the Iowa court’s interpretation of 15 U.S.C. § 9058(c) as temporary represents a minority view. The majority interpretation is that a rental property is “covered property” if the property owner has received federal backing in some form.
- Judge Hoar asked if the Committee might request an advisory opinion from the Supreme Court.
- Ms. Bent suggested that, if this is a matter of state law, then the Committee could establish the rule without binding Vermont to opinions from other jurisdictions.
- Mr. Dumont responded that rulemaking could be a suitable method of extending the 30-day notice rule.
- Ms. Murray said the Vermont statute requires 14 days’ notice.
- Ms. Shelkrot doubted that the Committee could establish a rule because this is a legislative matter. Ms. Murray also questioned the Committee’s jurisdiction.
- Judge Hoar and Mr. Dumont discussed whether the question of insufficiency of notice is substantive (see 9 V.S.A. § 4457) or procedural. If procedural, the Supreme Court is empowered to engage in rulemaking.
- Ms. Asay expressed concern that the Committee might be imposing a requirement that is arguably not in the federal statute.

Ms. Asay moved to reconsider the Committee’s previous decision to make Rule 9.2 permanent. Judge Hoar seconded. Continued discussion:

- Ms. Bent and Ms. Murray emphasized the importance of the Committee’s decision. Ms. Murray noted that 70-80% of tenants are unrepresented by counsel whereas 90% of property owners are represented.
- Mr. Rose wondered whether the Committee could help create a case or controversy for judicial consideration.
- Mr. Dumont urged members to read Justice Dooley’s article, *The Regulation of the Practice of Law, Practice, and Procedure*, 8 Vt. L. Rev. 211, 221.

The vote for reconsideration passed without further discussion, under Robert’s Rules two-thirds vote requirement. A subcommittee of Judge Hoar, Ms. Asay, and Ms. Murray was formed to research and report back with a recommendation at the May meeting.

3 . PROPOSED RULES OUT FOR COMMENT

A. # 23-16. Rule 4(c) – Special appointments versus service by any adult not a party.

A proposal submitted for public comment added “good cause” as a reason for using special appointment. Comments closed December 9, 2024. Subsequent amendments to Rule 4(c) were presented for discussion.

Summary: Ms. Vesilind will provide the Committee with several options for amending the language in the proposed rule and reporter’s notes, for consideration at the May meeting.

New proposed revisions as of January 3, 2025 would:

- Require a “suitable” indifferent person;
- Broaden the reasons for special appointment whenever it is more “economical or efficient than service by an officer”; and
- Require service of the order of appointment.

Discussion:

- About the use of the word “suitable”:
 - Mr. Dumont reminded the Committee of Ms. Murray’s suggestion that the person affecting service wear a uniform;
 - Judge Hoar relayed that the Legislature is considering a bill that would limit cross-jurisdictional service to writs of possession;
 - General consensus that the attorney’s motion should include the proposed server’s name and credentials, and that would-be servers will provide attorneys these credentials;
 - Judge Hoar noted that this proposal is a clarification of the existing process, recognizing a court’s supervisory role; compare this to Federal Rule of Civil Procedure 4(c).
- About the proposed Reporter’s Notes proposed by Chair Keyes:
 - Ms. Asay questioned whether the proposed language accurately reflects the proposed rule’s language;
 - Mr. Dumont suggested adding a reference to the statute that allows cross-jurisdictional service by sheriffs (see 12 V.S.A. § 691 and 12 V.S.A. § 4854);

	<ul style="list-style-type: none"> ○ Ms. Bent suggested adding language that reminds attorneys that municipal police officers are also empowered to effectuate civil process. See 24 V.S.A. § 1935. <p>Mr. Dumont moved to have Ms. Vesilind provide the Committee several options for amending the language in the proposed rule and for the reporter’s notes. Mr. Rose seconded the motion. The motion passed.</p>
<p>B.</p>	<p>#24-15. Amendment to Rule 30 – Printed cases</p> <p>The proposed amendment adds Rule 30(e) to state the filing deadlines for a required printed case and any optional printed case(s). These deadlines were inadvertently omitted when the requirement of a printed case was reinstated in 2024. Comments on the proposed amendments closed as of March 5, 2025. Proposed rule and reporter’s notes attached in March meeting agenda. Draft language below:</p> <p style="text-align: center;">RULE 30. PRINTED CASE</p> <p>(b) Supplemental Printed Case. The appellee may <u>assemble file</u> a supplemental printed case. The appellee must file any supplemental printed case when the appellee's principal brief is filed.</p> <p style="text-align: center;">* * * * *</p> <p>(e) Filing Deadlines. <u>The appellant must file a required printed case, or any optional printed case, when the appellant’s principal brief is filed. The appellee must file a supplemental printed case, if any, when the appellee’s principal brief is filed.</u></p> <p>(e)(f) Costs of Production. Mindful that the entire record is always available to the Court, the parties must not include unnecessary material in the required printed case or supplemental printed case. The cost of producing a required paper printed case is a taxable cost. If any party unnecessarily produces a printed case or causes unnecessary parts of the record to be included in the required printed case, the Court may impose the cost of producing those parts on that party.</p> <p>Discussion: This amendment could be in effect July 1 if voted to recommend today.</p> <p>Ms. Asay moved for a vote to recommend the amendments to Rule 30 as proposed. Ms. Bent seconded. The motion passed unanimously.</p> <p>Chair Keyes or Ms. Vesilind to submit the letter and recommendation to the Court.</p>
<p>C.</p>	<p>#24-6. Rule 65(b)(1) - Application for Preliminary Injunction only by motion.</p> <p>The proposed amendment to Rule 65(b)(1) deletes the option to apply for a preliminary injunction on a complaint without a motion. Under the proposed rule, a motion is required.</p> <p>Proposed rule (with slightly edited reporter’s note from Chair Keyes) attached to March meeting agenda. <u>Comments on these proposed amendments will be accepted through April 10, 2025.</u> The Chair reported that he had not received any comments to date.</p> <p>Rule amendment proposal below:</p>

RULE 65. INJUNCTIONS

* * *

(b) Preliminary Injunction.

(1) *Notice.* ~~The court may issue a No preliminary injunction only on motion, and after shall be issued without notice and hearing at a time and place set by the clerk. The application for preliminary injunction may be included in the complaint or may be made by motion. The notice of hearing may shall be signed by the clerk, or by the court which is to hear the matter, The movant must and shall be served a copy of the notice of hearing with a copy of the motion upon all parties by the plaintiff in the manner provided by these rules, with a copy of the application.~~

SUGGESTED AMENDMENTS FOR CONSIDERATION AS PROPOSED RULES

5. # 23-7. Rule 54(e) and Rule 58(b) and (d) – Taxation of costs and preparation of form of judgment by the court, instead of the clerk.

In the January meeting, the Committee voted to shift the burden of taxing costs and preparing the form of judgment from the clerk to the court. Further revisions and draft reporters notes were discussed.

Summary: Ms. Vesilind to provide the Committee with options for amending the language in the proposed rule, based on the discussion at this meeting, as well as reporter’s notes. For consideration at the May meeting.

Questions posed by Chair Keyes in the agenda:

- What is the proper form and effect of a court order awarding or denying costs under Rule 54?
- Would such an order be separately appealable? If so, when?
- Should the order be entered as an amended judgment or as a separate judgment under Rule 58(a)?
- Can we reconcile the two rules, or do we need to amend V.R.C.P. 54(a) (that every money judgment must include all costs allowed the prevailing party) or V.R.C.P. 58(c) (that entry of judgment must not be delayed for the taxation for costs)?
- If attorney’s fees are timely requested, should timely filing a bill of costs also be eligible for a Rule 58(c) order staying appeal time?
- Should the rule allow the judge to coalesce the judgment, costs and fees, or any two, into a single judgment?

Mr. Dumont presented memos with proposed amendments.

- Ms. Asay asked about the timing for appeal and post-judgment motions such as Rule 59.
- Mr. Dumont said this would be a consolidated judgment that would toll the period.
- Ms. Bent referred to the 1996 Reporter’s Notes, which explain that there is a separate judgment for attorneys’ fees, but not for costs.
- Judge Hoar provided an example that supported separate judgments: Plaintiff prevails in a jury trial over a contract dispute, with remedies including the doubling of damages, attorneys’ fees, and costs for the “substantially prevailing” party. There is a dispute over what qualifies as “substantially prevailing.” Before this can be resolved,

	<p>an appeal is timely filed. Under Mr. Dumont’s proposal, entering a judgment would be premature.</p> <ul style="list-style-type: none"> • Ms. Shelkrot and Judge Hoar asked Mr. Dumont whether the V.R.A.P. 4 period would begin again for amended judgments. Several members expressed concern that this might confuse practitioners. • The point was raised that an initial judgment on the merits will include pre-judgment interest. Mr. Dumont stated that a party cannot get post-judgment interest on pre-judgment interest. <p>A motion was made and seconded to have Ms. Vesilind provide the Committee with several options for amending the language in the proposed rule, based on the discussion at this meeting, as well as reporter’s notes. For consideration at the May meeting. The motion passed unanimously.</p>
6.	<p># 25-1. Rule 79.1 – Automatic withdrawal upon the entry of final judgment and the expiration of the time for appeal. (Suggested by Judge Hoar / Civil Oversight).</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
7.	<p># 23-5 & # 24-9. Rule 79.1 – Client contact information with motion to withdraw; Substitution of counsel without notice and motion. (Suggestion of Judge Toor, Judge Hoar, Civil Division Oversight)</p> <p>The current working draft of 79.1(f) and (g) based on the January discussion (available in the March agenda), includes additional suggested stylistic changes modeled on V.R.A.P. 4.1 as well as more recent suggested changes for automatic withdrawal on final judgment, # 25-1.</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
<p>OTHER SUGGESTED AMENDMENTS FOR POSSIBLE FURTHER REVIEW.</p>	
8.	<p>#24-10. Proposed Rule 80.12 - Post-conviction relief (Proposal of Civil Division Oversight)</p> <p>Civil Division Oversight proposed draft of new Rule 80.12 is in the March agenda.</p> <p>Summary: A special virtual meeting will be held on May 16, 2025, at 9:00 a.m., to educate committee members on the Civil Division Oversight Committee proposal, and to hear from identified stakeholders.</p> <p>Discussion:</p> <ul style="list-style-type: none"> • Partial list of stakeholders to include representatives from the Defender General’s office; the Prisoners’ Rights Office; and the Department of State’s Attorneys and Sheriffs. • Once the committee has finalized its proposal for a new rule, if it decides that one is needed, whether to hold an A.O. 11 open meeting for public comment.

9.	<p># 24-3. Rule 55 – Citation of legal authority for out-of-state service under Rule 4(c).</p> <p>Suggestion to require citation of the out-of-state rule or statute that permits the type of out-of-state service used.</p> <p>In November, the Committee agreed that Rule 55 would be the proper placement for this requirement, and not V.R.C.P. 4(e). The Committee decided that no rule change is needed but elected to hear comments from members of the judiciary polled by Judge Hoar. In the January meeting, Judge Hoar reported that a majority of the respondents preferred a rule.</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
10.	<p>#24-12. Rule 5(a) and Rule 77(d) - Service and notification of parties who have not appeared. (Inquiry from Judge Spero)</p> <p>Under Rules 5(a) and 77(d) a party need not serve - and the clerk need not notify - any party “in default for failure to appear.” Is clarification needed? Should Rule 55 require service of default motions?</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
11.	<p>#24-14. Rule 5(h) / 2020 V.R.E.F. 11(g) - Electronic certificate of service. (Suggestion of Judge Toor)</p> <p>Summary: Under V.R.C.P. 5(h) every document filed with the court after the complaint and required by this rule to be served upon a party, must be accompanied by a certificate of service “except as provided in any applicable provision of the 2020 Vermont Rules for Electronic Filing.” The Efiling Committee at its December 2024 meeting denied Judge Toor’s request to amend the electronic certificate of service proviso of 2020 V.R.E.F. 11(g). Suggestion: abandon the electronic certificate of service and require an individually-created certificate of service with each electronic filing.</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
12.	<p>#24-11. Rule 4 (d)(1)(ii) - Service on incompetent person. (Inquiry of Probate Rules Committee.)</p> <p>Probate Rules Committee seeks feedback on possible amendments under consideration to V.R.P.P. 4.4(6) (service on incompetent person), which allows service on a guardian, to possibly be restricted to a “court-appointed” guardian and to add as an alternative “an agent under a power of attorney.” Current Civil and Probate rules are now substantially identical.</p> <p>DRAFT language of V.R.P.P. 4 from the Probate Committee:</p>

	<p>(6) <u>Service upon Incompetent Person</u> – If a party to be served is an incompetent person, copies of the notice and petition shall also be served by the appropriate method upon a court-appointed guardian of the incompetent person or a competent adult member of the family with whom the incompetent resides, an agent under a power of attorney or, if the incompetent person is living in an institution, then upon the director or chief executive officer of the institution. If service cannot be made upon any of them, then it shall be made as provided by order of the court.</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
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13. RULES PROMULGATED FOR EFFECT JULY 1, 2025	
A.	<p># 22-6. Rules 16.2 and 26(f) - Scheduling Orders</p> <p>Promulgation Order Amending Promulgation Order Amending Rules 16.2 and 26(f) of the Vermont Rules of Civil Procedure. This Order was promulgated on December 16, 2024, effective July 1, 2025.</p>
B.	<p># 23-8. Updated Declaration Rule</p> <p>Order Deleting Rule 11(e), Amending Rules 43 and 56 of the Vermont Rules of Civil Procedure. This Order was promulgated on February 3, 2025, effective July 1, 2025.</p>
C.	<p>#24-8. #23-17. Order Amending Rule 5(b)(4)(A) and Amending Rules 3; Rule 4(a)(2), (d)(6)(A), and (e)(5); Rule 5(a)(2), (b)(1), (c), (f), (h)(1)(A) and (k)(1) of the Vermont Rules for Environmental Court Proceedings</p> <p>This Order was promulgated on February 3, 2025, effective July 1, 2025.</p>

REPORTS, NEWS, AND TRAILING AGENDA ITEMS	
14.	<p># 22-6. A.O. 39 - Mediation Panel update (Proposal of Civil Division Oversight)</p> <p>Whether A.O. 39 (Alternative Dispute Resolution Civil Actions) should be updated. Ms. Badgewick was scheduled to report.</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
15.	<p># 20-13.2 - [TABLED] Service of Default Judgments: Proposed Order Amending Rules 55, 62(b), and 80.1(f).</p> <p>Proposed Rule 55, 62(b), and 80.1(f) tabled at March 2024 meeting.</p>

16.	<p>#24-13. News from The Landlord-Tenant Law Study Committee created by 2024, Act 181 (H.687), Sec. 113 to review and consider modernizing the landlord-tenant laws and evictions processes in Vermont. Ms. Murray was scheduled to report.</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
17.	<p>News from Efiling Committee (Mr. Rose)</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
18.	<p>News from Civil Division Oversight (Judge Hoar and Ms. Damone)</p> <p>Judge Hoar reported that, in addition to changes to the provisional relief trustee process, the Civil Division Oversight Committee is discussing considerable revisions to Rules 4.1 and 4.2.</p>
19.	<p># 24-2. Special Advisory Committee on Remote Hearings (Mr. Dumont)</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
20.	<p># 24-7. News from Court Rules Subcommittee, Judiciary Committee on Artificial Intelligence</p> <p>Chair Keyes to report on the subcommittee’s recommendation that court rules are adequate to address generative artificial intelligence.</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>
21.	<p># 23-1. Rule 28(a)(2) - Remote Deposition oaths.</p> <p>Proposed OPR Permanent Rule for Remote Notarization (#24-P01) will allow qualified and credentialed notaries in Vermont to administer oaths to individuals located outside the state.</p> <p>V.R.C.P. 28(a)(2) requires depositions within another state, or within a territory or insular possession subject to the dominion of the United States be taken before an officer authorized to administer oaths by the laws of the place where the examination is held or of the United States, or before a person appointed by the court in which the action is pending.</p> <p>For consideration: once #24-P01 is made permanent, whether V.R.C.P. 28(a)(2) should be amended to include Vermont notaries qualified to act remotely.</p> <p><u>Due to time constraints, this agenda item was deferred until the May meeting.</u></p>

NEW BUSINESS

22. Pending legislation that may require rules change.

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

NEXT MEETING DATES

2025: May 2, September 5, November 7; 2026: January 9, March 6.

Chair Keyes announced that he is stepping down from his position as Chair, effective June 1, 2025, but that he will remain a member of the Committee. Committee members thanked Chair Keyes for his dedication and considerable efforts in chairing this active advisory committee.

The Committee adjourned at approximately 12:00 p.m.