

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE  
MINUTES FROM MEETING OF NOVEMBER 7, 2025 - **Approved**  
9:00 a.m. – 12:00 p.m.**

The meeting was called to order at 9:04 a.m. virtually on Teams by Bridget Asay, Chair, with the following Committee members present: Hon. David Barra, Merrill Bent, Allan Keyes, Jean Murray, Jon Rose, Hon. Megan Shafritz, and Mark Werle. Also present were Hon. Harold Eaton, Supreme Court liaison; and Pamela Vesilind, Reporter.

Chair Asay welcomed the newest member of the Committee, Mark Werle.

**1. Approval of draft minutes of May 5, 2025, meeting.**

The committee unanimously approved the draft minutes of the meeting of May 5, 2025, as previously circulated, on motion duly made by Judge Barra and seconded by Judge Shafritz.

**AMENDMENTS FOR CONSIDERATION AS PROPOSED RULES**

**2. #25-05 V.R.E.C.P. 5 – Requiring statement of questions be filed with notice of appeal/cross-appeal (Judge Zonay and Jim Dumont).**

Ms. Bent reported from the memo circulated in advance of the meeting.

Action items for committee:

1. Assess committee interest in proposing an amendment that would require the statement of questions be filed with the notice of appeal.
2. Review and provide input on proposed draft in Ms. Bent’s memo.
3. Possibly approve draft for public comment, depending on discussion.

As to whether this is an issue the committee wants to address:

- Mr. Keyes said that the statement of questions requirement would apply to both appellant and cross-appellant, potentially shortening the process by as much as five (5) weeks if a cross-appellant also wants to file a statement of questions.
- Mr. Werle contributed that having a statement of questions earlier in the appeals process could clarify the identities of all parties.
- The suggestion for the proposed amendment was from a member of the judiciary, which is frequently focused on efficiency. Chair Asay explained that the discussion about delay in the appeals process arose when the Legislature commissioned the Act 250 Appeals Study currently being conducted by the Land Use Review Board. Former Committee member James Dumont is participating in the study. (<https://act250.vermont.gov/appeals-report> due November 15, 2025).
- Justice Eaton added that, with the current – under current climate with all the backlog, shortening things up by even 3 weeks is a step in the right direction.

Additional discussion:

- Mr. Rose observed that V.R.C.P. 74(b), Appeals from Decisions of Governmental Agencies, provides 30 days for the filing of a statement of questions. (“Within 30 days after the filing of the notice of appeal the clerk or other appropriate officer of the agency shall transmit the papers and exhibits filed to the clerk of the superior court in the manner provided in Rule 11(b) of the Rules of Appellate Procedure, and the appellant shall file a statement of questions, if required, with the clerk of the superior court and serve it upon all other parties in accordance with Rule 5.”)
- Ms. Bent’s memo explained that the Notice of Appeals statute, 24 V.S.A. § 4466, does not mention the statement of questions, nor does it direct the party to the Environmental Division Rules. This could create an unintentional disadvantage to pro se litigants and uninitiated attorneys. Chair Asay raised the issue to the Committee.
- How the process works in probate court.
- Mr. Keyes suggested that the Environmental Law judges be consulted for their input.

Regarding the draft language in Ms. Bent’s memo:

- Judge Shafritz and Ms. Bent discussed moving the language in (f) *Statement of Questions*, which reads:

(f) *Statement of Questions.* ~~Within 21 days after the filing of the notice of appeal,~~ The appellant ~~and any cross-appellant~~ shall file with ~~their notice of appeal or notice of cross-appeal~~ the clerk of the Environmental Court a statement of the questions that the appellant ~~or cross-appellant~~ desires to have determined. The statement shall be served in accordance with Rule 5 of the Vermont Rules of Civil Procedure. No response to the statement of questions shall be filed. The appellant ~~or cross-appellant~~ may not raise any question on the appeal not presented in the statement as filed, unless otherwise ordered by the court in a pretrial order entered pursuant to subdivision (d) of Rule 2. The statement is subject to a motion to clarify or dismiss some or all of the questions.

to (b)(3) *Contents of Notice of Appeal.* Mr. Keyes agreed, adding that the reference to (b)(3) found in (b)(1) *Filing the Notice of Appeal* implies that (b)(3) provides a complete statement of what is required.

Chair Asay proposed that the committee review a redrafted version, with Reporter’s Notes, at the January, 2026 meeting. Ms. Bent and Ms. Vesilind agreed.

### 3. #24-10 V.R.C.P. 80.12 - Post-Conviction Relief

Subcommittee members Chair Asay, Judge Shafritz, and Ms. Wetherell met and together with Ms. Vesilind made considerable progress on the draft language in sections (a) through (h) as proposed by the PCR Working Group. The committee was asked to review and provide input on the suggested changes.

Judge Shafritz reiterated the purpose of the proposed rule: to memorialize general practices and provide rules-based guidance.

Committee review:

**(a) Applicability.** There was general agreement to directly reference the statute, 13 V.S.A. § 7131, rather than quote extensively from the statute. Mr. Rose commented that although he generally prefers this shorter version, it may present additional challenges to pro se litigants.

**(c) Filing the Petition.** No changes were proposed or discussed.

**(b) The Petition and (d) Preliminary Review.**

No specific changes suggested for (b).

(d)(1) *Assignment of Judge.*

Judge Shafritz suggested replacing the terms “assignment” and “assign.”

(d)(2) *Initial Consideration by the Judge.*

Discussion:

- Whether “files” and “records of the case” refer to those from the criminal case.
- Informal feedback that some judges would prefer more specific petition requirements, to enable early dismissal as appropriate.
- The definitions of “plainly” (used in the rule) and “conclusively” (used in the statute).

**(e) Notice and Answer; Victim Notification.**

It was observed that although the State’s Attorney considers this resource-intensive and at times burdensome, the statute requires the prosecutor to notify the victim.

**(f) Discovery.**

Discussion:

- What is meant by “or in accordance with the practices and principles of law.”
- Whether the rule should clarify when the civil procedure rules as opposed to the criminal procedural rules are to be used.
- What would fall into the “principles and practice” category.  
Mr. Keyes answered that former Reporter Kinvin Wroth had explained that the phrase “principles and practice” referred to English common law. He further noted that the conjunction “or” meant that the use of one source was to the exclusion of the other two.
- That Civil Procedure Rule 26(f) requires a motion to initiate discovery, and whether proposed Rule 80.12 adheres to this.
- Whether there is a pre-discovery conference or hearing in this process, or if proposed Rule 80.12 is drafted to provide more flexibility.
- Whether there should be language clarifying that discovery is available.

**(g) Evidentiary Hearing.** Committee feedback: no objections or comments

**(h) Relief**

Discussed:

- Whether “remand” should be “transfer.”
- Whether a remand/transfer to criminal court would be employed when the civil court orders a new trial.
- Clarifying when a case must be transferred to criminal court.
- What happens if the criminal court objects to the stipulated settlement approved by the civil court?
- Clarifying the movement of a case between courts.
- How Rule 11 applies to a plea colloquy.
- Concerns about the “interest of justice” standard; it does not appear to be rooted in any statute or provision. Is there a legal standard from case law? [Reporter’s comment: In 28 U.S.C. § 1406, which controls transfer of venue from an improper venue to a proper venue, the “interest of justice” standard presumptively results in a grant of transfer instead of dismissal.]
- Whether a citation to a statute here could be helpful.
- Whether the proposed rule requires the civil court to grant or dismiss the *entire* petition.
- If the civil court determines a 13 V.S.A. § 7131 violation occurred, whether it must order the relief request in the petition, or does it have discretion to substitute an alternative relief (consider language to indicate the court’s authority to “grant the appropriate relief”).
- In the process of remanding/transferring the case to the criminal court, if the superior court grants or denies the petition/relief, does that become an appealable right? Would the appeal be taken by the criminal division?
- The statute says the order on the petition can be appealed. (§ 7135. “An appeal may be taken to the Supreme Court from the order entered on the motion.”)  
If there is a new trial to be heard, then the civil court’s order is not final and therefore not appealable.
- Whether the first sentence in (h) should be struck: “If the court finds that the judgment was made without jurisdiction, or that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the petitioner as to make the judgment vulnerable to collateral attack, the court shall grant the petition.” (several members verbally agreed with this suggestion).
- Whether V.R.C.P. 81 will require amending.
- How prosecutors and criminal defense attorneys are uncomfortable dealing with civil rules.

The subcommittee agreed to take the Committee’s comments for consideration.

**4. #23-01 V.R.C.P. 28(a)(1) and (2) – Deposition oaths**

Issue: Do the new OPR permanent rules on remote notarization ([effective 2/26/25](#)) affect our existing rules? OPR rules appear to not apply when a Vermont notary administers testimonial oaths pursuant to Civil Rules 28 and 30.

**Administrative Rule 5.1(c)** The following acts are not notarial acts regulated under these Rules and are governed by the statutes and rules regarding those acts:

- i. the administration of an oath swearing to or affirming the truth of oral testimony following the oath . . . .

Is a rule change needed?

Ms. Bent reported from the memo circulated before the meeting. Proposed Rule 5(2):

(2) *Elsewhere Within the United States.* Within another state . . . depositions ~~shall~~ may be taken before an officer authorized to administer oaths by the laws of the place where the examination is held or the United States, or before a person appointed by the court in which the action is pending. A Vermont qualified notary public, including a party's attorney who is a notary, is authorized to administer an oath to a witness in a case pending before a Vermont court or agency regardless of the witness's location. A licensed stenographer qualified in any U.S. State or Territory is authorized to administer an oath to a witness in a case pending before a Vermont court or agency regardless of the witness's location.

Discussed:

- Whether the stipulation language in Civil Rules 28 – 30 could include remote deposition oaths. From Ms. Bent's memo:

Rule 30(b)(7) states that “The parties may stipulate in writing or a superior judge may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 28(b), 37(a)(1), and 37(b)(1), a deposition taken by such means is taken at the place where the deponent is to answer the questions.”

This provision means that when a deponent is located outside of the State of Vermont, Rule 28(a)(2) governs who the deposition may be taken before. Thus, even when parties stipulate to take an out-of-state deposition by remote means, they would have to look to the rules of the state in which the deponent is located to determine whether a Vermont notary public is authorized to give the oath to the witness.

However, Rule 29(a) allows the parties to “by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.”

Rule 30(b)(3) provides further that “The oath may be administered by an attorney for one of the parties who is a notary.”

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Discussion:

- Whether an oral stipulation recorded by the reporter in the transcript qualifies as a “written stipulation.” Ms. Bent has contacted the agency attorney for an explanation of how this is done in practice, but she has not yet received a response.
- OPR guidance to stenographers from the Office of the Secretary of State: consult Vermont Title 12 and the Rules of Civil Procedure.
- Pecuniary interests of Vermont stenographers disadvantaged by Vermont statute.
- Whether an amended civil rule would violate Vermont notary statutes, even if attorneys stipulate to a remote oath, in writing. From Ms. Bent’s memo:
- Whether this issue requires resolution by the Vermont Legislature.

It was the sense of the committee that the next step would be return to the next meeting with a formatted version of the proposed amendment, with reporter’s notes.

5. **#25-06. V.R.C.P. 79(a) – Records kept by clerks** (Trial Court Operations). Original suggested amendment to Rule 79(a), Books & Records Kept by the Clerks, to address certain emergency orders. Judge Barra reported.

The issue: When courts issue certain after-hours orders, these orders are dated on the day the clerk enters them. Yet the order may be served before the date of entry.

In informal polling, the consensus among judges is to date the orders on the date of issuance, not date of entry. Amended 5/1/2025, 12 V.S.A. § 1534 allows that emergency complaints of sexual assault may be filed after hours:

**§ 5134. EMERGENCY RELIEF** (a) In accordance with the Vermont Rules of Civil Procedure, a person other than a family or household member as defined in 15 V.S.A. § 1101(2) may file a complaint for a temporary order against stalking or sexual assault. ~~Such complaint~~ Stalking complaints shall be filed during regular

court hours. The plaintiff shall submit an affidavit in support of the order. The court may issue a temporary order under this chapter ex parte, without notice to the defendant, upon motion and findings by the court that the defendant has stalked or sexually assaulted the plaintiff. The court may order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other such order it deems necessary to protect the plaintiff or the plaintiff's children, or both.

This is contrary to Civil Rule 79(a) (penultimate sentence; emphasis added):

The entry of an order or judgment shall show **the date the entry is made**. . . .

The suggested amendment to 79(a) submitted to the Civil Rules Committee:

The entry of an order or judgment ~~shall~~ will show **the date the entry is made, except for temporary Relief from Abuse, Stalking, Exploitation and Extreme Risk Protection order decisions made after hours, which will show the decision date.** When in an action trial by jury has been properly demanded or ordered the clerk ~~shall~~ will enter the word "jury" on the docket assigned to that action.

Discussion:

- Civil Rules for general cases state that an order is not effective until it is entered. To make the date of the order effective under these circumstances, consider an example like the one in Rule 80.10(a)(2).
- Whether an amendment to Rule 79 should refer to broader set of circumstances beyond stalking.
- The committee should solicit input from the Family Rules Committee. Family Court Rules direct the reader to Civil Rules (is there a specific rule?).
- Yet Vermont Title 33, Exploitation, cites the Family Court Rules.

Judge Barra's recommendation: pursue the goal of resolving potential timeline conflicts (date of order issuance; date of service; date of entry) but reconsider the language to do so. The issue has not yet arisen since amended § 1534 took effect.

## POTENTIAL AMENDMENTS IN PROGRESS OR FOR FURTHER REVIEW

Unassigned items and assigned items for consideration in future meetings. See agenda for more details on items #6 - #14.

Chair Asay will contact committee members about assignments for items #6 – #10; #12.

6. **#24-03 V.R.C.P. 55 – Citation of legal authority for out-of-state service** (Judge Toor).
7. **#25-04 V.R.C.P. 15(a) – Reword leave to amend provision for clarity** (Attorney Alexander Dean).
8. **#25-07 V.R.C.P. 26(c)(5) and V.R.C.P. 30(c) – Protective Orders in Discovery** (Rules of Evidence Committee)

9. **#25-03 V.R.C.P. 4.1(c) and (d) – proposed amendments to the attachment process** (Attorney Robbason).
10. **#24-11 V.R.C.P. 4(d)(1)(ii) – Service on incompetent persons** (Probate Rules Committee).
11. **#24-12 V.R.C.P. 5(a), 77(d), and 55 – Service and notification of parties who have not appeared** (Judge Spero).

Ms. Murray to update in January meeting.

12. **#23-07 V.R.C.P. 54(e), V.R.C.P. 58(b), (d) – Taxation of costs and preparation of form of judgment by the court instead of the clerk** (Judge Hoar).
13. **#24-14 V.R.C.P. 5(h), 2020 V.R.E.F. 11(g) – Electronic certificate of service** (Judge Toor)  
Mr. Rose to update in January meeting.
14. **#25-01 V.R.C.P. 79.1(f) – Automatic withdrawal upon the entry of final judgment; expiration of time for appeal.**

**#23-05 and #24-09 V.R.C.P. 79.1 – Client contact information with motion to withdraw and substitution of counsel without notice and motion**

Mr. Rose to update in January meeting.

There being no further business, the meeting adjourned at 11:35 a.m.

Respectfully submitted,  
Pamela A. Vesilind, Reporter