

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE
AGENDA FOR MEETING OF JANUARY 9, 2026
9:00 a.m. – 12:00 p.m.**

- 1. Approval of draft minutes of November 11, 2025, meeting.**

PROPOSED RULES OUT FOR COMMENT

None at this time.

AMENDMENTS FOR CONSIDERATION AS PROPOSED RULES

Assigned items for consideration in this meeting.

- 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).

Discuss a redrafted version (Ms. Wetherell, Ms. Bent), with Reporter’s Notes (Ms. Vesilind).

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

Discuss a redrafted version (Judge Shafritz, Ms. Wetherell)

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

Discuss a redrafted version (Ms. Bent), with Reporter’s Notes (Ms. Vesilind).

- 5. #25-06 V.R.C.P. 79(a) – Records kept by clerks** (Trial Court Operations).

Update from chair

POTENTIAL AMENDMENTS IN PROGRESS OR FOR FURTHER REVIEW

Unassigned items and assigned items for consideration in future meetings.

- 6. #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.

Suggestion to abandon the electronic certificate of service and require an individually created certificate of service with each electronic filing. 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).

- 7. #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; please see memorandum provided with agenda.

8. **#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.

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.” Yet under Small Claims Rule 3(e)(1) “The plaintiff must mail a copy of the motion [for default judgment] and affidavit to the defendant's last known address.” Rule no longer includes the entry of default step that exists in the federal rule. See V.R.C.P. 55(a).

Judge Spero has observed some plaintiffs misinterpreting Rule 5’s service requirement for defendants who have not appeared. Should Rule 5 be amended to clarify that this exception refers to “parties against whom default judgment has been entered”?

9. **Amendments to Rule 7(a)(7) of the 2020 Vermont Rules for Electronic Filing, and Rule 32(a)(1)(E) of the Vermont Rules of Appellate Procedure**

Appoint subcommittee consisting of Judge Shafritz and Mr. Rose to address potential amendment to e-filing rules and to V.R.A.P. 32(a) to address use of links and bookmarks to filed content. The subcommittee would address the rule change for both committees.

10. **#24-03 V.R.C.P. 55 – Citation of legal authority for out-of-state service** (Judge Toor).
Unassigned.

As with the federal rule, V.R.C.P. 4(e) authorizes two methods of out-of-state service:

- in the same manner as if such service were made within [Vermont]; or
- in any manner of service effected under the laws of the state in which the person is served.

The committee agreed that no rule change is necessary, subject to a polling of judges by Judge Hoar, who reported in January 2025 that most judges prefer a rule. The committee then decided that if it were to recommend adoption of this requirement, Rule 55 (Default Judgment) would be the proper placement.

Language proposed by Mr. Keyes:

(a) Motion for Default Judgment. When a party against whom a judgment for affirmative relief is sought by complaint, cross-claim, counterclaim, or other pleading has failed to plead or otherwise defend, the party seeking the affirmative relief may file a motion for a default judgment. A motion that relies on service outside the state effected under the law of the place of service must specify the statute or rule of the place of service that authorizes the manner of service.

11. **#25-04 V.R.C.P. 15(a) – Reword leave to amend provision for clarity** (Attorney Alexander Dean).

Unassigned.

Existing: “Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.”

Proposed: “Otherwise, a party may amend the party's pleading only by leave of court, with leave to be freely given when justice so requires; or by written consent of the adverse party.”

12. **#25-07 V.R.C.P. 26(c)(5), V.R.C.P. 30(c) – Protective Orders in Discovery**
(Rules of Evidence Committee)

Unassigned.

Whether the VRE Committee's proposed amendments to VRE 615 (Exclusion of Witnesses) to conform with newly amended FRE 615 will impact Rule 26(c)(5) (Protective orders in Discovery) or Rule 30(c) (Depositions on Oral Examination)

13. **#25-03 V.R.C.P. 4.1(c) and (d) – proposed amendments to the attachment process**
(Attorney Robbason).

Unassigned.

Proposed language:

(c) Same: Form. The writ of attachment shall be dated and signed by the clerk. It shall contain the name of the court, ~~the names and residences of the parties, the date of the complaint,~~ and the order of approval issued under subdivision (b) of this rule;

(d) Same: Execution; Service.

(1) *Execution.* The plaintiff's attorney shall deliver to an officer or to a person specially appointed to make the attachment two copies of the writ as issued by the Clerk ~~the original or a certified copy of the writ, a copy thereof,~~ and a list of property exempt from attachment by statute. . . .

(2) *Proof of Execution.* The officer or other person making an attachment shall make proof of its execution by setting forth on one ~~the original or a certified~~ copy of the writ, or on a paper attached to it for that purpose,

...
(4) *Filing.* The plaintiff's attorney shall file the writ in the form it was served and with notations (if any) of the serving officer or other person thereon, and all proofs of execution with the court as provided in Rule 4(i) or 5(d) and (e).

14. **#24-11 V.R.C.P. 4(d)(1)(ii) Service on incompetent persons** (Probate Rules Committee).
Unassigned.

The 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.

15. #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).

Assigned to Reporter for drafting.

The subcommittee of Chair Asay, Mr. Dumont, and Judge Hoar met to reach a consensus on the following issues. In the May meeting, Ms. Asay presented the subcommittee’s suggestions:

1. Shift responsibility from clerk to court in two areas: taxation of costs (V.R.C.P. 54(e)), and preparation of judgment order (V.R.C.P. 58(b)).
2. Delete statement in Rule 54(a) that costs shall be included in every judgment awarding monetary relief.
3. Amend Rule 54(d)-(g) so that the default is that all requests for costs shall be verified and filed within 14 days of entry of judgment. Other parties to have 14 days from service in which to respond.
4. Amend Rules 58(b) & (d) so that the default procedure is that the court (not the clerk) prepares the form of judgment in all cases but in all cases the court has the discretion to order the parties to do so. Existing rule gives 7 days to respond when a party submits them. Subcommittee did not consider making this 14 in conforming with cost process above.
5. Amend rules (Rule 58(c)?) to state that entry of judgment not be delayed for taxing of costs or award of attorney’s fees; add that in all cases the court has the discretion to delay entry of judgment for taxing of costs and/or award of attorney’s fees.

TRAILING ITEMS

16. #20-13. Service of Default Judgments: Proposed Order Amending Rules 55, 62(b), and 80.1(f). See [Proposed rule for comment](#). Tabled at the March 2024 meeting.

NEWS

17. News from Efiling Committee
Mr. Rose and Judge Shafritz to report.

18. News from Civil Division Oversight Committee
Ms. Damone to report.

NEW BUSINESS

19. New business for the March meeting.