VERMONT SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE
MINUTES FROM MEETING OF MARCH 6, 2026
9:00 a.m. – 12:00 p.m.

Committee Members in Attendance: J. Barra, J. Shafritz, Bridget Asay, Greg Weimer, Jean Murray, Allan Keyes, Merrill Bent, Anne Damone, Jonathan Rose, Lisa Shelkrot
Others present: J. Eaton, Supreme Court liaison; Emily Wetherell, Deputy Clerk, Pamela Vesilind
Absent Members: Mark Werle

Meeting started at 9:04am

1. Approval of draft minutes of January 7, 2026, meeting.

The committee agreed to vote by email after the meeting. After the meeting, a majority of members voted in favor of approving the minutes.

PROPOSED RULES OUT FOR COMMENT

2. #25-05 V.R.E.C.P. 5 – Requiring statement of questions be filed with notice of appeal/cross-appeal

PROPOSED-VRECP5-FORCOMMENT.pdf

Comment period closes April 13; for discussion in May.

3. #24-10 V.R.C.P. 80.12 and 81(a) - Post-Conviction Relief

PROPOSED-VRCP80.12andVRCP81(a)-FORCOMMENT.pdf

Comment period closes April 13; for discussion in May.

AMENDMENTS FOR CONSIDERATION AS PROPOSED RULES
Assigned items for consideration in this meeting.

4. #26-01 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

Mr. Rose explained that although there was previously a technological impediment to having links in documents, the electronic filing system now allows bookmarks and other kinds of internal links to be included in documents. The subcommittee met with the member of the bar that suggested this change. A proposed draft was circulated to the committee amending the rule to allow internal bookmarks (like links from the table of contents). Ms. Wetherell explained that the efiling rules committee meets in a week and can vote on the parallel efiling rule so that both rules have the same requirements. Mr. Rose will report to efiling rules committee.

Mr. Rose moved to send rule to Court to send out for comment; J. Barra second; All voted in favor with no opposition.

5. #24-03 V.R.C.P. 55 – Citation of legal authority for out-of-state service (Judge Toor).

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 previously 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 and Judge Shafritz:

(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.

J. Shafritz presented the suggested amendment that was drafted with the help of Mr. Keyes. J. Shafritz explained that parties file motions for service based on out-of-state rules and court needs to assure itself that service is completed properly. It can be complicated and time-consuming to find the applicable law and determine if satisfied. The proposal puts the burden on the movant to provide the statute or rule along with the motion.

J. Barra expressed support for the proposal and explained that it would provide judges with important information.

Mr. Keyes pointed out that the proposed amendment will require a Reporter's Note. J. Shafritz suggested that the notes explain the reason for the rule—providing the court with the necessary information that service was proper in the jurisdiction where it was completed, and indicated she would look at a draft if helpful.

J. Shafritz moved to ask Court to send the proposal out for comment; J. Barra second. All voted in favor. No opposition.

POTENTIAL AMENDMENTS IN PROGRESS OR FOR FURTHER REVIEW

Assigned and unassigned items for potential discussion or for assignment and 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.

Suggestion to abandon the electronic certificate of service and require an individually created certificate of service with each electronic filing. Under VRCP 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 provision of 2020 V.R.E.F. 11(g).

Mr. Rose explained that this suggestion came from J. Toor back in 2024. J. Toor sought to return to the requirement a separate certificate of service be provided along with every filing. Currently, when service is made on an efiler by an efiler, there is a checkbox that is made and no certificate of service is provided. J. Toor's concern was mostly related to situations involving self-represented litigants and the rules do require a separate certificate of service if there is a party that is not an efiler. The Efiling rules committee elected not to make a change to rule although the system was changed to default to "Efile and Serve" and the language of check box was changed. Mr. Rose explained that judges or staff can look into whether there was service through efiling.

J. Shafritz explained that what does not show is whether someone was properly served. The judicial assistant can dig into the envelope and see if the correct parties were chosen as the service contacts. J. Shafritz pointed out that a certificate of service is not the same as proof of service.

J. Shafritz suggested that the form require parties to identify the address or email address used. It appears the new form does require this.
600-00264 Certificate of Service (01.2026).pdf

Ms. Damone explained that the issue is usually that self-represented litigants are not aware of the need to provide service on all parties.

Mr. Rose suggested that no action needed at this time. The committee agreed.

7. #26-02 Possible Revision to Service-First Filing under V.R.C.P. 3

Request from Judge Richardson and CDOC: *In my capacity as Chair of the CDOC, I have been asked by the Committee to recommend that the Civil Rules Advisory Committee consider revisiting the service-first method of initiating a lawsuit under Rule 3(a). Our Committee has been reviewing this issue based on feedback from court staff and practitioners, and we believe that the efficacy and purpose of service-first filing method may have shifted and would be worthy of review by your Committee.*

In support of this recommendation to examine the Rule, we would note the following issues that have come up during our review from a Civil Oversight perspective:

1) *The Enterprise Justice System makes processing answers filed before the complaint more difficult. It requires additional staff time and coordination to ensure that an answer filed before a complaint is eventually filed and linked to the electronic docket generated after the complaint is filed. While we have sought to increase training and awareness, it is an inherent issue in the system against which there are limited safeguards.*
2) *The service-first method appears to be primarily used at present in collections and landlord/tenant cases where there has historically been an imbalance in resources between plaintiffs and defendants to access legal counsel. This process can add a level of confusion for defendants already with access to justice issues.*
3) *The Vermont rule is inconsistent with federal practice and what we understand to be the majority of state courts that require a complaint to be filed prior to service. See S.Glover, 35 Will. Mitchell L.Rev. 1115, 1119 (2009) (noting that 41 states and the federal courts require a complaint to be filed before service may be made on a defendant).*
4) *Court staff are receiving questions from Defendants seeking information about complaints and summons and are hearing concerns that such documents may be a scam or fraud due to the absence*

of case information in the public portals or available from court staff. As with point 2, such fears may undermine a defendant's participation in the process or create unnecessary doubt in the system.

In an effort to address some of these concerns, our Committee has elected to make changes to the summons form to incorporate some awareness of service-first commencement (please see attached copy), but we also believe that the issue warrants more substantial review.

Thank you and the Committee for your consideration of this matter, and please let me know if you need any more information from myself or the Civil Division Oversight Committee.

Ms. Asay explained that this came from CDOC and reviewed the reasons for the recommendation from that committee as outlined above.

Ms. Damone indicated that she polled her colleagues and other clerks indicated that when people receive a complaint filed by service first people think it is scam and do not understand how a case can be initiated without court action. If they call the court, there is no record of the case. There is a sense that this is unfair to self-represented litigants.

Ms. Shelkrot wondered what portion of cases are initiated this way. Ms. Bent indicted that she has used this to get the attention of the other party without a formal court filing.

J. Shafritz indicated that there were not statistics but the process is seen in landlord-tenant cases with some frequency. J. Shafritz indicated Ms. Bent's purpose could be accomplished by a demand letter. J. Shafritz thought committee might want to hear from attorneys that use this method. She thought it might be used if plaintiff thought service would take a long time. Ms. Murray indicated that this is used in landlord-tenant cases because sometimes it is difficult to effect service, but the most-common reason is because the thought is that it gives tenants an opportunity to figure things out before a formal case is filed. Ms. Murray explained that tenants often think that it is a scam because the court cannot confirm that the case is legitimate. This means default is much more common in these cases. Ms. Murray would want to listen to those who use this method but also to defendants impacted by this process. She is interested in whether default is more common with this kind of case initiation. She is concerned about fairness. J. Shafritz indicated that there may not be time for a demand letter before the time required to initiate a case. Ms. Murray indicated that this happens in collection cases as well. Ms. Murray requested that there be some data to support the discussion. Mr. Keyes pointed out that there will be no judiciary data on cases that were served and never filed, but attorneys might know. Mr. Keyes pointed out that there would need to be statutory amendment. 12 V.S.A. § 466. Ms. Shelkrot asked for data generally on how often this is used outside of the case types identified. If it is a tool being used, then may not want to eliminate that tool.

After some discussion Ms. Asay clarified the committee's follow-up requests. Ms. Asay will follow up with the Court Administrator to see if there is data on cases initiated by service and what portion of default cases are initiated by service first, especially for landlord-tenant and collections cases. Ms. Murray suggested Nadine Scibek as an attorney who files cases this way. J. Shafritz was not sure that judiciary tracks and thought maybe a survey of practitioners. She suggested Angela Zaikowski. Ms. Asay requested that committee members ask lawyers that they practice with about uses of the service-first method. Mr. Weimer indicated that there could be a survey to the bar if members wanted. Mr. Keyes agreed to help with phrasing the questions.

The matter will be discussed further in May.

8. #26-03 Potential Review of Pro Hac Rule to Require Contact Information for Attorney

See emails from Lynn Wdodwiak and Attorney Licensing.

Ms. Asay asked if there was a volunteer to look into this further. Mr. Weimer said V.R.C.P. 79.1 requires association with local counsel and understood that service on local counsel is sufficient for service on the pro hac vice under the rule. Ms. Shelkrot indicated that she thought that attorneys are required to enter notice of appearance. Ms. Bent volunteered to look into it for May meeting.

9. #23-01 V.R.C.P. 28(a)(1) and (2) – Deposition oaths
Ms. Bent will provide update in May.

10. #25-06 V.R.C.P. 79(a) – Records kept by clerks (Trial Court Operations).

Update from chair

Ms. Asay explained that the after-hours orders get issued and signed during non-regular work hours. The question is what date is supposed to be made on the docket.

Mr. Keyes wondered if there are temporary orders that are not emergencies and whether language should be temporary emergency after-hour orders. Mr. Keyes noted that Reporter's Notes should refer to stalking orders too and Ms. Wetherell pointed out that stalking orders are not outside regular hours in statute. Ms. Damone wondering if the orders should be specified in rule. J. Barra said if list them in the rule, then have to keep amending rule. Attempt was meant to generically define them to avoid this. Ms. Asay noted that this rule is for court staff and can hopefully be accompanied by instructions of how to implement.

J. Barra move; Ms. Damone second to send to the Court to send out for comment. All in favor. No opposition.

11. #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 May.

12. #24-12 V.R.C.P. 5(a), 77(d), and 55 – Service and notification of parties who have not appeared (Judge pero).

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"?

Ms. Murray will provide update in May.

13. #25-04 V.R.C.P. 15(a) – Reword leave to amend provision for clarity (Attorney Alexander Dean).

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."

Mr. Werle sent a memo regarding this suggestion. Item will be discussed in May.

14. #25-07 V.R.C.P. 26(c)(5), V.R.C.P. 30(c) – Protective Orders in Discovery (Rules of Evidence Committee)
Chair to report.

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)

Ms. Asay provided background on interplay between V.R.E. 615 and V.R.C.P. 30. Essentially, V.R.C.P. 30 incorporates the sequestration rule in V.R.E. 615 and therefore a court would not have any discretion if sequestration was requested. Mr. Keyes circulated a memo explaining that when FRCP 30 was amended to make sequestration not apply to depositions, Vermont rule did not follow federal rule. The question for the committee is whether Vermont wants to follow federal model and clarify that sequestration does not apply in deposition process. J. Shafritz asked if Evidence Rules had a position on it. Ms. Asay did not understand that they were asking for a particular result but just pointed out inconsistency.

Mr. Rose indicated that he supported following the federal example. Ms. Shelkrot indicated that the issue of who is allowed to be in deposition does arise but there are no rules surrounding this. J. Shafritz noted that it really comes down to whether there is discretion for a protective order under Rule 26 versus sequestration which does not provide discretion. J. Shafritz indicated it seemed to make sense to follow federal example. The committee generally supported adopting the federal model.

Ms. Asay will work with reporter to bring language to committee for next month.

15. #25-03 V.R.C.P. 4.1(c) and (d) – proposed amendments to the attachment process (Attorney Robbason).

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).

Ms. Bent to report in May.

16. #24-11 V.R.C.P. 4(d)(1)(ii) Service on incompetent persons (Probate Rules Committee).

Chair to report.

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.

Ms. Asay indicated that the probate rule was not changed, and this item can come off the agenda for the future.

17. #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, the Committee adopted the subcommittee's proposed approach and referred to the Reporter for drafting.

1. Shift responsibility from clerk to court in two areas: taxation of costs (VRCP 54(e)), and preparation of judgment order (VRCP 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.

Ms. Asay asked for volunteers to help with implementation. Ms. Wetherell volunteered to help with drafting.

TRAILING ITEMS

18. #20-13. Service of Default Judgments: Proposed Order Amending Rules 55, 62(b), and 80.1(f). See Proposed rule for comment.

Ms. Asay indicated that this may come off the agenda and she will report at the next meeting.

NEWS

19. News from Efiling Committee

Mr. Rose reported that most-relevant item was the internal bookmarking already discussed. In addition, efiling will soon be implemented for matters before hearing panels of the PRB.

20. News from Civil Division Oversight Committee

Ms. Damone reported that biggest discussion was on the service-first initiation of a case. This was already discussed by committee.

NEW BUSINESS

21. New business for the May meeting.

Service by Sheriff
Ms. Asay indicated that she received a comment on the service by sheriff. The person asked why service couldn't be made by private investigator.

Ms. Murray proposed that it might be that sheriffs are not professionally doing their job and that she may be ready to look at the rule again. Ms. Bent also in favor of loosening rules to allow service by person other than sheriff. J. Shafritz pointed out that rule was just recently amended to allow service by someone other than a sheriff with court permission and suggested waiting to see if amendment will alleviate issues.

Ms. Asay will share feedback to the committee and members can consider whether to add this as a trailing agenda item.

Meeting adjourned at 10:55am