

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE  
AGENDA FOR MEETING OF May 1, 2026  
9:00 a.m. – 12:00 p.m.**

1. **Approval of draft minutes of March 6, 2026, meeting.**

**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**

Comment period closed April 13. Comments distributed for discussion (Cyr, LaRosa, Roy, Handel). Potential vote to recommend promulgation.

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

Comment period closed April 13. Comments distributed for discussion (J. Spero). Potential vote to recommend promulgation.

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**

Comment period closes June 7.

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

Comment period closes June 7.

6. **#25-06 V.R.C.P. 79(a) – Records kept by clerks (Trial Court Operations).**

Comment period closes June 7.

**AMENDMENTS FOR CONSIDERATION AS PROPOSED RULES**

Assigned items for consideration in this meeting.

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

Proposal from Civil Oversight is to eliminate service-first filings, so that all civil cases are initiated by filing. Original request is below.

In March meeting, committee members suggested seeking data from CAO regarding service-first filings. Chair Asay followed up and received a prompt response; unfortunately, that information is not tracked and thus there's no way to pull data about the number of service-first filings or their disposition (including whether defaults are more common).

Greg Weimer worked with VBA to put out bar survey on this issue. Results distributed. Greg also proposes that Committee consider extending time for service:

*I'd like to propose that we also consider extending the time to complete service if Rule 3 does away with commencing an action by service. The Federal rule allows 90 days to complete service. Some comments point out that filing first against difficult defendants requires extensions to complete service. Extending the time to 90 days would alleviate that to some extent. In addition, there is a real pitfall that many people don't know. If one files a diversity action in federal court in VT you don't*

*get the 90 days under federal rule 3 to complete service, you get Vermont's 60 days to complete service, due the Erie doctrine and the issue of whether the statute of limitations is a procedural or substantive law question. Making the time to complete service under both rules the same would resolve that issue.*

Allan Keyes has proposed draft language.

***Original 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.*

**8. #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**

Memo and proposal from Jon Rose and Judge Shafritz distributed.

## POTENTIAL AMENDMENTS IN PROGRESS OR FOR FURTHER REVIEW

Assigned and unassigned items for potential discussion or for assignment and consideration in future meetings.

### 9. #26-03 Potential Review of Pro Hac Rule to Require Contact Information for Attorney

Ms. Bent to update on suggestion to require pro hac motions to include contact information for attorney.

### 10. #23-01 V.R.C.P. 28(a)(1) and (2) – Deposition oaths

Ms. Bent to update.

### 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.

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”?

### 12. #25-04 V.R.C.P. 15(a) – Reword leave to amend provision for clarity (Attorney Alexander Dean).

Memo from Mr. Werle distributed.

(original suggestion from 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.”)

### 13. #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 V.R.E. 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)

Committee generally indicated support in May meeting for amending V.R.C.P. 30 to track federal rule so that sequestration rules for trial do not apply to depositions (leaving question of attendees at depositions to protective orders under Rule 26).

**14. #25-03 V.R.C.P. 4.1(c) and (d) – proposed amendments to the attachment process** (Attorney Robbason).

Ms. Bent to report.

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).

**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).

Needs re-assignment 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.

#### **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 September meeting.**