

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE
ZOOM AGENDA FOR MEETING OF September 4, 2026
9:00 a.m. – 12:00 p.m.**

1. Approval of draft minutes of May 1, 2026, meeting.

RULES PROMULGATED (8/18/2026 ORDERS, EFFECTIVE 1/1/2027)

2. **#25-05 V.R.E.C.P. 5 – Requiring statement of questions be filed with notice of appeal/cross-appeal ([Link to Promulgation Order](#))**
 - Majority of committee voted in favor at May 1, 2026 meeting.
3. **#24-10 V.R.C.P. 80.12 and 81(a) – Post-Conviction Relief ([Link to Promulgation Order](#))**
 - Committee unanimously voted in favor at May 1, 2026 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 ([Link to Promulgation Order](#))**
 - On March 13, 2026, Committee on Rules for Electronic Filing voted to send proposed rule amendments to Court. Comment period closed on June 7.

PROPOSED RULES OUT FOR COMMENT

5. **#24-03 V.R.C.P. 55 – Citation of legal authority for out-of-state service (Judge Toor).**
 - Comment period closed June 7. Deferred from May meeting. No comments received.
 - Potential vote to recommend promulgation.
6. **#25-06 V.R.C.P. 79(a) – Records kept by clerks (Trial Court Operations).**
 - Comment period closed June 7. Deferred from May meeting. No comments received.
 - Potential vote to recommend promulgation.

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**
 - Continuing discussion from May meeting about eliminating service-first filings (Civil Division Oversight Committee)
 - Extend post-filing service deadline to 90 days (Weimer, Keyes)

- Change deadlines for filing Answer (?)
- Judge Shafritz to update from Civil Oversight.

Summary of Proposal

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. See Results (results circulated too late for review at the May meeting). 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.

See Allan Keyes 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 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, #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; Automatic withdrawal upon the entry of final judgment; expiration of time for appeal. (Jon Rose and Judge Shafritz)

- Memo and proposal from Jon Rose and Judge Shafritz.

9. #23-01 V.R.C.P. 28(a)(1) and (2) – Deposition oaths

- See report from Ms. Bent for proposed language.

10. #26-06 V.R.C.P. 80.5(k) housekeeping amendments

- a. **Housekeeping Recommendation:** Update 80.5(k) reference to “16.3 (Alternative Dispute Resolution)” to be “16.3 (Mediation)” because V.R.C.P. 16.3 was amended some time ago and is now titled “Mediation.” (Emily Wetherell)

- Rule 16.3 is titled “Mediation”

- b. **Housekeeping Recommendation:** Update 80.5(k) reference to “7(a) (Pleadings Allowed; Form of Motions)” to be “7(a) (Pleadings)” (Diaz)

- Rule 7 is titled “Pleadings Allowed; Motions.” Rule 7(a) is titled “Pleadings.” Rule 7(b) is titled “Motions and Other Papers.” The reference in 80.5(k) to “7(a) (Pleadings)” avoids confusion about whether Rule 7(b) is excluded from applicability by 80.5(k).

- c. Full Text of Rule:

Rule 80.5(k): “Applicability of Civil Rules. The following rules shall not apply to proceedings under this rule: Rules 3 (Commencement of Action), 4 (Process), 4.1 (Attachment), 4.2 (Trustee Process), 4.3 (Arrest), 6 (Time), **7(a) (Pleadings Allowed; Form of Motions)**, 8 (General Rules of Pleading), 9 (Pleading Special Matters), 10(b) (Form of Pleadings), 12 (Defenses and Objections), 13 (Counterclaim and Cross-Claim), 14 (Third-Party Practice), 15 (Amended and Supplemental Pleadings), 16.1 (Complex Actions), **16.3 (Alternative Dispute Resolution)**, 18-24 (Joinder and Parties), 38-39 (Jury Trial), 41(a)(1) (Voluntary Dismissal by Plaintiff), 47-51

(Jurors and Trial), 53 (Masters), 55 (Default), 56 (Summary Judgment), 57 (Declaratory Judgment), 58 (Entry of Judgment), 64 (Replevin), 65 (Injunctions), 65.1 (Security), 66 (Receivers), 67 (Deposit in Court), 68 (Offer of Judgment), 69 (Execution), 70-76 (Judgments, Process, Appeals), 80.1-80.2 (Mortgage Foreclosure and Naturalization), 80.4 (Habeas Corpus), 80.6 (Traffic and Municipal Ordinance Bureau), and 80.7 (Immobilization and Forfeiture). The remaining Civil Rules do apply, provided that where the court finds that a procedure provided for in those rules would be inconsistent with the summary procedures contemplated by statute, it may order that a different procedure be followed. In case of conflict between this rule and another Civil Rule, the provisions of this rule shall govern.”

POTENTIAL AMENDMENTS IN PROGRESS OR FOR FURTHER REVIEW

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

11. #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.

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

- To be discussed at November 6, 2026 meeting (Judge Shafritz and Jean Murray)
- 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”?

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

- See Memo from Mr. Werle.
- Original suggestion from 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.”)

14. #25-07 V.R.C.P. 26(c)(5), V.R.C.P. 30(c) – Post-2026 V.R.E. 615 Amendments and Protective Orders in Discovery

(Rules of Evidence Committee)

- See Memo from Jay Diaz.
- Whether the amendments to VRE 615 (Exclusion of Witnesses) ([Link to Promulgation Order](#)) 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 VRCP 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).

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).

- Postpone to November 6 meeting.
- Subcommittee of Chair, 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. Chair to report.
 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.

16. #26-04 V.R.C.P. 41(b)(1)(ii) – Involuntary Dismissal Deadlines

- See Memo from Jay Diaz.
- Whether the asymmetrical deadlines in V.R.C.P. 41(b)(1)(ii) should be made consistent.

- New issue before the Committee based on commentary and request from Judge Barra, Judge McManus, and Stephen Crowley.

17. #26-05 Potential V.R.E.C.P. amendments due to Act 175, section 7 (Emily Wetherell)

a. Potential assignment to Committee member or reporter. Act 175

b. Act 175, section 7, says the following; any V.R.E.C.P. amendments necessary Full Text of Act 175 S. 7, as amended:

(k)(1) The Secretary may enter into an agreement with the owner of a POTW to delegate to the owner of the POTW authority under this title to regulate pretreatment discharges to the POTW. An agreement entered into by the Secretary under this subsection shall authorize the owner of the POTW to regulate and enforce pretreatment discharges to the POTW consistent with the authority set forth in 40 C.F.R. Part 40, including the establishment of applicable civil, criminal, or administrative penalties for the violation of pretreatment standards or requirements. The owner of a POTW that the Secretary enters into an agreement with under this subsection may, as part of the agreement, set application fees and other fees necessary for the regulation of a pretreatment discharge to the POTW. The Environmental Division shall have the same jurisdiction to review the actions of the owner of the POTW delegated pretreatment authority by an agreement under this subsection and to hear appeals as the Environmental Division's jurisdiction over the Secretary's actions. The jurisdiction of the Environmental Division shall be construed broadly with respect to review of the actions of an owner of a POTW delegated pretreatment authority under this subsection.

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](#). Tabled at the March 2024 meeting.

NEWS

19. News from E-filing Committee

- Mr. Rose and Judge Shafritz to report.

20. News from Civil Division Oversight Committee

- Judge Shafritz to report.

NEW BUSINESS

21. New business for the November meeting.