

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE  
AGENDA FOR MEETING OF JANUARY 5, 2024**

The Civil Rules Committee will meet virtually at 9:00 a.m., Friday, January 5, 2023, to consider the following agenda:

**1. Approval of draft minutes**

**ACTION ITEMS**

**SUGGESTED AMENDMENTS FOR COMMITTEE CONSIDERATION as PROPOSED  
RULES**

**2. # 23-9.1. Suggested amendment of Rule 6 due to delays in service by regular mail (Judge Tomasi).**

Dumont draft of 11.3.2023

- Chair Keyes to report any comments from Criminal, Family or Probate.
- Judge Hoar / Civil Oversight.
- Continued committee discussion.

**3. # 23-8. Updating Declarations. Rule 11**

Act No. 46, Sec. 4 amends 4 V.S.A. § 27b (formerly “Electronically Filed Verified Documents,” changed to “Self-Attested Declaration In Lieu Of Notarization”) to remove the limitation that only registered electronic filers can use declarations -- The authorization to use a declaration now applies to the filing of “any document,” with limited exceptions.

Current Rule 11(e) (Use of Declaration in Place of Notarization) specifically “does not apply when an oath, affidavit, or notarization is required by statute.”

- Mr. Dumont to offer suggested revisions to Rule 11 to conform to new statute. -- Also to consider whether to apply rule to (unfiled) discovery responses.
- Committee discussion

**4. # 23-5. Suggested amendment to V.R.C.P. 79.1 to provide client contact information with motion to withdraw.**

Proposal of Civil Oversight suggesting amendment to require lawyers who seek to withdraw provide client contact information.

“A common problem with lawyers’ motions to withdraw is that they do not provide the court with their client’s mailing address, despite the fact that we are required to send the client notice of the hearing directly. V.R.C.P. 79.1(f).”

- For continued discussion, including issues of privacy of client contact information.

**5. # 23-16. Rule 4. Service by any adult not a party.**

(Suggestion of Senator Hasim )

“The genesis of this bill comes from a number of constituents who have expressed growing frustration with the increasing delays in service from at least two different sheriffs offices. I suspect a rule change to allow for non-law enforcement to serve civil process will help expedite the initiation of different types of cases.”

- For committee discussion and possible action.

**6. #23-15. V.R.A.P. 28 cross reference error.**

Rule 28(g)(1) has an obsolete cross-reference to Rule 32(a)(7) instead of current Rule 32(a)(4) (as reorganized and amended 2021)

Draft proposed V.R.A.P. 28 update.

- For committee discussion and possible action.

**7. #23-13 Obsolete reference in V.R.S.C.P. 9**

V.R.S.C.P. 9 refers to a now-abrogated form that was in the V.R.C.P. Appendix of Forms.

- For committee discussion and possible action.

**OTHER SUGGESTED AMENDMENTS FOR POSSIBLE FURTHER REVIEW.**

**8. # 22-6. Rules 16.2, 16.3, 26(f), A.O. 39 and the standard case management order.**

Proposal of Civil Division Oversight Committee.

**1. Should AO 39 (Alternative Dispute Resolution Civil Actions) be updated?**

- Ms. Badgewick to report with input from Ms. Damone

**2. Should pretrial-conference, mediation, and meet-and-confer rules be updated to conform to current practice and to allow simplification and better usefulness of the so-called “Discovery - Alternate Dispute Resolution Stipulation”? Issues of scheduling of trial-readiness, close of discovery, and summary judgment under discussion.**

- Mr. Weimer to report.

**9. # 23-7. Rule 54 & 58 entry of judgment and taxation of costs.**

- Judge Hoar to report.

**10. #23-14 V.R.S.C.P. 5 Motions in Small Claims Court**

Should Small Claims Rule 4 state how and when to oppose a motion?

- For possible further review.

**11. #23-17 (Environmental Rule 5(b)(4)(A) Appeal from an Appropriate Municipal Panel**

Issues of delay and confusion re: identifying, serving, and documenting service on applicants and on participating parties entitled to notice of appeal to Environmental Court in zoning cases.

- For possible further review

**PROPOSED RULES**  
**(Comment period expired December 12.)**

**For preliminary discussion**

**Further comments to be solicited at January 14, 2024 seminar in Montreal**

**12. # 22-10. Proposed Order Amending V.R.A.P. 3(e) and 27(a)(3) out for comment**

The proposed amendment to V.R.A.P. 3(e) makes the appellee's docketing statement optional. In many appeals, the appellee's docketing statement is cumulative and not necessary for the Court or parties. Although the filing is no longer mandatory, as a matter of practice an appellee should consider whether filing one is useful in a particular case.

The proposed amendment to V.R.A.P. 27(b)(3) allows a reply in support of a motion. This is consistent with the federal appellate rule, as is the time allowed for the reply—7 days after service of the response unless otherwise ordered. The time to reply is kept short to avoid delay in resolution of motions but can be extended under V.R.A.P. 26(b). This proposed amendment does not affect V.R.A.P. 27(b)(1), which allows the Court to act on a motion for a procedural order without notice to, or response from, other parties.

- Ellie Bertwell 11/16/2023 (suggesting clarification of the due date of the docketing statement)
- Eleanor L.P. Spottswood 3/3/2023 (enthusiastic support)
- Benjamin D. Battles 10/18/2023 (provide clarity that will benefit the bench and bar, particularly members of the bar who infrequently practice at the Vermont Supreme Court, and pro se litigants)

**13. # 23-6. Proposed Order Amending V.R.C.P. 11(a) out for comment**

The proposed amendment Rule 11(a) requires every pleading, written motion and other document that requires a signature to include the signer's telephone number. The primary purpose of this change is to assist self-represented litigants who wish to contact an opposing attorney by phone.

No comments.

**14. # 20-13. Proposed Order Amending V.R.C.P. 4(c), (d), (e), and (f), 55, 62(b), and 80.1(f) out for comment**

The proposed amendments to the caption and text of Rules 4(d) and 4(e) delete the references to "personal" service. Proposed Rule 4(d)(2) is amended to aggregate into a single subdivision the methods of service on the State of Vermont or any agency or officer thereof. Former Rule 4(f)(2), relating to mail service on an officer of the state as a statutory process agent, is moved to Rule 4(d)(2). The existing provision of Rule 4(d)(2), for service in false claims actions, is reworded for clarity with no change of meaning intended.

The proposed amendment recaptions Rule 4(f) to "Service by Mail Outside the State." The text is reorganized to clarify each step in the mail service process and, in some cases, to modify the requirements of the existing rule.

Proposed Rule 55(d) is added to require service of a default judgment against a party who has not appeared in the case.

New proposed Rule 55(c)(8) is added to allow the court to include in a default judgment the projected cost of service required by Rule 55(d).

The proposed amendment to Rule 62(b) states that execution against a party who has not appeared is stayed until the party to whom judgment was awarded serves the default judgment pursuant to new proposed Rule 55(d), which now specifies the method of service.

The proposed amendment to Rule 80.1(f) allows the court to include in a default judgment the projected cost of service required by Rule 55(d). The cost of initial service of the summons and complaint is presumptively a reliable measure of the projected future cost of service of the default judgment.

One recent comment received:

- Merrill E. Bent, Esq. 10/13/2023(The proposed rule change would impose additional burdens on parties who are doing the correct thing by seeking relief through the courts (as opposed to self-help). This would make it harder and more expensive when litigation is already prohibitively expensive for many, and access to the courts is a real concern for people without substantial means. If a Defendant does not want to be found—which is often the case—Plaintiff will have to go through the burden of attempting service, and then the expense of filing a motion for alternative service, even though the Defendant already has received due process with service of the complaint. And of course that expense would be multiplied if there is more than one defendant. The change would provide for more process than is due)

Three comments on original proposal:

- Rachel (Jones) Ljunggren. February 11, 2022 (The proposed rule will increase the cost of the residential foreclosure process and will result in additional delay. Amendments to V.R.C.P. 80.1 should be made to allow the reasonable costs incurred in effectuating service of process of the default judgment to be collected by the Plaintiff. The Committee should also consider adopting service of a notice by mail in place of service by a process server. Several states have adopted such process with success.)

- Cabot Teachout, December 27, 2021 (The proposed amendments to V.R.C.P. 55 impose undue and unfair burdens on plaintiffs in default judgment cases.)

- Brice Simon, December 15, 2021 (making it a requirement to serve it regardless of whether it is being enforced at that time is a good idea)

#### **15. # 23-2.1. Proposed amendment to delete Rule 9.2(c) (eviction).**

Rule 9.2(c) currently provides that the court may take appropriate action when there is sufficient evidence that a tenant has applied for funds from the Vermont Emergency Rental Assistance Program (VERAP). When all applications for this program are processed or funds exhausted the rule will be obsolete. Action deferred last meeting, when a few appeals remained to be processed and Due to some continued processing of applications, the Agency decided to release another “last” check run for VERAP on November 15<sup>th</sup>.

- Chair Keyes to report

**16. # 23-2.2. Proposed amendment to delete notice requirement of Rule 9.3(b) (foreclosure and replevin), and separate Proposed Order Abrogating V.R.C.P. 9.3 out for comment.**

Rule 9.3(b) requires the plaintiff in certain foreclosure and replevin actions to provide notice to homeowners of the availability and purpose of funds from the Vermont Homeowner Assistance Program (VHAP) on a form that includes sample request for stay.

Deletion of noticed requirements and abrogation of entire of Rule 9.3 deferred at last meetings. Applications are closed and the Agency expects to continue to process applications through January or - February 2024.

No comments

- Chair Keyes to report.

**OTHER REPORTS, NEWS, AND TRAILING AGENDA ITEMS**

**17. Saturday, January 13, 2024 “Winter Thaw” Seminar on Civil Rules in Montreal.**

Bonnie Badgewick, Bridget Asay, Judge Hoar, and Professor Vesilind are participating.

**18. ## News from E-filing, Civil Oversight, or Evidence Rules Committees?**

- Mr. Koeninger, Ms. Damone; Judge Hoar, and/or Ms. McAndrew to report.

**19. # 23-1. [Tabled] Remote Deposition oaths.**

- OPR Emergency Administrative Rules for Notaries Public and Remote Notarization have again been extended. Emergency Administrative Rules for Notaries Public and Remote Notarization (Eff. 9/5/2023; Expires 3/3/2024)

We are waiting to see whether permanent rules still in process will allow notaries in Vermont to administer oaths to individuals located outside the state. See V.R.C.P 28(a) (persons before whom depositions may be taken) does not include Vermont notaries where the deponent is outside the state.

**20. # 23-2.3. [CARES ACT notice] Rule 9.2(b) expires September 30, 2025**

Rule 9.2(b) implements the federal requirement of at least 30 days’ notice of termination of certain residential tenancies. [Section 4024(c)(1) of the federal Coronavirus Aid, Relief, and Economic Security Act Public Law No. 116-136, 15 U.S.C. § 9058(c)(1). (The lessor of a covered dwelling unit “may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate.”)]

We are monitoring the operation of this Rule and any changes in the federal law or its interpretation and need to advise the Court sufficiently in advance of September 30, 2025, whether to make Rule 9.2(b) permanent.

**NEW BUSINESS**

**21. Any new business for March agenda?**

**DATE OF NEXT MEETINGS:** March 1, May 3, June 7, September 6, November 1

**ADJOURN.**