

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE
AGENDA FOR MEETING OF NOVEMBER 3, 2023**

The Civil Rules Committee will meet virtually at 9:00 a.m., Friday, November 3, 2023, to consider the following agenda:

1. Approval of draft minutes of the meeting of September 22, 2023.

ACTION ITEMS

2. # 23-11. Emergency Amendment to V.R.S.C.P. 2 (jurisdictional limits) promulgated, effective August 14, 2023.

This emergency amendment was made over the summer to conform with an amendment to 12 V.S.A. § 5531 raising the jurisdictional limit for small claims proceedings to \$10,000.00, except for certain debt collection actions. The Committee has been directed to review any comments received and advise the Court whether the amendments should be revised or remain permanent. Comment period expired October 23, 2023. Chair Keyes to report on any comments. For committee discussion and action.

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

3. # 23-9.1. Suggested amendment of Rule 6 due to delays in service by regular mail.

For further discussion

- Mr. Dumont to offer suggested language to reinstate 3-day rule in certain cases.
- Judge Hoar to suggest whether internal “best practices” can assure fairness to self-represented litigants using mail, without rule change.

4. # 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 “any document,” whether or not filed, with limited exceptions. Rule 11(e) (Use of Declaration in Place of Notarization) applies to filings, and specifically “does not apply when an oath, affidavit, or notarization is required by statute.”

For further discussion

- Ms. Spero to offer suggested revisions to Rule 11 to conform to new statute. -- Also to consider how to apply rule to (unfiled) discovery responses.

5. # 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 further discussion, including issues of privacy of litigant’s contact information.

[Note: Vermont Rules for Public Access to Court Records, Rule 6(b)(9)(C) provides an exception to public access for “information provided to the court for notification purposes” in a proceeding seeking an order against stalking or sexual assault.]

- Ms. Spero to present options for a rule that would require withdrawing attorney to provide client’s contact information.

OTHER SUGGESTED AMENDMENTS FOR POSSIBLE FURTHER REVIEW.

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

Proposal of Civil Division Oversight Committee.

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”?

Should AO 39 (Alternative Dispute Resolution Civil Actions) be updated? Issues of scheduling of trial-readiness, close of discovery, and summary judgment under discussion.

- Ms. Badgewick and Mr. Weimer to report.

7. # 23-7. Rule 54 & 58 entry of judgment and taxation of costs. Judge Hoar to report

PROMULGATED RULES (FYI)

8. # 23-3. Promulgation Order Amending V.R.C.P. 64 (replevin), effective January 1, 2024. [PROMULGATED-VRCP64--STAMPED.pdf](#)
9. # 23-10. Promulgation Order Amending V.R.A.P. 28(e) and 30, effective January 1, 2024. [PROMULGATED-VRAP28\(e\)and30--STAMPED.pdf](#)
10. # 22-8. Promulgation Order Amending Administrative Order No. 11, effective January 1, 2024. [PROMULGATED-AO11--STAMPED.pdf](#)

PROPOSED RULES

(Comment period remains open until December 11.)

To be discussed at January 14, 2024 seminar (see new business, below)

11. # 22-10. Proposed Order Amending V.R.A.P. 3(e) and 27(a)(3) [PROPOSED-VRAP3\(e\)27\(a\)\(3\)--FORCOMMENT.pdf](#)
12. # 23-6. Proposed Order Amending V.R.C.P. 11(a) [PROPOSED-VRCP11\(a\)--FORCOMMENT.pdf](#)

13. # 20-13. **Proposed Order Amending V.R.C.P. 4(c), (d), (e), and (f), 55, 62(b), and 80.1(f)** [PROPOSED-VRCP4\(c\)\(d\)\(e\)\(f\)_55_62_80.1\(f\)--FORCOMMENT.pdf](#)
14. # 23-2.2. **Proposed amendment to delete notice requirement of Rule 9.3(b) (foreclosure and replevin), and Proposed Order Abrogating V.R.C.P. 9.3 out for comment.** [PROPOSED-VRCP9.2-9.3--FORCOMMENT.pdf](#); [PROPOSED-VRCP9.3--FORCOMMENT.pdf](#)

OTHER REPORTS, NEWS, AND TRAILING AGENDA ITEMS

15. #23-12 **Federal Rule amendments take effect December 1, 2023. Appellate Rules 2, 4, 26, and 45. Civil Rules 6, 15, 72, and new Rule 87.**

Mr. Weimer and Chair Keyes to report. [Congressional Package](#) (pdf)

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

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

17. # 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.

18. # 23-2.1. **Proposed amendment to delete Rule 9.2(c) (eviction).** [PROPOSED-VRCP9.2-9.3--FORCOMMENT.pdf](#)

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.

- Due to some continued processing of applications, the Agency has decided to release another “last” check run for VERAP on November 15th.

19. # 23-2.3. **Rule 9.2(b) expires September 30, 2025** [Public Law No. 116-136](#), [15 U.S.C. § 9058\(c\)\(1\)](#). .

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.

- Defer to January meeting.

NEW BUSINESS

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

Bonnie Badgewick, Bridget Asay, Judge Hoar are participating.

21. #23-13 Obsolete reference in V.R.S.C.P. 9

22. Any other new business for January agenda?

DATE OF NEXT MEETINGS.

January 5, March 1, May 3, June 7, September 6, November 1

ADJOURN.