

c/o LEGISLATIVE COUNSEL  
115 STATE STREET  
MONTPELIER, VT 05633-5301

PHONE: (802) 828-2231  
FAX: (802) 828-2424



Sen. Alison Clarkson, Chair  
Sen. Randy Brock  
Sen. Richard Sears Jr.  
Sen. Tanya Vyhovsky

Rep. Barbara Rachelson, Vice Chair  
Rep. Thomas Burditt  
Rep. Martin LaLonde  
Rep. Tristan Roberts

## STATE OF VERMONT

### Legislative Committee on Judicial Rules

JUDICIAL RULES

MINUTES

June 19, 2024

The Legislative Committee on Judicial Rules met on Wednesday, June 19, 2024, beginning at 12:00 noon in Room 10 of the State House. The meeting was also held virtually through Zoom and streamed on YouTube.

The following members were present in person and remotely:

Sen. Alison Clarkson  
Sen. Randy Brock  
Sen. Tanya Vyhovsky

Rep. Barbara Rachelson  
Rep. Martin LaLonde  
Rep. Tristan Roberts

Staff present:

Erik FitzPatrick  
Mike Ferrant

Legislative Counsel  
Committee Assistant

The Committee approved the minutes of its meeting from Monday, November 13, 2023.

The Committee first discussed the Court's new promulgation dates for judicial rules and how to correlate them with allowing sufficient time to comment by the Legislative Committee on Judicial Rules (LCJR). Attorney Wetherell agreed with the suggestion to coordinate promulgation dates with LCJR meeting times, and noted that it is helpful for the Court to know when LCJR is planning to meet so that it can adjust accordingly. Senator Clarkson suggested discussing a proposed annual meeting schedule at the fall LCJR meeting.

**Hon. John Treadwell, Superior Judge, Chair, Advisory Committee on Rules of Criminal Procedure, Vermont Supreme Court; Hon. Walter Morris (Ret.), Reporter, Advisory Committee on Rules of Criminal Procedure, Vermont Supreme Court.**

V.R.Cr.P. 41(b) and (c) (proposed December 12, 2023; promulgated May 6, 2024; effective January 1, 2025; not yet reviewed by LCJR).

Judge Treadwell first announced that Judge Morris was retiring and that his place as Reporter was being taken by Professor Shannon Heery of Vermont Law School. The Committee thanked Judge Morris for his 14 years of service, and he thanked the Committee for its work as well.

Judge Treadwell explained that a nontestimonial order (NTO) is a type of search warrant ordered for evidence that is nontestimonial in nature, such as an order for DNA testing or blood testing. In 2010, Rule 41 was changed to permit remote applications for search warrants by “reliable electronic means.” This proposal is to make a parallel change permitting NTO applications to be made remotely in the same manner as remote search warrant applications.

Judge Treadwell added that there had been no comments from the bar to the proposal, but many judges expressed appreciation so that law enforcement officers would be able to apply remotely instead of having to appear in person late at night.

Senator Clarkson commented that NTOs are equally important as search warrants so she was happy that the two are being made consistent.

Senator Brock asked if “reliable electronic means” was defined, and Judge Treadwell indicated where the definition was and read the wording to the Committee.

Senator Brock commented that with the increasing use of Artificial Intelligence there is a growing concern about deep fakes, so he asked if the Court was looking at this issue. Court Administrator Corsones answered that the Court had several committees examining the issue, and their work could be described to LCJR at a future meeting.

Representative Rachelson asked if other states had this rule, and Judge Morris answered that other states had it in statute rather than rule, so it is a familiar process in other jurisdictions.

The Committee had no objections to the rule.

**Hon. Kathryn Kennedy, Probate Judge, Chair, Advisory Committee on Rules of Probate Procedure, Vermont Supreme Court.**

V.R.P.P. 7(e), 7(d) (proposed November 6, 2023; promulgated February 5, 2024; effective July 1, 2024; not yet reviewed by LCJR).

Judge Kennedy explained that both rules are straightforward measures to permit more effective streamlining of probate proceedings. Currently, when a motion is filed, the court sets it for a hearing and requires opposition and objections to be filed seven days before the hearing. The changes to Rule 7 permit the court to rule on the motion without a hearing if no objection is filed.

Senator Vyhovsky asked if a large number of motions are decided without a hearing currently and whether the new rule might have an impact on the case backlog. Judge Kennedy answered that the Probate Division does not have the backlog issues that other divisions have, fortunately, and the new rule permits proceedings to move along expeditiously when appropriate.

The Committee had no objections to the rule.

V.R.P.P. 16.1(b), 16.1(d)(2) (proposed November 6, 2023; promulgated February 5, 2024; effective July 1, 2024; not yet reviewed by LCJR).

Judge Kennedy explained that the rule permits the court to limit mediation participants to parties and interested persons with an interest in the issue being mediated, and provides the option of in-person, remote, or hybrid participation in the mediation. Judge Kennedy added that the rule allows the court process to flow better and proceed more efficiently because the parties not involved in an issue do not need to be included in a mediation.

The Committee had no objections to the rule.

**Emily Wetherell, Esq., Deputy Clerk, Vermont Supreme Court.**

Attorney Wetherell said that she would be presenting the family rules because Judge McDonald-Cady was presiding over a jury trial.

V.R.F.P. 1(i)(2)(B) (proposed December 12, 2023; comments due February 12, 2024; not yet reviewed by LCJR).

Attorney Wetherell explained that the proposed rule is a purely technical update of outdated terminology related to persons with disabilities.

The Committee had no objections to the proposal.

V.R.F.P. 15(i) (proposed March 6, 2024; comments due April 26; not yet reviewed by LCJR).

Attorney Wetherell explained that the proposed rule is a purely technical repeal of a requirement that is obsolete because e-Cabinet registration is no longer used.

The Committee had no objections to the proposal.

**Hon. John Dooley (Ret.), Chair, Committee on Rules for Electronic Filing, Vermont Supreme Court; Emily Wetherell, Esq., Deputy Clerk, Vermont Supreme Court.**

Vermont Rules for Electronic Filing 5 (proposed April 10, 2023; reviewed by LCJR June 19, 2023; promulgated November 6, 2023; effective January 8, 2024).

Justice Dooley provided background on the Electronic Filing Committee, which was originally established to create a process for electronic filing and is now a permanent committee like the other rules committees.

Justice Dooley then described Rule 5, which LCJR looked at during its previous meeting, and which establishes procedures for electronic filing of motions, including the circumstances that lead to the acceptance and rejection of electronic filings. The Court has heard many comments and complaints about the system over the years, and this proposal was made in response.

Justice Dooley explained that the rule created a list of reasons for which a rejection could occur, such as for nonpayment of the filing fee. The proposal permits a rejected filing to be appealed to the Court Administrator, and it provides the opportunity to correct the filing issue and refile within seven days. There is a statewide initial review team at the Court, after which the filings are sent to the local court clerks for review. The rule includes a streamlined process for filing motions as well.

Senator Vyhovsky said that her constituents have made significant complaints about the e-filing system and its user accessibility, including that it requires printed and scanned forms instead of editable PDFs. Court Administrator Corsones replied that she had understood the system to be working well and that the Court has an Access Resource Center that offers assistance when users have problems. She offered to speak with Senator Vyhovsky about the issue further after the meeting. Attorney Wetherell added that there are many editable PDF forms on the Judiciary's website.

The Committee had no objections to the rule.

Vermont Rules for Electronic Filing 8(d) (proposed November 6, 2023; promulgated April 1, 2024; effective July 1, 2024; not yet reviewed by LCJR).

Justice Dooley explained that the rule requires each exhibit to be submitted as a separate document rather than as one compiled document.

The Committee had no objections to the rule.

Vermont Rules for Electronic Filing 2(c), 8(c) (proposed March 6, 2024; promulgated June 3, 2024; effective January 1, 2025; not yet reviewed by LCJR).

Justice Dooley explained that the rules establish procedures for filing exhibits such as audio and video recordings that cannot be filed electronically under the e-filing system.

The Committee had no objections to the rule.

**Allan Keyes, Esq., Chair, Advisory on Rules of Civil Procedure, Vermont Supreme Court; Professor Pamela Vesilind, Esq., Reporter, Advisory Committee on Rules of Civil Procedure, Vermont Supreme Court.**

V.R.C.P. 9.2 (proposed March 6, 2023; reviewed by LCJR November 13, 2023; promulgated February 5, 2024; effective July 1, 2024).

V.R.C.P. 9.3 (proposed October 10, 2023; reviewed by LCJR November 13, 2023; promulgated February 5, 2024; effective February 5, 2024).

Mr. Keyes explained that Rules 9.2 and 9.3 concern the Covid-era programs relating to mortgage foreclosure assistance, and that the programs have now been closed so the rules are being abrogated. The Committee had no objections, and Senator Clarkson thanked the Court for having the rules in place.

V.R.A.P. 3(e), 27(a)(3) (proposed October 10, 2023; reviewed by LCJR November 13, 2023; promulgated April 1, 2024; effective July 1, 2024).

Mr. Keyes explained that the rule makes the appellee's docketing statement optional and allows a reply to be filed in response to a motion made on appeal. The Committee had no objections.

V.R.C.P. 11(a) (proposed October 10, 2023; reviewed by LCJR November 13, 2023; promulgated April 1, 2024; effective July 1, 2024).

Mr. Keyes explained that the rule is purely technical, requiring a phone number on any court filing that requires a signature, and that it helps self-represented litigants (who do not have access to the Vermont Bar Association directory) have contact information for opposing attorneys. The Committee had no objections.

V.R.A.P. 28(g)(1); V.R.S.C.P. 9(b)(2)2 (promulgated April 1, 2024; effective July 1, 2024; not yet reviewed by LCJR).

Mr. Keyes explained that the rules are purely technical and simply update cross references. The Committee had no objections.

V.R.C.P. 4(c)–(f) (proposed October 10, 2023; reviewed by LCJR November 13, 2023; promulgated June 3, 2024; effective January 1, 2025).

Mr. Keyes explained the rule, which updates and clarifies the procedures for service of process in order to make them easier to understand. The rule also expands the definition of “certified mail” to include mail with return receipt requested, which reduces expenses for the parties, and clarifies that service by first-class mail must be mailed to the person's last known address.

The Committee had no objections.

V.R.C.P. 16.2 and 26(f) (proposed June 30, 2024; comments due August 3, 2024).

Mr. Keyes explained the proposal, which concerns procedures for scheduling orders and discovery conference orders, and adds “close of discovery” to the list of permissive contents in scheduling orders.

Representative LaLonde asked why the trial date did not remain in the scheduling order’s list of contents and Mr. Keyes responded that the trial date was removed because scheduling orders are ordinarily issued too early to know when the trial will be. He added that the Reporter’s Notes make clear that the trial date can be included under the catchall provision.

The Committee otherwise had no comments.

V.R.C.P. 80.1(b)(3) (proposed June 30, 2024; comments due August 3, 2024).

Because of the particular nature of foreclosure proceedings, Mr. Keyes explained, a specific answer must be used when a foreclosure complaint is filed. In such cases, the proposal requires use of the Verified Answer form on the Judiciary’s website. The Committee had no comments.

**Hon. Timothy Tomasi, Superior Judge, Chair, Vermont Rules for Public Access to Court Records, Vermont Supreme Court.**V.R.P.A.C.R. 6(a)–(c) (proposed October 10, 2023; reviewed by LCJR November 13, 2023; promulgated December 11, 2023; effective January 1, 2024).

Judge Tomasi explained the rules, which make various changes to the exemptions for public access to court records. The rules had already been promulgated, but the Court was able to make an amendment after promulgation that redrafts some of the language in order to improve clarity in response to Representative LaLonde’s concern expressed at the last LCJR meeting. The Committee had no objections, and Representative LaLonde and Senator Clarkson expressed their appreciation for the amendment.

The Committee adjourned at approximately 12:00 p.m.

Respectfully submitted,  
Erik FitzPatrick, Legislative Counsel