

**APPROVED**

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE  
Minutes of Meeting  
October 3, 2014**

The meeting was called to order at 9:15 a.m. in Room 216 Debevoise Hall, Vermont Law School, by William E. Griffin, Chair, with the following Committee members present: Eric Avildsen, Eileen Blackwood, James Dumont (by phone), Jean Giddings, Allan R. Keyes, Karen McAndrew, Hon. Dennis Pearson, Hon. Helen Toor, and Gregory Weimer. Also present was Professor L. Kinvin Wroth, Reporter.

**1. Minutes.** The draft minutes of the meeting of May 23, 2014, were unanimously approved as previously circulated.

**2. Status of proposed and recommended amendments.** Professor Wroth reported that

- Two comments had been received on the proposed amendments to V.R.C.P. 4(b), 4(l)(3)(H), 5(h), and Forms 1, 1B, 1C, 28, 29, sent out for comment on June 13, 2014. It was agreed to accept the suggested revision of proposed V.R.C.P. 5(h) that would allow a lawyer to certify service in the transmittal letter to the court, rather than in a separate certificate. On motion duly made and seconded, it was voted unanimously to recommend the proposed amendments, with that revision of proposed Rule 5(h), to the Court for promulgation.
- Three comments had been received on proposed new V.R.C.P. 9.1, 55(b)(7), and amendments to V.R.S.C.P. 3(e), (h)(7), sent out for comment on June 13, 2014. It was agreed to defer consideration of the comments until a later meeting.
- No comments had been received on proposed amendments to V.R.C.P. 43(e), 45, and new V.R.A.P. 24(a)(1)(B)(iii), sent out for comment on June 13, 2014.

In discussion, a motion duly made and seconded to substitute “when” for “before” in proposed V.R.C.P. 45(a)(4) failed by a vote of three in favor, six opposed. Professor Wroth agreed that the Reporter’s Notes explaining “before” should make clear that the notice should be given by the same means used for service of the subpoena. On motion duly made and seconded, there being no further discussion, it was voted, six in favor, three opposed, to recommend that the proposed amendment to V.R.C.P. 45(a)(4) be included in the recommended amendments as circulated. On motion duly made and seconded, it was voted unanimously to recommend the proposed amendments to the Court for promulgation as circulated.

- A substantial number of written comments had been received, and oral comments had been made at the September 19 VBA meeting, on proposed new V.R.C.P. 80.11, sent out for comment on June 13, 2014. In discussion, comments noted were the

possibilities that the process be voluntary, that personal injury actions be eliminated from the rule, that the threshold be lowered, that evictions be eliminated from the rule, and that the matter be left for consideration by the court at the pre-trial conference. On motion duly made and seconded, after discussion, it was voted unanimously to send the proposed rule and the comments received to the Vermont Bar Association Board of Managers, with the suggestion that it consider the comments received and advise the Committee of its conclusions on them.

**3. #s10-1/08-6/11-15/13-8—V.R.S.C.P. forms and proposed rule revisions.** Mr. Avildsen reported for the subcommittee (Mr. Avildsen, chair; Mr. Dumont; Ms. Blackwood; and Ms. Hobart) that he and Ms. Hobart were working on a revision of the Small Claims booklet and that the subcommittee would report at the next meeting.

**4. #10-5—Proposal to conform V.R.C.P. 6 to Federal Rules amendments.** The Committee considered drafts and charts prepared by Elizabeth Tisher, VLS 2014, incorporating the day-as-a-day rule in V.R.C.P. 6(a) and conforming other Rules provisions to the amendment. After discussion of a question regarding the number of days proposed in V.R.C.P. 59(e), on motion duly made and seconded, it was voted unanimously to refer the drafts to a subcommittee consisting of Mr. Keyes and Dumont to review all provisions and report their conclusions at a subsequent meeting.

**5. #s10-8/13-1—Adoption of amendments to ABA Model Code of Judicial Conduct.** After brief discussion of Judge Pearson's oral report, it was the consensus that the two subcommittees should proceed to develop a draft adapting the ABA Model Code revision to the Vermont Code of Judicial Conduct.

**6. #11-15—Trustee process against banks on certain federal agency direct deposits.** See item 3 above.

**7. #12-1—Event-witness amendment to V.R.C.P. 26(b)(4).** Ms. McAndrew and Professor Wroth will report at the next meeting.

**8. #12.6—V.R.P.C. 3.8(g), (h)—Conformity to Model Rules Amendments.** Ms. Blackwood reported for the subcommittee (Judge Pearson, Ms. Blackwood, chair, and Mr. Dumont and representatives of the Attorney General, the Defender General, the state's attorneys, and the private defense bar) that it would report at the next meeting.

**9. #13-4—Recent amendments of F.R.C.P. 37 and 45 and various F.R.A.P. Provisions.** See item 2 above.

**10. # 13-9—V.R.A. P. 1(b), 2, 26(b)—Consider in light of *In re D.D.*, 2013 VT 79, and *In re A.D.T.* 174 Vt. 369 (2002).** The Committee considered Professor Wroth's February 26 draft promulgation order with Reporter's Notes. After discussion of whether the cases cited in fact allowed an extension for cause or instead found no final order, a motion duly made and

seconded to adopt the draft, there being no further discussion, failed by a vote of one in favor, eight opposed.

**11. #13-11—V.R.P.C.—Consideration of ABA Ethics 20/20 revisions to ABA Model Rules.** Professor Wroth agreed to prepare a memorandum summarizing the ABA 20/20 changes and state adoptions of them for consideration at the next meeting.

**12. #14-1. Forms.** Chairman Griffin agreed to have a further conversation with the Court Administrator on the matter of eliminating the Appendix of Forms.

**13. #14-25. V.R.C.P. 51. Consider in light of *Straw v. VNA*, 2013 VT 102.** Professor Wroth agreed to prepare a draft for consideration at the next meeting.

**14. #14-36. V.R.C.P. 16.3. Consider simplification.** Judge Toor agreed to present her thoughts on this question for the next meeting.

**15. #14-47. V.R.C.P. 41(b)(1)(iii). Conform to Rule 3 60-day service requirement.** Professor Wroth agreed to prepare a draft for consideration at the next meeting.

**16. #14-58. V.R.C.P. 69. Consider practical effect.** Judge Toor agreed to present her thoughts on this question for the next meeting.

**17. #14-69. V.R.C.P. 74-75. Revise to clarify along lines of federal APA.** Judge Toor agreed to present her thoughts on this question for the next meeting.

**19. Date of next meetings.** It was agreed that the next meetings of the Committee would be at Vermont Law School on November 14, 2014, and January 30, 2015.

There being no further business, the meeting was adjourned at 11:50 a.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter