

**APPROVED**

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE  
Minutes of Meeting  
April 12, 2019**

The meeting was called to order at 9:10 a.m. in Room 216 Debevoise Hall, Vermont Law School, by Allan R. Keyes, Chair, with the following Committee members present: Eric Avildsen (by telephone), Bonnie Badgewick, Anne Damone, James Dumont, Karen McAndrew, and Gregory Weimer. Also present were Hon. Harold Eaton, Supreme Court liaison (by telephone) and Professor Emeritus L. Kinvin Wroth, Reporter.

**1. Minutes.** The draft minutes of the meeting of February 1, 2019, corrected to reflect that Mr. Dumont was present in person, were unanimously approved as previously circulated.

**2. Status of recommended, proposed, and pending amendments.**

A. V.R.C.P. 80.6. Professor Wroth reported that Judge Hayes, with thanks to the Committee for its careful consideration, had withdrawn the proposed amendments of V.R.C.P. 80.6 due to complications in obtaining legislative approval of necessary statutory changes. She hoped to present the proposals in some form during 2020 after legislative approval.

B. §12-1/14-10—Event-witness amendment to V.R.C.P. 26(b)(5)(A). Professor Wroth reported that the Committee's recommended revised amendments had been sent out for comment by the Court on December 17, 2018, with comments due on February 19, 2019. Chairman Keyes reported that both favorable and unfavorable comments had been received. Committee members noted that opposition to the amendments seemed to be based on provisions from earlier proposed amendments that had been omitted in the present version. On motion duly made and seconded, after discussion, it was voted unanimously to recommend to the Supreme Court that the revised amendments be promulgated as circulated.

C. §15-8. Special ad hoc committee on video/audio appearances and cameras in the court. Professor Wroth reported that:

(1) Proposed amendments to V.R.C.P. 43(a) et al., V.R.F.P. 17, and proposed A.O. 47, had been recommended to the Supreme Court for promulgation by the Special Committee on January 28, 2019, as sent out for comment, with the substitution of amendments to V.R.P.P. 43 and new V.R.P.P. 43.1 proposed by the Probate Rules Advisory Committee for the originally proposed amendment to V.R.P.P. 43(b). The Court had considered the recommended amendments and administrative order on April 1 and expects to take final action on them at its May 1 administrative meeting.

(2) The Supreme Court's revised proposed draft of V.R.C.P. 79.2 et al., sent out for comment on September 6, with the comment period extended by the Court until January 31,

2019, had been considered by the Court on April 1. The Court expects to take final action on the recommendations at its May 1 administrative meeting.

D. # 17-1. Allocation of residual class action funds. Request of Chief Justice for Committee review of ABA request concerning adoption of procedures providing for allocation of residual class action funds. The Committee's proposed amendment adding V.R.C.P. 23(g) to provide for the disbursement of residual funds remaining after satisfaction of all claims under a class action judgment or settlement had been recommended to the Court on April 11, 2018, for promulgation. On November 30, 2018, the Committee had renewed that recommendation, subject to discussions with the State Treasurer's office concerning the relation of the recommended rule to pending amendments to the Unclaimed Property Act (UPA), 27 V.S.A, ch.14. Chairman Keyes and Mr. Avildsen reported that the Treasurer's office had agreed not to seek statutory amendments changing the present provisions of the UPA concerning class action residual funds. On motion duly made and seconded, after discussion, it was voted unanimously to recommend to the Supreme Court that new Rule 23(g) be promulgated as previously recommended, with language in the Reporter's Notes to reflect that agreement.

E. #17-7. V.R.C.P. 55—Amendments recommended by Civil Division Oversight Committee. Proposed amendments to V.R.C.P. 55 and 80.1 sent out for comment on December 17, 2018, with comments due on February 19, 2019. It was agreed to defer action on this item until the next meeting in view of the necessary absence of Judge Toor, who had agreed to review and report on comments received.

F. #14-7. V.R.C.P. 41(b)(1)(iii). Conform to Rule 3's 60-day service requirement. Proposed amendments to V.R.C.P. 41 sent out for comment on December 17, 2018, with comments due on February 19, 2019. It was agreed to defer action on this item until the next meeting in view of the necessary absence of Judge Toor, who had agreed to review and report on comments received.

G. #10-8/13-1—Adoption of 2007 amendments to ABA Model Code of Judicial Conduct. Professor Wroth reported that the proposed draft approved at the Committee's meeting of November 30 had been approved by the Judicial Conduct Board and sent to the Court as the joint proposal of Committee and Board on February 26, 2019. The Court on April 1, 2019, had approved the draft to be sent out for comment on April 9, with comments due on June 10, 2019.

**3. #14-8. V.R.C.P. 4.1, 4.2, 69, 69.1. Collection and Enforcement of Judgments.** It was agreed to defer action on this item until the next meeting in view of the necessary absence of Judge Pearson.

**4. #17-4. Review status of Amendments to V.R.A.P. 24 (IFP Proceedings),** recommended for promulgation on December 3, 2014. Proposed order amending V.R.C.P. 3.1(b) and V.R.A.P. 24(a) sent to the Court on December 17, 2018, to be sent out for comment. Professor Wroth reported that consideration of the proposed order by the Court will be deferred

until the question of a comparable amendment to V.R.P.P. 3.1 could be resolved by the Probate Rules Committee.

**5. #14-1. Status of Appendix of Forms; new E-Filing. Rules.** Professor Wroth noted that at the last meeting the Committee had agreed to defer action on Civil Rules provisions governing forms, pending proposals by the reconstituted Special Advisory Committee on Rules for Electronic Filing, charged to develop amendments to those Rules in time for the roll-out of the Next Generation Court Management System (NGCMS) and revised Rules for Public Access to Court Records. He reported that he had communicated the Committee's concerns to the Special Committee's Chair and Reporter. The Special Committee's proposed new rules and any necessary amendments to existing procedural rules are to be sent out for comment on May 10.

**6. #19-1. Reconciliation of Juror Qualifications Rules with V.R.C.P. 47(a) and V.R.Cr.P. 24(a).** Chairman Keyes and Professor Wroth reported that they would attend a joint meeting with the Chair and Reporter of the Criminal Rules Committee to consider resolution of differences between the Juror Qualification Rules and the Civil and Criminal rules governing the examination of jurors.

**7. Other Business.** Mr. Dumont asked that the agenda for the next meeting include consideration of the incorporation in V.R.C.P. 16 and 16.1 of provisions that had been previously proposed as amendments of VRCP 26(b) but had not been adopted. He agreed to provide draft proposals for consideration at that meeting.

**8. Dates of future meetings.** As previously agreed, the next meeting of the Committee will be held on June 21, 2019. It was agreed to hold a further meeting on September 20, 2019.

There being no further business, the meeting was adjourned at 10:20 a.m.

Respectfully submitted,

L. Kinvin Wroth  
Reporter