

**APPROVED**

**VERMONT SUPREME COURT  
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE  
Minutes of Meeting  
October 4, 2019**

The meeting was called to order at 9:05 a.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Allan R. Keyes, Chair, with the following Committee members present: Eric Avildsen, Bonnie Badgewick, James Dumont, Karen McAndrew, Hon. Dennis Pearson, Hon. Helen Toor, and Gregory Weimer. Also present were Hon. Harold Eaton, Supreme Court liaison; Assistant Attorney General Kate Gallagher; and Professor Emeritus L. Kinvin Wroth, Reporter.

**1. Minutes.** The draft minutes of the meeting of June 21, 2019, were unanimously approved as previously circulated.

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

A. #15-8. Special ad hoc committee on video/audio appearances and cameras in the court. Professor Wroth reported that the proposed amendments to V.R.C.P. 43(a) et al., V.R.F.P. 17, and proposed A.O. 47, promulgated on May 1, effective August 3, 2019, were held for further consideration by the Legislative Committee on Judicial Rules (LCJR) on June 6, 2019. That consideration had not yet occurred, because LCJR had not met since that date.

B. #17-7. V.R.C.P. 55 and 80.1—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. Reviewed by LCJR on June 6, 2019, without objection, but with suggestion to use a more modern term than “infant.” The Committee reviewed Judge Toor’s draft of October 3, 2019, incorporating that and other suggestions. On motion duly made and seconded, it was voted unanimously to recommend the October 3 draft for promulgation with any necessary revisions to the Reporter’s Notes.

C. #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. Reviewed by LCJR, at its meeting on June 6, 2019, with no objection. Professor Wroth reported that the amendments were promulgated July 9, effective September 9, 2019. Judge Toor noted that she had sent to the Court Administrator revised forms reflecting the amendments.

D. #10-8/13-1—Adoption of 2007 amendments to ABA Model Code of Judicial Conduct. Professor Wroth reported that the joint proposal of the Committee and the Judicial Conduct Board, recommended to the Supreme Court for promulgation on June 21, had been promulgated August 6, effective October 7, 2019, as Vermont Code of Judicial Conduct 2019.

E. #19-3. Vermont Rules for Public Access to Court Records. The Committee considered the revised Vermont Rules for Public Access to Court Records (incorporating the former Rules for Dissemination of Electronic Case Records) adopted by Supreme Court order of May 1, effective July 1, 2019. Reviewed by LCJR on June 6, 2019, without objection. After brief discussion of Judge Toor's October memorandum on sealing and *in camera* filing, it was agreed that Judge Toor should send a revised version of her memorandum directly to the Public Access Rules Committee and its Reporter.

F. #19-4. V.R.C.P. 5, 79(a). Proposed Amendments to conform to proposed new V.R.E.F. 11, drafted by Special Committee on Electronic Filing, sent out for comment on June 19, with comments due by August 19, 2019. Chairman Keyes reported that Judge Toor's comments had been sent to the Electronic Filing Committee. Mr. Avildsen, a member of that committee, reported that her comments and those that he had submitted had been considered by the E-filing Committee and were to be addressed primarily in the Reporter's Notes. Few changes had been made in a new draft of the Rules that was to be recommended for promulgation. If the recommended Rules are promulgated, they will undoubtedly require revision after initial experience under them in the new Electronic Case Management System (CMS). The current projection for implementation of the CMS is March 2020 for three counties and a statewide roll-out in September 2020. The Committee expressed thanks to Judge Toor for her contributions to consideration of this item.

G. #19-2. V.R.C.P. 62(a)(3)(A). Orders for possession. Professor Wroth reported that the Committee's proposed amendment was sent out for comment on October 1, with comments due on December 2, 2019.

H. #19-9. Emergency amendments to V.R.C.P. 79.2(c) and V.R.A.P. 35(c) adding restrictions on the use of devices in a court house, promulgated September 4, 2019, effective immediately. Professor Wroth reported that comments on the emergency amendments, though they were effective immediately, could be submitted until November 8, 2019. Chairman Keyes noted that paragraph 5 of the order of May 3 promulgating V.R.C.P. 79.2 effective September 3, 2019, required the Committee to review the operation of the Rule and to advise the Court not later than September 7, 2021, whether the Rule should be revised or made permanent.

**3. #14-8. V.R.C.P. 4.1, 4.2, 69, 69.1. Collection and Enforcement of Judgments.** Judge Pearson reported on the status of his continuing drafting efforts and received the following comments on specific points in his February 11, 2019, draft:

- It was agreed that *Connecticut v. Doeher*, 501 U.S. 1 (1991), striking down provisions for attachment without notice and hearing, was not a problem for the Vermont Rules in view of the order-of-approval provisions of present V.R.C.P. 4.1(b) and 4.2(b) adopted in 1979 and carried forward in Judge Pearson's draft
- Regarding the requirement of draft VRCP 4.1(f)(4)(B).that the writ be served upon the defendant within three days after completion of an ex parte attachment, it was noted that

the present rule says “promptly,” and it was suggested that the draft could provide, “promptly, but in no event more than 14 days” after completion of the attachment. Mr. Dumont agreed to check and report on comparable provisions in New York and California.

- In response to a suggestion that Rule 4.2 should make clear the trustee’s responsibility to keep an attached asset frozen until order of the court, Judge Pearson stated that he would include such a provision in Rule 4.2(b).

Judge Pearson undertook to provide a further revised draft at the next meeting.

**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 continued to be deferred until the question of a comparable amendment to V.R.P.P. 3.1 is resolved by the Probate Rules Committee, presumably at its October 9 meeting.

**5. #14-1. Status of Appendix of Forms.** Ms. Blackwood and Professor Wroth will review and update her original memorandum covering form provisions that are required by particular rules for the next meeting.

**6. #19-1. Reconciliation of Juror Qualifications Rules with V.R.C.P. 47(a) and V.R.Cr.P. 24(a).** The Committee considered Chairman Keyes’ report that the Public Access Rules Committee was meeting to consider the proposal that V.R.C.P. 47(a)(2) and V.R.Cr.P. 24(a)(2) both be amended to continue to provide the parties with access to juror questionnaires but to leave issues of public inspection to the Public Access Committee. He noted that under the Federal Rules only the parties had access.

Judge Toor suggested that the public access rules should clarify the responsibilities of lawyers for maintaining confidentiality of the questionnaires, including whether they can get copies; whether jurors’ names and addresses should be confidential or, if public, subject to the judge’s order of confidentiality; whether copies or the information can be shared with a client; and whether there should be a specific prohibition against distribution by a client or self-represented litigant. On motion duly made and seconded, there being no further discussion, it was voted unanimously that the Public Access Rules should address public inspection, including the foregoing specific issues of confidentiality and access, and that Committee approval of the proposed amendment of V.R.C.P. 47 should be deferred until the actions of the Public Access Committee were known.

**7. #19-6. Small Claims Judgments.** The Committee considered Professor Wroth’s draft proposed order containing amendments to V.R.S.C.P. 3, 7, 9, and 10 to implement the June 2019 proposed Small Claims Rules amendments presented by Judge Toor on behalf of the Civil Division Oversight Committee. The amendments are intended to address the problem under the

present Rules of notice of the judgment to the defendant. In discussion, it was agreed to add at the beginning of Rule 3(f) the words, “To collect on the judgment.” On motion duly made and seconded, there being no further discussion, it was voted unanimously to propose that the amendments be sent out for comment with that addition and the correction of a typographical error in the Reporter’s Notes

**8. #19-7. Procedure for motions to seal.** Judge Toor asked that this item be withdrawn in light of the Committee’s actions concerning Public Access Rule 9 under agenda item 2.A.

**9. #19-8. Rule regarding preservation depositions.** This item was deferred until the next meeting in the absence of Ms, Spero.

**10. #19-10. Recent amendments to the Federal Rules.** The Committee considered Chairman Keyes’ October 2, 2019, summary of amendments to the Federal Rules adopted and proposed from 2016 to 2020. Mr. Dumont agreed to prepare a summary of their effect—or lack thereof—on the Vermont Rules for the next meeting. Judge Toor and Ms. McAndrew will prepare a comment on the 2018 amendments of F.R.C.P. 23.

**11. #19-11. Proposed amendment to allow service under Rule 4(c) by any non-party over 18.** The Committee considered Harry Ryan’s letter of September 13 proposing the amendment and Chairman Keyes’ memorandum of September 26, 2019, in response, as well as material provided by Judge Toor on the experience with private servers in New York. In discussion, it was agreed that service of summons and complaint was appropriate for Vermont and was working well. On motion duly made and seconded, there being no further discussion, it was voted unanimously to take no action on this proposal

**12. Other business.** Judge Toor noted that the recent retirement of a assistant judge after a conduct issue on the issuance of arrest warrants had produced many comments on the administration of the Small Claims Rules. She indicated that the Civil Division Oversight Committee would undertake a review of those Rules and make proposals for revisions to this Committee.

**13. Next meetings.** The next meeting of the Committee is scheduled for November 8, 2019. It was agreed to schedule a further meeting for January 24, 2020.

There being no further business, the meeting was adjourned at 11:15 a.m.

Respectfully submitted,

L. Kinvin Wroth  
Reporter