

APPROVED

VERMONT SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE Minutes of Meeting November 8, 2019

The meeting was called to order at 9:15 a.m. in the Hoff Lounge, Oakes Hall, Vermont Law School, by Allan R. Keyes, Chair, with the following Committee members present: Bonnie Badgewick, Eileen Blackwood, Anne Damone, James Dumont (by telephone), Navah Spero, and Gregory Weimer. Also present were Hon. Harold Eaton, Supreme Court liaison; and Professor Emeritus L. Kinvin Wroth, Reporter.

1. Minutes. The draft minutes of the meeting of October 4, 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. Professor Wroth reported that the recommended amendments to V.R.C.P. 55 and 80.1, as approved by the Committee on October 4, were promulgated on November 5, 2019, effective January 6, 2020.

C. #19-3. Vermont Rules for Public Access to Court Records. This item was deferred in the absence of Judge Toor.

D. #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. Professor Wroth reported that the Electronic Filing Committee was meeting at the present time to consider whether to recommend the proposed amendments.

E. #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. Chairman Keyes reported that he had received no comments to date.

F. #19-6. Small Claims Judgments. Professor Wroth reported that proposed amendments to V.R.S.C.P. 3, 7, 9, and 10, as approved by the Committee on October 4, were sent out for comment on November 6, 2019, with comments due on January 6, 2020.

G. Proposed amendments to V.R.C.P. 40(e)(4) and V.R.A.P. 27.1(b)(4). Professor Wroth reported that proposed amendments to V.R.C.P. 40(e)(4) and V.R.A.P. 27.1(b)(4), drafted by Deputy Clerk Emily Wetherell updating cross references to reflect promulgation of the Vermont

Code of Judicial Conduct 2019, had been sent out for comment on November 6, 2019, with comments due on January 6, 2020, to Ms. Wetherell. It was agreed that any concerns about the amendments should be sent to Chairman Keyes, who would communicate them to Ms. Wetherell. .

3. #14-8. V.R.C.P. 4.1, 4.2, 69, 69.1. Collection and Enforcement of Judgments.

This item was deferred in the absence of Judge Pearson. Mr. Dumont will report at the next meeting on comparable provisions in New York and California regarding the time after completion of an ex parte attachment for service of the writ.

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 a comparable amendment to V.R.P.P. 3.1 is considered by the Probate Rules Committee, which did not address the question at its October 9 meeting. He agreed to make sure that the matter was reached at that Committee's next meeting.

5. #14-1. Status of Appendix of Forms. The Committee considered Professor Wroth's November 7, 2019, list of references to forms in the Civil Rules. Mr. Dumont noted the problem presented by potential discrepancies between the list of exemptions in V.R.C.P. 34 and the list on the Judiciary website, https://www.vermontjudiciary.org/sites/default/files/documents/100-00511_0.pdf. In discussion, it was agreed that, to deal with the inconsistency problem as the system moves to Electronic filing,

- Chairman Keyes and Professor Wroth will discuss the matter with Judge Morris, Reporter to the Special Committee on Electronic Filing.
- Chairman Keyes will discuss the matter with Emily Wetherell.
- Ms. Blackwood and Mr. Dumont will review Form 34 and the Judiciary website list for discrepancies.

6. #19-1. Reconciliation of Juror Qualifications Rules with V.R.C.P. 47(a) and V.R.Cr.P. 24(a). Chairman Keyes reported that Judge Morris and Justice Dooley, Reporter and Chair, respectively of the Public Access Rules Committee, had advised him that the Public Access Committee would consider the Civil Rules Committee's decision at its October 4 meeting that the Public Access Rules should address public inspection, including specific issues of confidentiality and access, and that the Civil Rules Committee's 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. #19-8. Rule regarding preservation depositions. Ms. Spero reported that her research had shown that only Colorado has a separate rule governing depositions to preserve testimony during trial. (Various equivalents of V.R.C.P./F.R.C.P. 27 provide for depositions to perpetuate testimony only before an action is brought or when an appeal is pending.) She will report further at the next meeting and would be glad to have comments from Committee members in the meantime.

8. #19-10. Recent amendments to the Federal Rules. The Committee considered Mr. Dumont's memorandum of November 6, 2019, commenting on amendments to the Federal Rules

adopted or proposed since 2015, as well as Mr. Weimer's proposal concerning the 14-day time for responding to dispositive motions under Rule 12 (per Rule 78) and the 30 days for responses to Rule 56 motions. Mr. Weimer had proposed adoption of the 30-day response time for all dispositive motions as provided by U.S.D.C. Vt. Rule 7(a)(3). On motion duly made and seconded, after discussion, it was voted unanimously to ask Professor Wroth to prepare a draft for the next meeting that would specify the 30-day response time in Rule 78, or alternatively in Rule 12.

In further discussion, it was agreed to discuss the appropriateness for Vermont of the amendments of F.R.C.P. 26(c)(1)(B) and 34 at the next meeting and to defer consideration of proposed F.R.A.P. 42(b) until action on the federal rule proposal was known. In view of the absence of Judge Toor, consideration of her October 15, 2015, comment on the 2018 amendments of F.R.C.P. 23 was deferred to the next meeting. Professor Wroth agreed to prepare drafts of proposed amendments to V.R.C.P. 23, 26, and 34 for discussion at that meeting.

9. Other business. Mr. Weimer raised the question of whether a motion to dismiss less than the whole complaint should be considered when made, or as part of consideration of the whole complaint. He will review the question whether the situation is appropriate for a rule and will report at the next meeting.

10. Next meetings. The next meeting of the Committee is scheduled for January 24, 2020. Professor Wroth will circulate the choice of March 20 or March 27 for a subsequent meeting.

There being no further business, the meeting was adjourned at 10:45 a.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter