

APPROVED

VERMONT SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE Minutes of Meeting November 19, 2021

The meeting was called to order at 9:30 a.m. virtually on Zoom by Allan R. Keyes, Chair, with the following Committee members present: Eric Avildsen, Hon. David Barra, Eileen Blackwood, James Dumont, Karen McAndrew, Hon. Robert Mello, 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 29, 2021, were unanimously approved as previously circulated.

2. Proposed amendments to be sent out for comment. Chairman Keyes asked that in the interest of time the following proposed rules, listed under agenda item 3, be recommended to be sent out for comment, subject to discussion of any objections at the end of the meeting:

A. #21-3B. V.R.A.P. 25(a)(2)(B). Clarification of inconsistent filing deadlines and related procedures.

B. #20-13. Proposed amendments of V.R.C.P. 55, 62, regarding service of default judgments.

C. V.R.S.C.P. 7 and 8. Civil Division Oversight Committee amendment proposal.

D. #20-11. Methods of expediting civil trials. Recommended emergency amendment of V.R.C.P. 68 allowing either party to serve an offer of judgment.

On motion duly made and seconded, there being no discussion, it was voted unanimously to recommend that the Supreme Court send those proposed rules out for comment. Professor Wroth agreed to put the proposals in proper form and send them to the Court as soon as possible.

3. Rules recommended, or to be considered, for promulgation.

~~A. Recommended amendment of AO 49, §21.d to address delays in the provision of Vermont Emergency Rental Assistance (VERAP) funds to pay back rent and forestall evictions from residential housing. Transmitted to the Court on November 4, 2021. [Considered as report under item 4.E(3) below.]~~

B. #21-2(1). Remote Mediation. Proposed amendment of V.R.C.P. 16.3(b), sent out for comment on August 3, with comments due in September 3, 2021. Reviewed by Legislative Committee on Judicial Rules (LCJR) on October 21, 2021. The Civil Rules Committee considered Professor Wroth's revised draft dated November 17, 2021. On motion duly made and seconded, after discussion, it was voted unanimously to recommend promulgation of the revised draft of the amendment. Professor Wroth agreed to substitute "provision" for "proposal" in the second-to-last line of the third paragraph of the Reporter's Notes, and to delete the fourth paragraph of the Notes.

C. #20-8. Proposal to clarify V.R.C.P. 56, sent out for comment on August 3, with comments due on October 3, 2021. Reviewed by LCJR on October 21, 2021. The Committee considered the proposed amendments of the rule, which provided in detail that the response to a statement of undisputed facts must be paragraph-by-paragraph as opposed to a single competing statement of facts. On motion duly made and seconded, after discussion, it was voted unanimously to recommend promulgation of the amendment with the substitution in Rule 56(b) of the uniform phrase “within [n] days after” for all deadlines; with the deletion in that subdivision of “at any time until,” “at any time,” and “upon the party;” and with the insertion in the last sentence of Rule 56(c)(3) of the underlined phrase: “The court may also allow a surreply memorandum in the same format”

D. #21-3A. Conforming V.R.C.P. 3.1 and court forms concerning waiver of filing and service fees. The Committee considered the proposed amendments of V.R.C.P. 3.1, 4, 84, and the proposed abrogation of the Appendix of Forms sent out for comment on August 3, with comments due October 3, 2021. Reviewed by LCJR on October 21, 2021. On motion duly made and seconded, after discussion, it was voted unanimously to recommend promulgation of the amendments as proposed,

~~E. #20-11. Methods of expediting civil trials. Recommended emergency amendment of V.R.C.P. 68 allowing either party to serve an offer of judgment. To be considered for permanent promulgation.~~ **[Considered as proposed rule for comment under item 2.D above.]**

F. #20-9A. Elimination of papers served electronically from the 3-day extension of time provided by V.R.C.P. 6(e) and V.R.A.P. 26(c). The Committee considered a proposed promulgation order abrogating V.R.C.P. 6(e) and V.R.A.P. 26(c) and containing amendments to V.R.A.P. 26(d) and 31(a), sent out for comment on September 16, with comments due on November 15, 2021. Reviewed by LCJR on October 21, 2021. The Committee reviewed Judge Toor’s memorandum of November 4, 2021, opposing the amendment, at least for mailed documents, in view of its impact on self-represented litigants, particularly with increasing mail delays. Noting that the 3-day rule was a cause of confusion for clerks and others, Chairman Keyes suggested that allowance of extensions by judges on a case-by-case basis would be more effective and that members of the bar that he had contacted were not opposed to the elimination of the rule.

On motion duly made and seconded, after discussion, it was voted unanimously to recommend promulgation of the amendments abrogating the 3-day rule and extending certain filing times in the Appellate Rules as proposed.

G. Remote administration of oaths. The Committee considered a proposed amendment adding V.R.C.P. 11(e) to provide for remote administration of oaths, sent out for comment on September 1, with comments due on October 1, 2021. Reviewed by LCJR on October 21, 2021. The Committee also considered Michael Benvenuto’s memorandum of November 4, 2021, expressing concerns about the draft Reporter’s Notes. On motion duly made and seconded, after discussion, it was voted unanimously to recommend promulgation of the amendment as proposed. Professor Wroth asked for comments on the draft Reporter’s Notes to be sent to him by November 23.

H. #19-10. Proposed amendments to V.R.C.P. 43 and 54 correcting references to former V.R.C.P. 78. The Committee considered the proposed amendments sent out for comment on September 16, with comments due on October 13, 2021. Reviewed by LCJR. on October 21, 2021. On motion duly made and seconded, there being no discussion, it was voted unanimously to recommend promulgation of the amendments to V.R.C.P. 43 and 54 as proposed.

4. Reports.

A. V.R.C.P. 79.1. Civil Division Oversight Committee amendment proposal requiring submission of affidavit by out-of-state lawyers seeking *pro hac vice* admission. Mr. Weimer raised questions about overlap with existing requirements of AO 41. Mr. Avildsen and Mr. Weimer will review the issues and report at the next meeting

B. Electronic Service and Filing and Remote Administration of Oaths. Proposed amendments to V.R.C.P. 5 sent out for comment on September 1 with comments due on October 1, 2021. Reviewed by LCJR on October 21, 2021. Chairman Keyes called the Committee's attention to the report of the subcommittee (Ms. Badgewick, chair, Mr. Dumont, and himself) on the proposed amendments to V.R.C.P. 5 and related rules distributed in his email to the Committee on November 18, 2021. After brief discussion, it was agreed that Committee members should review the report and send comments to the subcommittee by November 23. If there were no objections, the draft, with any further necessary revisions, would be sent to the Court to send out for comment.

C. #20-9B. Amendments made necessary to conform the Civil Rules to the 2020 Vermont Rules on Electronic Filing, promulgated December 10, 2019, effective March 2, 2020. Chairman Keyes reported for the subcommittee (Ms. Badgewick, Ms. Spero, and himself) that he had asked Justice Dooley and Judge Morris to review the subcommittee's current proposals and will report on their comments at a subsequent meeting of the Committee.

D. Remote Jury Trials. Special Advisory Committee on Remote Hearings. Mr. Dumont reported that the Special Committee had held two meetings but had no conclusions to report,

E. October 14 and November 4 and 15 amendments to AO 49. Professor Wroth reported that (1) AO 49 had been extended to March 1, 2022, by order of November 4, 2021, which also authorized the Board of Bar examiners to establish health and safety protocols for in-person bar examinations. (2) The Committee's recommended amendments to AO 49, § 22, concerning foreclosures, were promulgated effective October 14, 2021. (3) The Committee's recommended amendments to AO 49, § 21, concerning evictions, were promulgated effective November 15, 2021.

F. #14-8. V.R.C.P. 4.1, 4.2, 69, 69.1. Collection and Enforcement of Judgments. Professor Wroth agreed to make a proposal for further action at the next meeting.

G. Committee consideration of other AO 49 provisions that might be made permanent. Request of Supreme Court. This item was not considered.

5. Other business. There was no other business

6. Next meeting. Justice Eaton noted that the Court's forthcoming administrative meetings were scheduled for December 13, 2021; January 10, 2022; and February 7, 2022. It was agreed to hold the next meeting of the Committee virtually at 9:00 a.m., on Friday, January 7, 2022, with January 28, 2022, as a date for a further meeting if necessary.

There being no further business, the meeting was adjourned at 12:05 p.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter