

**VERMONT SUPREME COURT**  
**ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE**  
**Minutes of Meeting**  
**September 9, 2022**

The meeting was called to order at 9:05 a.m. virtually on Webex by Allan R. Keyes, Chair, with the following Committee members present: Bridget Asay, Eric Avildsen, Bonnie Badgewick, Anne Damone, James Dumont, Karen McAndrew, Hon. Robert Mello, Navah Spero, and Gregory Weimer. Also present were Hon. Harold Eaton; Supreme Court liaison; Laura Rowntree, Attorney General's designee; David Koeninger; Hon. Amy Davenport, Reporter, Family Rules Committee; Emily Wetherell, Deputy Clerk, Vermont Supreme Court; and Professor Emeritus L. Kinvin Wroth, Reporter Emeritus.

The Chair welcomed new member Bridget Asay and also David Koeninger, who has been appointed to replace Eric Avildsen effective September 10, 2022.

**1. Minutes.** The draft minutes of the meeting of June 17, 2022, were unanimously approved as previously circulated with the additional note that the Committee recognized and verified that Professor Wroth, as of July 9, 2022, attained the status of *Reporter Emeritus*, with all the rights, privileges and honors pertaining thereto.

**2. Action Items.**

- A. Proposed V.R.S.C.P. 6 and V.R.C.P. 80.6 (22-3, proposed remote hearings in small claims and judicial bureau out for comment; and 22-4, proposed V.R.C.P. 80.6. correction of erroneous and obsolete references.)

The committee reviewed the consolidated proposed rules V.R.S.C.P. 6 and V.R.C.P. 80.6 as circulated on September 2, 2022, including additional technical corrections to Rule 80.6 and reporters notes.

After discussion that there should be no motion formalities required for a request for in-person attendance, on motion duly made and seconded, it was voted unanimously to recommend for promulgation the proposal as circulated, with guidance in the Reporter's Notes to be added concerning in-person attendance.

- B. B.22-2. Proposed V.R.C.P. 9.2 and 9.3 (Special eviction and foreclosure procedures out for comment.)

The committee considered the revised proposed new rules 9.2 and 9.3 and reporters notes circulated on September 2, 2022, and comments received from Attorney Walter French, Attorney Susan Steckel, The Vermont Housing Authority, by George Demas and Tyler Maas; and Vermont Legal Aid, by Jean Murray and Grace Pazdan.

In discussion the committee suggested several clarifying changes to the text of the proposed rules as a result of the comments. These include, in Rule 9. 3:

- that the notice obligation should apply only to an owner occupying the property as the primary residence;
- that the 'sale' in (c)(1) is a "public sale".

In addition, the committee voted to modify the proposed rules to:

1. Limit the CARES Act notice requirement to evictions based in in whole or in part on nonpayment of rent. (Proposed Rule 9.2(a));
2. Eliminate the requirement for notice of the rental assistance program now that program is closed to new applications as of October 1. (Proposed Rule 9.2 (b) (1));
3. Extend the automatic stay in foreclosure cases from 60 days to the final determination on the application for homeowner assistance. [Modeled on 2021 Acts, No. 182 (Adj. Sess.), § 21(d)(2) (effective June 7, 2022), which extends the redemption period in a tax sale pending VHAP final action on an application.] (Proposed Rule 9.3 ); and
4. Shorten the committee’s reporting deadline in section 5 of the order.

On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that the Supreme Court promulgate Proposed V.R.C.P. 9.2 and 9.3 as so amended, with reporter’s notes to be revised accordingly.

Chairman Keyes agreed to circulate a draft for comment that afternoon and immediately finalize the recommendation to the Court, which must act on Tuesday, September 13<sup>th</sup>.

C. # 22-1. Special Item of Business V.R.C.P. 43.1

On behalf of the Special Committee on Remote Hearings, Scott Griffith, chair, presented that Committee’s proposed V.R.C.P. 43.1 with Reporter’s Notes for discussion and comment. Mr. Griffith described the structure and purpose of the Committee, established by Supreme Court order on June 21, 2022. Mr. Dumont and Mr. Koeninger are members. Mr. Griffith noted that the validity and use of remote hearings depends on the nature of available equipment, buildings, and staff. The policy subcommittee of the Committee had prepared a draft of proposed revised V.R.C.P. 43.1 to serve as a model for the other Rules committees.

Mr. Dumont summarized the draft, for which he was Reporter. He noted that surveys indicated a preference for remote hearings with a clear and simple process. The rule revolves around good cause, which is not defined in the rule. The rule is intended to fit available technology and courthouse space. The rule permits audio proceedings but contains a preference for video over audio.

Chairman Keyes stated that the purpose of the present discussion was to provide comments to the Special Committee, which would be making final recommendations to the Court as early as November after input from other divisions. A lively discussion ensued.

In discussion of the difference between evidentiary and non-evidentiary proceedings, Mr. Dumont noted that the distinction worked differently in criminal proceedings under AO 38 and might be eliminated in future revisions.

It was noted that there was no definition of “good cause” in the draft rule, except that it is presumed for proceedings provided for in a Judicial Emergency order or in proceedings expected to take less than one hour.

It was suggested that the lesser standard proposed by Ms. Spero for Rule 16.3 proceedings could be adopted for non-evidentiary proceedings, i.e., "in the court's discretion" for nonevidentiary, with good cause for evidentiary.

The consensus appeared to be to retain the dichotomy between nonevidentiary and evidentiary but define evidentiary as a proceeding in which testimony is taken orally. Also, for evidentiary, discard the one-hour presumption of good cause.

It was also suggested that the factors that the judge may consider to include whether a courthouse has been designated "a limited entry" facility by the Court Administrator.

In view of the lateness of the hour and the productivity of the discussion, Chairman Keyes asked Ms. Spero, Ms. Asay, and Judge Mello to act as a subcommittee to continue the dialog and provide additional comments to the Special Committee; and suggested that any members' individual comments be forwarded in writing to Mr. Griffith.

### **3. Other business.**

It was noted that the Civil Rules panel to be held at the Vermont Trial Lawyers Association meeting at Basin Harbor on October 7 would provide an opportunity to discuss the remote hearing issues, as well as to receive feedback on the working of the several rules changes that have been promulgated in the last year. Members are encouraged to attend.

Chairman Keyes noted that this was Mr. Avildsen's last meeting as a member of the Committee and called attention to his many years of insightful participation in discussion of all issues that came before the Committee. In a rising voice vote, the Committee expressed its thanks for his service and wished him well for the future.

### **4. Next meeting.** The next regular Civil Rules meeting will be held on October 14.

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

Respectfully submitted,

Allan R. Keyes

*Reporter pro tem*