

**VERMONT SUPREME COURT**  
**ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE**  
**Minutes of Meeting**  
**July 19, 2013**

The meeting was called to order at 9:15 a.m. in Room 216 Debevoise Hall, Vermont Law School, by William E. Griffin, Chair, with the following Committee members present: Eric Avildsen, Eileen Blackwood, James A. Dumont, Jean Giddings, Kathleen Hobart, Allan R. Keyes, Karen McAndrew, Hon. Dennis Pearson, and Greg Weimer. Also present were Hon. Marilyn R. Skoglund, Supreme Court liaison, and Professor L. Kinvin Wroth, Reporter.

Chairman Griffin and the Committee welcomed Eileen Blackwood to her first meeting as a member of the Committee. The Committee asked Chairman Griffin to write to Joseph Frank, Esquire, thanking him on behalf of the Committee for his many years of dedicated service

1. **Minutes.** The draft minutes of the meeting of May 3, 2013, were unanimously approved.
2. **Status of proposed and recommended amendments.** Professor Wroth reported that the Committee's recommended amendments to the Small Claims Rules had been approved by the Court. The proposed amendments to V.R.C.P. 80.1(b)(3) and 80.9 and V.R.E.C.P. 5(h)(1) had been sent out for comment on June 18, with comments due on August 16, 2013.
3. **#s10-1/08-6, 11-15—V.R.S.C.P. Forms and Proposed Rule Revisions.** Mr. Avildsen reported that the subcommittee would report at the next meeting on remaining agenda items.
4. **#10-5—Proposal to Conform V.R.C.P. 6 to Federal Amendments.** Professor Wroth reported that he had advised the chairs of the other rules advisory committees of the pending proposal to adapt the federal "day is a day" approach for V.R.C.P. 6(a). It was agreed that the proposal should be incorporated in the Civil Rules restyling project that Emily Wetherell and he were undertaking, that he would start the other advisory committees on the process of considering "day is a day," and that this Committee would subsequently address any changes necessary in the Environmental Court and Small Claims rules.
5. **#10-8—Adoption of Amendments to ABA Model Code of Judicial Conduct.** This item was considered together with item 12 concerning amendments of V.C.J.C. 5A and 5B covering probate judges. Professor Wroth reported that the Court has asked the Committee to consider adaptation of the 2007 ABA Model Code of Judicial Conduct. He also reported that the Court wished the Committee to consider amendments eliminating or reducing exceptions for elected judges. Committee members noted that the role of part-time probate judges is changing because they are now judges of the superior court. After discussion of various approaches, Justice Skoglund agreed to report to the Supreme Court that the Committee intends initially to establish a separate subcommittee consisting of members of the Committee, probate judges, and others with an interest in judicial conduct issues to consider amendment of the provisions of the Code covering elected probate judges. The Committee will then establish a larger subcommittee of judges, practitioners, and others to work with it on the adaptation of the ABA Model Code. Provisions for elected judges would be incorporated in any final adaptation of the Model Code.

**6. #11-15—Trustee Process against Banks on Certain Federal Agency Direct Deposits.** See item 3 above.

**7. #12-1—Event-witness Amendment to V.R.C.P. 26(b)(4).** The Committee considered Ms. McAndrew's July 18 report for the discovery subcommittee on possible further efforts to amend Rule 26(b)(4) in light of the recent decision in *Stella v. Spaulding*, 2013 VT 9. It was agreed that Ms. McAndrew and Professor Wroth would prepare a draft amendment for discussion at the next meeting that would require disclosure of both retained and event expert witnesses on request and would address the question of requiring written reports, at least from retained experts, with provisions as to the timing of requests and the possibility of waiver in smaller cases. The question of employee experts would be considered after the basic issues.

**8. #12.5—Consideration of V.R.C.P. 79(b) and H.1.** Professor Wroth reported that Act 67 of 2013 had eliminated the statutory record-keeping requirements implemented in V.R.P.C. 79(b). He agreed to prepare an appropriate amendment of the rule for the next meeting.

**9. #12.6—V.R.P.C. 3.8(g), (h)—Conformity to Model Rules Amendments.** The Committee considered Professor Wroth's draft amendments adding V.R.P.C. 3.8(g) and (h) and Comments to adapt 2008 amendments of the ABA Model Rules. He noted that, as agreed at the May 3 meeting, he had asked the Criminal Rules Committee to put the question on its agenda for comment. Chairman Griffin agreed to ask for comments from the AG's and Defender's General's offices, the State's Attorneys Association, the VBA's Criminal Law Section, and the Criminal Division Oversight Committee.

**10. #12-7—V.R.C.P. 5—Certificate of Service and Form.** Oversight Committee members present agreed to raise this question at a forthcoming meeting of that Committee, indicating concerns of Civil Rules Committee members and to report at the next meeting.

**11. #12-8—V.R.C.P. 3—Notice of Appearance Form.** Oversight Committee members present agreed to raise this question at a forthcoming meeting of that Committee, indicating concerns of Civil Rules Committee members and to report at the next meeting.

**12. #13-1—V.C.J.C. sections 5A and 5B.** See item 5 above.

**13. #13-2—Proposed amendments to V.R.C.P. 43(e) concerning appointment and compensation of interpreters.** The Committee considered Professor Wroth's draft amendment incorporating the present practice of the courts in paying for interpreters for persons with limited English language proficiency and hearing impairments. After Committee review of the Department of Justice letter concerning requirements for such interpreters, Professor Wroth agreed to prepare a further draft for the next meeting.

**14. #13-4—Recent amendments of F.R.C.P. 37 and 45.** Mr. Keyes agreed that the Federal Rules subcommittee would report at the next meeting on amendments to F.R.C.P. 37 and 45 that have now been adopted. Ms. Blackwood agreed to take Mr. Frank's place on the subcommittee.

Professor Wroth agreed to discuss with Emily Wetherell recent amendments to the Federal Rules of Appellate Procedure noted by Mr. Keyes.

**15. #13-5—V.R.C.P. 4(b)—Requirement of e-mail address on summons.** The Committee considered Bridget Asay’s e-mail raising questions about the requirement of V.R.C.P. 4(b) that the summons contain the e-mail address of the court in light of the present limited state of e-mail communication. Professor Wroth agreed to prepare a draft amendment for the next meeting that would delete “e-mail” from the provision and add “if applicable” to the last sentence.

**16. #13-6—V.R.A.P. 4(c)—question raised in *Coles v. Coles*, 2013 VT 36, note 2.** The Committee considered the Supreme Court’s request that the Committee propose an amendment of V.R.A.P. 4(c) providing that a presumption of receipt would arise from the timely mailing of notice by the clerk. After discussion of the way in which such a presumption might be framed, on motion duly made and seconded, there being no further discussion, it was voted unanimously to advise the Court that the Committee had considered the matter and had concluded that no action on the request was appropriate.

**17. Other business.** Mr. Weimer, a member of the committee established by the VBA to consider separate rules for small cases, that the committee was considering a ceiling of \$100,000 for such rules, which would include discovery provisions limiting the number of depositions and interrogatories, requiring initial disclosures, addressing disclosure of experts, and providing time limits for discovery, as well as provisions requiring mediation. He agreed to keep the Committee and the Reporter informed of progress on the project.

**18. Date of next meeting.** Professor Wroth agreed to circulate possible dates for a meeting in late September or early October.

There being no further business, the meeting was adjourned at 11:45 a.m..

Respectfully submitted,

L. Kinvin Wroth, Reporter