

VERMONT SUPREME COURT
Advisory Committee on Rules of Civil Procedure
2015 Annual Report
May 31, 2016

The Advisory Committee on Rules of Civil Procedure submits this report to the Supreme Court pursuant to Administrative Order No. 17, § 5. The report covers the Committee's activities in 2015. The Committee met seven times,—on January 30, March 27, June 12, July 17, September 11, October 30, and December 11, 2015—to consider amendments or other matters pertaining to the Vermont Rules of Civil Procedure, the Vermont Rules of Appellate Procedure, the Vermont Rules for Environmental Court Proceedings, the Vermont Rules of Small Claims Procedure, the Vermont Rules of Professional Conduct, and the Vermont Code of Judicial Conduct, and to review comments received from the bar and others on proposed amendments concerning those rules.

Allan R. Keyes, Esq., succeeded William B. Griffin, Esq., as chair of the Committee, effective July 1, 2015. Mr. Griffin continues as a member of the Committee.

I. SUMMARY OF COMMITTEE ACTIONS IN 2015

The Committee's proposed amendments of V.R.C.P. 45 and V.R.A.P. 24 were recommended to the Court for promulgation on December 3, 2014. The amendments of V.R.C.P. 45 were promulgated on December 11, 2014, effective February 13, 2015. The amendment of V.R.A.P. 24 was held by the Court for further consideration of an issue raised during consideration of the amendment.

The Committee's suggested revisions to draft emergency amendments to V.R.S.C.P. 3, 7, 10, 12, prepared at the Court's request to eliminate postal costs and save clerk time were transmitted to the Court on February 4 and promulgated February 25, with the effective date extended to May 4 by order of March 25. The amendments were further revised as recommended by the Committee, after consultation with court clerks and the Civil Division Oversight Committee and promulgated as revised by order of April 28, effective May 4, 2015.

The Committee considered provisions in the Court's draft cost-saving bill that would have some effect on the Rules of Civil Procedure or civil practice and agreed that individual members could send comments to the Reporter for transmittal to the Court.

The Committee's recommended amendments to V.R.C.P. 9.1, 55(b)(7), and V.R.S.C.P. 3(h)(7), adding provisions to the Civil Rules comparable to the credit card debt provisions of the Small Claims Rules, were promulgated on July 1, effective September 1, 2015.

The Committee's recommended amendments to V.R.C.P. 4(b), 4(l), 5(d), (h), Forms 1, 1B, 1C, 28, 29, were promulgated on July 20, effective September 21, 2015.

The Committee agreed to recommend adoption of the 2007 ABA Model Code of Judicial Conduct to replace present Vermont Code of Judicial Conduct, with appropriate variations for Vermont practice, pending development by the Reporter of a document showing substantive differences between the present Vermont Code and the ABA Model Code and demonstrating how those differences would be continued in the new Vermont Code.

The Committee agreed to defer to the Electronic Filing Rules Committee the decision whether to recommend promulgation of that Committee's proposed amendment of V.R.E.F. 1(a)(1), implementing the Small Claims Pilot Project in Addison, Orange, Rutland, and Windsor counties, sent out for comment on August 6 with comments to be sent by October 5 to the Civil Rules Committee. On the recommendation of the Electronic Filing Rules Committee the amendment was promulgated on November 25, 2015, effective January 25, 2016.

The Committee's recommended amendment to V.R.C.P. 43(f) concerning appointment of interpreters was sent to the Court on November 9, 2015, and is awaiting consideration with parallel recommendations from other Rules committees.

The Committee's proposed amendments to the Vermont Rules of Professional Conduct, addressing nonrefundable fees, issues concerning client trust accounts, and other matters, sent out for comment on October 22, with comments due December 22, 2015, will be considered at the first Committee meeting in 2016..

The Committee's proposed amendment of V.R.C.P. 5 concerning e-mail service, sent out for comment on October 22, with comments due December 21, 2015, will be considered at the first Committee meeting in 2016.

The Committee's proposed amendments to V.R.C.P. 51 concerning requests for instructions at the charging conference were sent out for comment on November 25, 2015, with comments due on January 25, 2016.

The Committee agreed to recommend to the Court that (1) the emergency amendments to V.R.S.C.P. 3, 7, 10, 12, promulgated April 28, 2015, effective May 4, 2015, should be continued as emergency amendments; (2) those emergency amendments should be further amended and V.R.S.C.P. 8(b) and 9 should be amended as emergency amendments effective April 15, 2016; and (3) the Advisory Committee should be directed to continue to review the operation of these emergency rules as continued and amended, and to advise the Court not later than April 16, 2017, whether the rules should be further revised, continued as emergency rules, or made permanent [sent on January 1, 2016].

The Committee agreed to recommend to the Court that the “day is a day” amendments to the Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure as sent out for comment on August 6, with recommended changes in V.R.C.P. 6(a) and (e) and any necessary conforming changes in V.R.A.P. 26, as well as “day is a day” amendments to all other procedural rules, be promulgated with an effective date of July 1, 2016 [sent on January 1, 2016].

The Committee agreed to recommend to the Court that emergency amendments of V.R.C.P. 80.6 intended to bring Rule 80.6 into compliance with statutory changes in time to assure federal National Highway Traffic Safety funding an e-citation project in the Judicial Bureau be promulgated with necessary changes to reflect the recodification of the Servicemembers Civil Relief Act that took effect December 1, 2015 [sent on January 1, 2016].

II. MATTERS REMAINING ON THE COMMITTEE'S AGENDA

The following matters remain on the Committee's agenda for further consideration:

PRIORITY ITEMS

1. Status of promulgated and proposed amendments.

A. # 15.3. Proposed amendments to Vermont Rules of Professional Conduct, sent out for comment on October 22, comments due December 22, 2015, to be reviewed.

B. #15-4. Proposed amendment of V.R.C.P. 5 concerning e-mail service, sent out for comment on October 22, with comments due December 22, 2015, to be reviewed.

C. #14-5. V.R.C.P. 51. Jury Instructions. Consider in light of *Straw v. VNA*, 2013 VT 102. Sent out for comment on November 25, 2015, with comments due on January 25, 2016, to be reviewed.

2. #15-1. Consider revisions to V.R.C.P.16.1 concerning complex action designation.

3. #14-1. Status of Appendix of Forms.

4. # 14.2. Proposed revised draft of V.R.C.P. 80.11 providing for expedited actions, sent out for comment on June 9, comments due on August 7, 2015.

5. #15-6. Amendments to implement legislative adoption of the False Claims Act.

6. #16.1. Amendments to the Rules of Appellate Procedure to implement prison mailbox rule, as requested in *In re Joseph Bruyette*, 2016 VT 3.

7. #16.2. Incorporation of amendment of VR.F.P. 9(e), effective September 21, 2015, for Civil Division petitions for protective order for stalking or sexual assault.

OTHER ACTION ITEMS

8. #10-5. Consideration of Federal Rules amendments effective December 15, 2015.
9. #14-6. V.R.C.P. 16.3. Alternative Dispute Resolution. Consider simplification.
10. #15-6. Proposal to review “tack and mail” provisions of V.R.C.P. 4.
11. #15-7. Proposal to reconsider certificate of service provisions of new V.R.C.P. 5(h).
12. #15-8. Proposal to amend V.R.S.C.P. 2(a) to eliminate credit card collection cases from the category of actions that may be brought under the Small Claims Rules.

TRAILING DOCKET

12. #10-8/13-1—Adoption of 2007 amendments to ABA Model Code of Judicial Conduct and amendments to sections 5A, 5B, of present Code.
13. #12-6—V.R.P.C. 3.8(g), (h). Conformity to Model Rules amendments concerning duties of prosecutors.
14. #12-1/14-10—Event-witness amendment to V.R.C.P. 26(b)(4) and mandatory disclosure.
15. #13-11—V.R.P.C. Consideration of ABA Ethics 20/20 revisions to ABA Model Rules.
16. #14-7. V.R.C.P. 41(b)(1)(iii). Conform to Rule 3’s 60-day service requirement.
17. #14-8. V.R.C.P. 69. Executions. Consider practical effect.
18. #14-9. V.R.C.P. 74-75. Revise to clarify along lines of federal APA.
19. #14-11. V.R.C.P. 7. Consider rule similar to federal Local Rule 7(a)(7) requiring agreement on motions.
20. #15-5. V.R.C.P. 45(f)(2). Questions regarding interpretation.

INFORMATION ITEM

21. #15-8. Special ad hoc committee on video/audio appearances and cameras in the court.

RESOLVED: That the members and reporter of the Vermont Supreme Court’s Advisory Committee on Rules of Civil Procedure

Mr. Avildsen reported for the Small Claims Subcommittee that it had accomplished its various charges and that new forms would overtake the rule-making process. On motion duly made and seconded, there being no discussion, it was voted unanimously that the subcommittee be discharged with the thanks for the Committee for its many years of service.

In closing, the Committee and the Reporter wish to express their gratitude and great thanks to William E. Griffin, Esquire for his long and effective service and calm and patient leadership as member and chair of the Committee from 1989 until 2015 and their hope that they will be able to benefit from his wise counsel for years to come.

The Committee and Reporter also wish to thank all the members of the Vermont bench and bar, the members of the Legislative Committee on Judicial Rules, and others who have participated in the rule-making process through their thoughtful suggestions and comments. In particular, thanks are due to Hon. Harold E. Eaton, Jr., for his assistance and support as Supreme Court liaison; and to Court Administrator Patricia Gabel; staff attorney Emily Wetherell; and Larry Abbott and Deb Laferriere of the Court Administrator's staff for their continued and essential support.

Respectfully submitted,

Allan R. Keyes, Chair

For the Committee:

Eric B. Avildsen
Eileen Blackwood
James A. Dumont
Jean B. Giddings
William E. Griffin
Kathleen Hobart
Karen McAndrew
Hon. Dennis Pearson
Hon. Helen M. Toor
Gregory Weimer

Hon. Harold E. Eaton, Jr., Supreme Court
Liaison
Professor L. Kinvin Wroth, Reporter