

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE
Minutes of Meeting
October 5, 2012

The meeting was called to order at 9:15 a.m. in Room 216, Debevoise Hall, Vermont Law School, South Royalton, by William E. Griffin, Chair. Present were Committee members Eric Avildsen, James A. Dumont, Jean Giddings, Kathleen Hobart, Allan R. Keyes, Karen McAndrew, Hon. Robert Mello (by phone), Hon. Dennis Pearson, and Greg Weimer. Also present were Alan A. Bjerke, Esq., and Professor L. Kinvin Wroth, Reporter.

1. Minutes.

The draft minutes of the meeting of July 13, 2012, were unanimously approved as previously distributed.

2. Status of Proposed and Promulgated Amendments.

Professor Wroth reported that the Committee's proposed amendments to the definitions section and sections 5A and 5B of the Vermont Code of Judicial Conduct, transmitted to the Court on December 13, 2011, were still under advisement and had not yet been circulated to the bar for comment. The Committee's recommended amendments to V.R.C.P. 28(d) and 72, had been promulgated July 10, effective September 10, 2012. The recommendations of the Special Committee in Rules for Electronic Case Filing of amendments to V.R.C.P. 77(d), V.R.E.F. 3(b) and (c), and A.O. 41 and proposed new Administrative Orders Nos. 44 and 45 had been promulgated May 30, effective July 30, 2012.

3. #s10-1/08-6, 11-10, 11-15—V.R.S.C.P.— Forms and Proposed Rule Revisions.

Mr. Avildsen presented the report of the Small Claims subcommittee on this and items 8 and 11. (1) The previously recommended answer and disclosure forms are now available online on the Judiciary website in both fillable and downloadable form. The revised IFP form has not yet been posted. Committee members noted the desirability of better coordination between the printed Official Forms and the forms now being developed and posted online by Judge Davenport. Consideration should be given to an amendment of V.R.C.P. 84 similar to the recent amendment of V.R.P.P. 84 to address this matter. (2) The amendments to V.R.S.C.P. 3(b) and (d) discussed by the Committee in May were presented with some revisions. Discussion followed on the manner in which the plaintiff is to be advised that defendant has selected the installment payment option provided in the new answer form. (3) Mr. Bjerke joined in discussion of the proposed amendment adding V.R.S.C.P. 3(h) requiring initial information and attachments in a complaint on an assigned debt. Issues raised included the appropriateness of having a separate fact-pleading approach for these actions, the difficulty of identifying the real plaintiff, and the effect of the rule on debt assignments in other than credit card cases. (4) The proposed amendment to V.R.S.C.P. 7(d) would eliminate the requirement of in-hand service when a disclosure order was not accepted. It was agreed that the rule should make clear the time at which the order was to be deemed not accepted. (5) The proposed amendment of V.R.S.C.P. 8(c)

was a clarification reflecting the appropriate scope of judicial discretion regarding the penalty for nonappearance at a contempt hearing.

It was agreed that the full package of amendments would be considered at the next meeting. In the meantime, the subcommittee would review proposed V.R.S.C.P. 3(h) and present a revision based on discussion with members of the collection bar, would address the problem of notice to the plaintiff concerning installment payments, and would address other minor comments on the proposed amendments. The two further items on the subcommittee's agenda—review of trustee process and review of exemption forms—would be presented at a later meeting.

At this point, Mr. Bjerke left the meeting.

4. #10-5—Proposal to Conform V.R.C.P. 6 to Federal Amendments.

Mr. Keyes presented the report of the Federal Rules subcommittee on how to accommodate the “day is a day” counting method incorporated in a recent amendment of F.R.C.P. 6 in V.R.C.P. 6 and the many rules provisions that incorporate time periods. With great thanks to Mr. Keyes for his extensive efforts on this issue, it was agreed that he and Professor Wroth would prepare a promulgation order for the necessary amendments to the Civil and Appellate Rules, including an appropriate amendment of V.R.C.P. 6, to be considered in depth by the Committee at a future meeting. Professor Wroth would report on the impact of the changed approach on other rules governing proceedings that are civil in nature. This proposal and the restyling of the Appellate Rules will go forward separately, with the counting provisions to be included in the restyled rules initially or by amendment, depending on which draft is ready first.

5. #10-6—Emergency Amendment of V.R.A.P. 33.1 Permitting Oral Argument in Summary Appeals by Video or Telephonic Conference.

Professor Wroth had no report on this item.

6. #10-8—Adoption of Amendments to ABA Model Code of Judicial Conduct.

Professor Wroth had no report on this item.

7. #11-4—Question Regarding Text of VRPC 4.1 Comment.

Professor Wroth had no report on this item.

8. #11-10—Pleading Requirements in Debt-buyer Collection Actions.

See item 3 above.

9. #11-11—Time Limit for Moving for Permission to Appeal.

The Committee reviewed Mr. Keyes' memorandum of May 25, 2012, and his proposed amendments of V.R.A.P. 6(a) and (b) adding a provision concerning time to move in the trial court for permission to appeal under V.R.A.P. 6(a) and provisions for a stay both in that subdivision and in V.R.A.P. 6(b) concerning motions in the Supreme Court. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend the proposal as drafted for circulation to the bar.

10. #11-13—Motions to Reconsider in Environmental Division.

Chairman Griffin reported that the Environmental Division judges had withdrawn their request for consideration of a rule on this point.

11. #11-15—Trustee Process against Banks on Certain Federal Agency Direct Deposits.

See item 3 above.

12. #12-1—Event-witness Amendment to V.R.C.P. 26(b)(4).

It was agreed to leave this item on the agenda but to take no action at the present time.

13. #12-2—Restyled Vermont Rules of Appellate Procedure.

At this point, Emily Wetherell, Supreme Court staff attorney, joined the meeting.

The Committee reviewed the principal changes that Ms. Wetherell had made in the prior draft of the restyled Appellate Rules, based on discussion at the last meeting.

It was agreed that Committee members who wished to raise questions about purely stylistic changes should do so by e-mail to Ms. Wetherell, copy to Professor Wroth, by October 20. Other concerns could be raised by e-mail as above prior to the next meeting or orally at that meeting. Ms. Wetherell would prepare a further draft for the next meeting incorporating matters agreed on at the present meeting and flagging for discussion issues that had not yet been resolved. She would also prepare for review at the next meeting a comprehensive list of “suspense” issues—matters of substance that could be deferred for further consideration after the proposed restyled rules had been sent to the Court for circulation to the bar. The restyled rules will be taken up at 9:00 a.m. at the next meeting, with the goal of completing action and having a draft ready to send forward after that meeting.

Items 14-17.

In view of the hour, items 14-17 were deferred until the next meeting.

18. Other Business.

Professor Wroth agreed to have a draft 2012 Annual Report ready for approval at the next

meeting.

19. Date of Next meeting.

It was agreed that the next meeting of the Committee would be held at 9:00 a.m. on Friday, December 14, 2012.

There being no further business, the meeting was adjourned at 12:20 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter