

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE
Minutes of Meeting
October 4, 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: Eileen Blackwood, James A. Dumont, Jean Giddings, Allan R. Keyes, Karen McAndrew (by telephone), and Hon. Dennis Pearson. Also present was Professor L. Kinvin Wroth, Reporter.

1. **Minutes.** The draft minutes of the meeting of July 19, 2013, were unanimously approved.
2. **Status of proposed and recommended amendments.** Professor Wroth reported that at a meeting on August 15, 2013, the Legislative Committee on Judicial Rules had reviewed the restyled Vermont Rules of Appellate Procedure promulgated on June 11, effective September 3, 2013, as further revised with a technical emergency amendment promulgated on August 12, 2013, effective on that date; the Small Claims Rules amendments promulgated on July 10, effective September 9, 2013; and the proposed amendments to V.R.C.P. 80.1(b)(3) and 80.9 and V.R.E.C.P. 5(h)(1) sent out for comment on June 18, with comments due on August 16, 2013. The Legislative Committee had only a minor stylistic comment on V.R.A.P. 45(g), comments for future consideration by the Advisory Committee on V.R.S.C.P. 3 and 8, and no comments on the other rules reviewed. The Advisory Committee agreed that the Small Claims Rules comments should be reviewed in connection with Agenda #13-8, item 17 below, concerning adaptation of the Small Claims amendments in the Civil Rules. The Committee agreed to incorporate technical corrections in the proposed amendment to V.R.C.P. 80.1(b)(3) noted in a comment from a member of the bar and to recommend for promulgation the proposed amendments sent out for comment on June 18 with those corrections.
3. **#s10-1/08-6/11-15/13-8—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. Ms. Blackwood agreed to take the place of Mr. Frank on the subcommittee.
4. **#10-5—Proposal to Conform V.R.C.P. 6 to Federal Amendments.** Professor Wroth reported that the other rules advisory committees would await the action of the Civil Rules Committee on the pending proposal to adapt the federal “day is a day” approach for V.R.C.P. 6(a) and other provisions of the Civil Rules in the restyling project that Emily Wetherell and he had begun.
5. **#s10-8/13-1—Adoption of Amendments to ABA Model Code of Judicial Conduct.** Chairman Griffin agreed to consult Justice Skoglund on the Court’s reaction to the Committee’s proposal, agreed on at the July 19 meeting, to establish one subcommittee to consider amendment of the provisions of V.C.J.C. 5A and 5B covering elected probate judges and a second larger subcommittee to work with it on the adaptation of the revised ABA Model Code for Vermont. If the Court’s reaction is positive, he will appoint the two subcommittees.

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). Ms. McAndrew and Professor Wroth will report at the next meeting on a draft amendment 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.

8. #12.5—Consideration of V.R.C.P. 79(b) and H.1. The Committee considered Professor Wroth's draft of an amendment to V.R.C.P. 79 reflecting the elimination of statutory record-keeping requirements. It was agreed that the draft should be recommended to be sent out for comment, subject to any comments on the draft by Ms. Hobart.

9. #12.6—V.R.P.C. 3.8(g), (h)—Conformity to Model Rules Amendments. Chairman Griffin reported that he was still in the process of soliciting comments from various constituencies and would report at the next meeting on reactions to Professor Wroth's draft amendments adding V.R.P.C. 3.8(g) and (h) and Comments in order to adapt 2008 amendments of the ABA Model Rules.

10. #12-7—V.R.C.P. 5—Certificate of Service and Form. Oversight Committee members reported that the Committee had not met since July but would consider this issue at an October 11 meeting.

11. #12-8—V.R.C.P. 3—Notice of Appearance Form. Oversight Committee members reported that the Committee had not met since July but would consider this issue at an October 11 meeting.

12. #13-2—Proposed amendments to V.R.C.P. 43(e) concerning appointment and compensation of interpreters. The Committee considered Professor Wroth's revised draft amendment of V.R.C.P. 43(e) incorporating the present practice of the courts in paying for interpreters for persons with limited English language proficiency and hearing impairments. Professor Wroth agreed to send the draft to the Court's Interpreter subcommittee with further revisions making clear that it applied to English proficiency and that the State would pay for any interpreter appointed under the rule.

13. #13-4—Recent amendments of F.R.C.P. 37 and 45 and various F.R.A.P. Provisions. Mr. Keyes agreed that the Federal Rules subcommittee would report at a subsequent meeting on pending amendments to F.R.C.P. 37 and 45. Professor Wroth reported that he had been advised by Emily Wetherell that only the pending amendment of F.R.A.P. 28 affected a rule with a parallel in the Vermont Rules, and that the F.R.A.P. amendment was not relevant to the Vermont rule.

14. #13-5—V.R.C.P. 4(b)—Requirement of e-mail address on summons. The Committee considered Professor Wroth's draft of an amendment to V.R.C.P. 4(b) to address a question

about the requirement of the rule that the summons contain the e-mail address of the court in light of the present limited state of e-mail communication. It was agreed that the draft should be recommended to be sent out for comment.

15. #13-6—V.R.A.P. 4(c)—question raised in *Coles v. Coles*, 2013 VT 36, note 2. The Committee agreed to advise the Court in its Annual Report that, as agreed at the July 19 meeting, it would not 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.

16. #13-7—Proposed Federal Rules Amendments Sent Out for Comment. It was agreed to defer action on this question pending results of the federal comment period.

17. #13-8—V.R.S.C.P. 3(h)—Whether to Adapt the Small Claims Rules Amendments to the Civil Rules. The Committee considered the September 25 e-mail of Thomas French to Chairman Griffin recommending that the recent Small Claims Rules Amendments be incorporated in the Civil Rules. It was agreed to refer this question to the Small Claims subcommittee. See item 3 above,

18. # 13-9—V.R.A. P. 1(b), 2, 26(b)—Consider in Light of *In re D.D.*, 2013 VT 79, and *In re A.D.T.* 174 Vt. 369 (2002). The Committee considered Mr. Dumont's suggestion that these cases warranted consideration of V.R.A.P. provisions barring the Court from waiving rules provisions when to do so would enlarge the appeal period. Mr. Dumont agreed to prepare a draft for the next meeting.

19. Other Business. Professor Wroth reported that he would circulate a draft Annual Report for Committee approval. He also noted that a new draft of the VBA's proposed Mid-size Case Rule was to be discussed at a meeting convened by the Chief Justice to discuss the subject on October 11. Professor Wroth has agreed to work with the VBA committee on further drafts.

20. Date of Next Meeting. Professor Wroth agreed to determine Committee members' availability for a meeting on November 22, December 6, or December 13, 2013.

There being no further business, the meeting was adjourned at 10:30 a.m..

Respectfully submitted,

L. Kinvin Wroth, Reporter