

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE
Minutes of Meeting
February 8, 2013**

The meeting was called to order at 9:15 a.m. by William E. Griffin, Chair. He and the following Committee members were present by telephone due to inclement weather: Eric Avildsen, James A. Dumont, Joseph E. Frank, Jean Giddings, Allan R. Keyes, Karen McAndrew, Hon. Robert Mello, and Hon. Dennis Pearson. Also by present by telephone was Professor L. Kinvin Wroth, Reporter.

1. Minutes.

The draft minutes of the meeting of December 14, 2012, were unanimously approved as previously distributed.

2. Status of Proposed and Promulgated Amendments.

Professor Wroth reported that he had been advised that the Supreme Court on February 6 had approved sending out for comment the Committee's proposed Small Claims Rules amendments, as well as amendments restyling and making related "substantive" changes in the Vermont Rules of Appellate Procedure.

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

Mr. Avildsen reported that the Small Claims subcommittee would have a report on additional items at the next meeting,

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

Committee members noted the impact of the "day is a day" amendments of the Federal Rules on Vermont Rules other than the Vermont Rules of Civil Procedure. Professor Wroth agreed to alert other Committee chairs to the pending consideration of amended FRCP 6 and to report on comments at the next meeting.

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 reported that, in light of its limited use to date, there had been no indication from the Court of the need to address this rule. On motion duly made and seconded, there being no discussion, it was voted unanimously to remove this item from the agenda.

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

Professor Wroth reported that he had made no progress on recruiting a colleague to assist with this project. He agreed to provide a report at the next meeting summarizing changes from the present Vermont Code.

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

Professor Wroth reported that there had been no response from the Court on the question whether a Rules amendment was necessary to incorporate the omitted Comment language. On motion duly made and seconded, there being no discussion, it was voted unanimously to send Professor Wroth's February 2, 2011, draft amendment to the Court for appropriate action, with any necessary updates to the Reporter's Notes.

8. #11-15—Trustee Process against Banks on Certain Federal Agency Direct Deposits, Small Claims

The Small Claims Subcommittee will report per item 3 above.

9. #12-1—Event-witness Amendment to V.R.C.P. 26(b)(4).

After discussion of the Supreme Court's recent decision in *Stella v. Spaulding*, 2013 VT 8, it was agreed that the Committee should look again at possible amendments to VRCP 26(b)(4), which continues to rely on the former Federal Rule. Ms. McAndrew agreed to chair a subcommittee on the matter, consisting of Messrs. Dumont and Keyes and Judge Pearson. Professor Wroth agreed to provide the Committee's file on the rule to the subcommittee.

10. #12-3—Amendment of V.R.E.C.P. 5(h) to Require Transcripts in All On-the-Record Appeals.

After discussion, Professor Wroth agreed to prepare a draft for review by the Environmental Division judges before the next meeting.

11. #12-4—Updating References in V.R.C.P. 80.1(b)(3) and 80.9(a).

Professor Wroth agreed to prepare a draft for the next meeting that would address statutory changes.

12. #12.5—Consideration of V.R.C.P. 79(b).

In discussion, it was agreed that rule was obsolete but that it appeared to incorporate provisions of 4 V.S.A. sec. 652 (formerly 602). Professor Wroth agreed to consider the limits imposed by the statute and to discuss an appropriate solution with the clerks and the Court Administrator.

13. #12.6—V.R.P.C. 3.8(g), (h)—Conformity to Model Rules Amendments.

Professor Wroth agreed to discuss with Scott McGee the position of the Criminal Rules Committee on the issue. Mr. Keyes called the Committee's attention to *Lay v. Pettengill*, 2011 VT 127 (11//23/11) concerning nondisclosure of potential criminal liability in negotiations over

defendant's employment status). *Cf.* V.R.P.C. 4.5.

14. #12-7—V.R.C.P. 5—Certificate of Service and Form.

In discussion of the Civil Division Oversight Committee's proposed amendment of VRCP 5 to require that lawyers and self-represented litigants be required to file certificates of service with documents filed with the court, Committee members noted that application of such a rule to lawyers seemed unnecessary but that the Oversight Committee had clearly intended that effect. Professor Wroth agreed to prepare a draft for the next meeting after discussing the impact of a rule limited to self-represented litigants with Justice Robinson, chair of the Court's Self-represented Litigants Committee.

15. #12-8 V.R.C.P. 3—Notice of Appearance Form.

After discussion of the Civil Division Oversight Committee's proposed amendment of VRCP 3 to require inclusion of a blank notice of appearance form with the summons for use by self-represented defendants, Committee members suggested that the rule should also apply to attorneys who were not filing an answer. Professor Wroth agreed to prepare a draft for the next meeting after considering the effect of VRCP 79.1(b), (d), and discussing with Justice Robinson the impact of such a rule on self-represented litigants.

16. Other business.

There was no other business.

17. Date of next meeting.

It was agreed that the next meeting would be held at Vermont Law School on Friday, May 3, 2013, at 9:00 a.m.

The meeting was adjourned at 10:40 a.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter