

APPROVED

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE
Minutes of Special Meeting
July 7, 2021**

The meeting was called to order at 9:10 a.m. virtually on Teams by Allan R. Keyes, Chair, with the following Committee members present: Bonnie Badgewick, Hon. David Barra, Eileen Blackwood, Anne Damone, James Dumont, Hon. Robert Mello, Navah Spero, and Gregory Weimer.

Also present were Hon. Harold Eaton, Supreme Court liaison; Professor Emeritus L. Kinvin Wroth, Reporter; Jean Murray, Vermont Legal Aid (VLA); and Angela Zaikowski, Vermont Landlords Association (VLL).

Chairman Keyes noted that Hon. David Barra was present as a new member of the Committee. He welcomed Ms. Murray and Ms. Zaikowski, who were present to answer questions concerning agenda item 1

1. Consideration of Vermont Legal Aid proposal to amend AO 49 regarding the Vermont Emergency Assistance Program. Requested by the Supreme Court.

Chairman Keyes stated that the purpose was to consider and make a recommendation to the Supreme Court on an appropriate amendment to AO 49 or the Civil Rules concerning the proposal of VLA for measures to address tenant concerns with delays in funding applications to the Vermont Emergency Rental and Utility Assistance Program (VERAP).

The following issues, raised in correspondence from Ms. Murray and Ms. Zaikowski, were to be considered:

1. Must landlords apply for VERAP funds or do only tenants need to apply?
2. Should a rule apply to all tenants, or only to “eligible” tenants and in non-payment of rent cases?
3. Are eviction proceedings to be stayed pending decision on application for VERAP funds, or must defendant apply for additional time on motion?
4. Must landlords certify that they have applied for VERAP funds or waive money damages for rent?

Judge Mello suggested that the Committee should consider Act 101 of 2019 (Adj. Sess.). § 1(g), effective May 14, 2020, which provides that in a motion hearing within 45 days after the moratorium ends, the court shall order the tenant to pay accruing and accrued unpaid rent into court, but the court may reduce the amount to be paid in light of circumstances arising during the moratorium affecting the tenant’s ability to pay and the tenant’s efforts to obtain VERAP funding. He noted that the court could require the parties to pursue the solution provided by VERAP and that some trial courts have issued notices alerting landlords and tenants to the availability of funds and legal assistance.

Chairman Keyes observed that proposed notice forms were attached to the correspondence from both

VLA and VLL. He suggested that perhaps the Committee should recommend a notice form to the Court and might limit its consideration to the use of Act 101.

General discussion followed. In response to questions, Ms Murray stated that, contrary to results in the preceding year under the Rental Housing Stabilization Program (RHSP), delays in VERAP approval of applications for funding presented problems for both tenants and landlords. Eviction should be postponed until after VERAP approval of funding for the tenant. Eviction before VERAP funding was approved would mean no funds available for the landlord. Landlords needed to participate in the VERAP process by assisting tenants to apply for funds or applying on tenants' behalf with the tenant's signature on the application. Landlords must certify that they have completed their part of the application process before proceeding to eviction or waive money damages for unpaid rent.

Ms. Zaikowski stated that landlords had been significantly burdened by the moratorium for over a year and that VERAP was more burdensome than RHSP had been. If the tenant won't act, the landlord cannot independently access VERAP funds. In most cases, landlords and tenants cooperate, but the tenant is the source of the most necessary information. She agreed that it would be beneficial to notify the tenant at the beginning of proceedings that VERAP was available. A tenant needing more time to apply could request it on motion. The VLA proposal that a landlord who did not participate waived money damages for rent was draconian.

Judge Mello then proposed a recommendation that if a tenant has applied for VERAP funds, the court will not issue a final judgment for unpaid rent or rent escrow until there has been a decision on the application. In discussion, it was suggested that the provision should include a judgment for possession that could be entered if the tenant receiving VERAP funds did not pay them in full to the landlord and, a requirement that the landlord, in initiating proceedings, advise the tenant of the availability of VERAP funds.

There being no further discussion, it was moved, seconded, and voted unanimously to recommend to the Supreme Court in general terms that the summons in a landlord's action against a tenant for eviction must be accompanied by a notice of the tenant's right to apply for VERAP funds and that, if the tenant applies, the court will not enter judgment for rent escrow or possession until VERAP has made a decision on the tenant's application.

Chairman Keyes agreed to draft a form of notice to the tenant that would accompany the recommendation to the Court. In response to a question from Chairman Keyes, Ms. Zaikowski stated that Appendix A to AO 49, § 21, was still necessary.

Judge Mello commended Ms. Murray and Ms. Zaikowski for their hard work over the 15 months of moratorium. They thanked him and noted that they would be working together on developing a landlord-tenant mediation program.

2. Amendments to the Appellate Rules proposed by special subcommittee of the Electronic Filing Rules Committee. Chairman Keyes thanked Committee members for their unanimous 8-0 email vote on the final draft of the Appellate Rules amendments distributed on July 3. Professor Wroth will send the Committee's draft to Justice Dooley, who will send it with the Electronic Filing Rules amendments to the Court.

3. Status reports on Supreme Court requests for consideration of permanent Rule status for certain AO 49 provisions Chairman Keyes reviewed provisions of the June 25, 2021, amendments to AO 49, Court Administrators memo, June 25, 2021, JUD - CAO Memo to Bar JUD.CAOMemotoBar@vermont.gov, affecting the Committee:

- Remote mediation. The issue is whether it should be the rule or an exception. In-person mediation was deemed important by lawyers responding to Chairman Keyes' informal survey. Mr. Weimer will report at the July 16 meeting on a survey of members conducted by the VBA, and Judge Mello's July 7 email, will be distributed.
- Special pleading in eviction and foreclosure proceedings. Mr. Avildsen will report at the July 16 meeting.
- V.R.C.P. 43.1 and Remote Hearings. Mr. Dumont, who has been appointed to a special committee on the issue, will report at the July 16 meeting.
- V.R.C.P. 5 and 11. Proposed amendments finalized by Chairman Keyes, Ms. Spero, and Professor Wroth to include email filing were sent to the Court on June 25.
- Committee consideration of other AO 49 provisions that might be made permanent. Committee members should submit any ideas for consideration at the July 16 meeting to Chairman Keyes and Professor Wroth.

4. Status Reports on other issues.

- Elimination of papers served electronically from the 3-day extension of time provided by V.R.C.P. 6(e) and V.R.A.P. 26(c). In considering changes to V.R.A.P. 26(c), the present language of F.R.A.P. 26(c) should be reviewed and changes made to V.R.A.P. 31(a) (Filing Deadlines) and V.R.A.P. 26(d)(1) (Stipulation to Extend Time on Appeal). Proposal to clarify V.R.C.P. 56 by providing that the response to a statement of undisputed facts must be paragraph-by-paragraph as opposed to a competing statement of facts. Ms. McAndrew and Professor Wroth will report on the status of the draft approved at the June 11 meeting

5. Schedule August meeting. It was agreed that the next meeting would be held at 9:00 a.m., August 20, 2021.

There being no further business, the meeting was adjourned at 10:45 a.m.

Respectfully submitted,

L. Kinvin Wroth
Reporter