

**APPROVED**  
**VERMONT SUPREME COURT**  
**ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE**  
**Minutes of Meeting**  
**August 20, 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: Eric Avildsen, Eileen Blackwood, James Dumont, Karen McAndrew, and Navah Spero.

Also present were Eleanor Spottswood, Attorney General's representative, and Professor Emeritus L. Kinvin Wroth, Reporter.

**1. Minutes.** The draft minutes of the meeting of July 16, 2021, were unanimously approved as previously circulated.

**2. Action items**

A. #21-2, Response to Supreme Court's memorandum of May 12, 2021, and the June 25, 2021, amendment of AO 49.

*Item 1. Remote Mediation. Proposed amendment of V.R.C.P. 16.3(b).* Professor Wroth reported that the proposed amendment was sent out for comment on August 3, with comments due on September 3, 2021. Ms. Spero suggested that the standard for the court to order remote mediation should be "in its discretion," rather than "for good cause." She will present a draft and supporting memorandum at the next meeting.

*Item 2. Remote Jury Trials. AO 52, Remote Civil Jury Trial Pilot Project, promulgated and effective August 3, 2021.* Chairman Keyes noted that the one-year remote Civil Jury Trial Project established by A.O. 52 was to be implemented under Protocols for Remote Civil Jury Trials developed by Justice Carroll's Remote Civil Jury Trial study committee. Issues like those under V.R.C.P. 43.1 concerning availability of witnesses remained to be considered.

Mr. Dumont reported that he had been appointed to the newly formed 16-member Special Advisory Committee on Remote Hearings, chaired by Scott Griffith, Chief of Planning and Court Services in the Court Administrator's Office. At its first meeting, the chair asked members to present comments at its next meeting in the week of August 23. The relationship between the broad charge of the Special Committee and AO 52 and its protocols is not yet clear.

*Item 3. E-mail Filing; Remote Administration of Oaths. Proposed amendments to V.R.C.P. 5 and 11 were sent to the Court on June 25, 2021.* Chairman Keyes and Professor Wroth reported that, after some revisions of the amendments of V.R.C.P. 5 based on conversations with Emily Wetherell and some direction from the Court, they expected the proposed amendments to be sent out for comment in the coming week.

*Item 4. Eviction Proceedings and Foreclosure Proceedings.* Mr. Avildsen stated that he had not felt it necessary to develop a further proposal. Professor Wroth reported that, as requested at the last meeting, on July 28, he had sent a letter to the Supreme Court, requesting that the Court keep AO 49, ¶21, or its equivalent, in place as long as the 30-day notice requirement of the federal CARES Act remains in effect.

*Item 5. Committee consideration of other AO 49 provisions that might be made permanent.* No Committee concerns were raised.

B. #20-9A. 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). The Committee considered Professor Wroth's draft promulgation order abrogating V.R.C.P. 6(e) and V.R.A.P. 26(c) and changing the time periods of V.R.A.P. 26(d)(1) (limits on stipulated extension of times for filing briefs) and 31(a) (deadlines for serving and filing briefs). Chairman Keyes stated that the issue had been raised by the Special Committee on Appellate Rules. He had surveyed members of the bar and had received a variety of suggestions, but decided to propose the extension of each set of time periods to 40, 30, and 21 days. These numbers were consistent with the provisions of the Federal Rules of Appellate Procedure and had the approval of Emily Wetherell, principal drafter of the recent amendments to the Vermont Appellate Rules facilitating electronic filing on the Supreme Court. In discussion, members of the Committee noted arguments favoring shorter periods for the appellant because of that party's opportunity to prepare ahead of filing and the provision for stipulated extensions. After further discussion, on motion duly made and seconded, it was voted unanimously to adopt 40, 30, and 21 days in both V.R.A.P. 26(d)(1) and 31(a). Then on motion duly made and seconded, it was voted unanimously to send the proposed order as drafted to the Court to be sent out for comment

C. #20-8. 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. Professor Wroth reported that the proposed amendment of V.R.C.P. 56 had been sent out for comment on August 3, with comments due on October 3, 2021.

D. #21-3. Conforming V.R.C.P.3.1 and court forms concerning waiver of filing and service fees. Professor Wroth reported that the proposed amendments of V.R.C.P. 3.1, 4, 84, and the proposed abrogation of the Appendix of Forms had been sent out for comment on August 3, with comments due October 3, 2021. The Court took no action on the proposed implementing Administrative Order.

E. #19-10. Amendments to V.R.C. P. 7 and 56 and abrogation of V.R.C.P. 78. Promulgated June 7, effective August 9, 2021. Professor Wroth reported that former V.R.C.P. 78 was referred to in V.R.C.P. 43(e) and 54(d)(2)(c). It was agreed that if incorporation of those references in amended V.R.C.P. 7 is pro forma, he will send a recommended amendment to the Court. Otherwise, he will send any necessary proposed amendment to the Committee for email approval. He further agreed to advise the Family Rules Committee of references to V.R.C.P. 78 in V.R.F.P. 2(b), 6, and 6.1, and to advise Legislative Counsel of references in 12 V.S.A. §§ 4853a, 4853b.

F. #14-8. V.R.C.P. 4.1, 4.2, 69, 69.1. Collection and Enforcement of Judgments. Judge Pearson and Professor Wroth will present a consolidated draft at the September meeting.

G. #20-13. Proposed amendments of V.R.C.P. 62, 77, regarding service of default judgments. The Committee considered Mr. Dumont's draft of the proposed amendments to V.R.C.P. 62 and 77 with minor editorial corrections and his suggested draft of a proposed amendment to V.R.C.P. 80.1. In discussion, he

suggested that the amendment to Rule 80.1 was probably unnecessary in light of the proposed change to Rule 77(d)(3). In further discussion, it was agreed that proposed Rule 77(d)(3) would be more appropriately placed in V.R.C.P. 55. Mr. Dumont agreed to prepare a new draft making that change for the next meeting.

H. #20-9B. Amendments made necessary to conform the Civil Rules to the 2020 Vermont Rules on Electronic Filing, promulgated December 10, 2019, effective March 2, 2020. In the necessary absence of Ms. Badgewick, Ms. Spero reported that Ms. Badgewick and she were working to address the comments of Committee members made at the last meeting. They were awaiting the Court's action on the proposed amendments to V.R.C.P. 5 and hoped that at the next meeting they would be able to present a chart to summarizing the distribution of existing E-filing Rules provisions among procedural rules and forms, administrative orders or directives, and other media such as Odyssey File and Serve user guides.

**3. Items for discussion and possible action.** #21-1. Blondin v. Milton Town School District, 2021 VT 2, 13, n.10. The Committee considered Professor Wroth's memorandum of March 18, 2021, and his alternate drafts amendments of V.R.C.P. 50(b) dated May 20, 2021, addressing the Supreme Court's request that the Committee consider the present requirement of Rule 50(b) that denial of or failure to grant a motion under Rule 50(a) during trial could be raised on appeal only be filing a renewal not later than 28 days after judgment or discharge or the jury. After discussion, it was agreed that issue should be placed higher on the agenda for consideration at the next meeting. Professor Wroth agreed to present a new draft substituting a "sufficiency of the evidence" test for the present requirement. Other alternatives to be considered were simply deleting the present requirement or making no change in the Rule.

**4. Information items.** Status of Court's Long Term Planning Committee: Ramp-up Report, May 13, 2020. In the absence of Justice Eaton, this item was deferred to the next meeting.

**5. Other business.** There was no other business.

**6. Next meetings.** The next meeting of the Committee will be held virtually at 9:00 a.m. on Friday, September 17, 2021. It was agreed that a meeting will be held at 9:00 a.m. on Friday, October 15 or 22, 2021, depending on responses to Professor Wroth's e-mail circulation of those dates, with medium to be determined. A further meeting will be held on November 19, 2021, if needed. Dates for subsequent meetings will be considered at the September 17 meeting.

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

Respectfully submitted,

L. Kinvin Wroth  
Reporter