

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE
Minutes of Meeting
April 22, 2022

The meeting was called to order at 9:10 a.m. virtually on Zoom by Allan R. Keyes, Chair, with the following Committee members present: Eric Avildsen, Hon. David Barra, Bonnie Badgewick, Anne Damone, James Dumont, Eileen Blackwood, Karen McAndrew, Navah Spero, and Gregory Weimer. Also present were Emily Wetherell, Deputy Clerk of the Supreme Court; Laura Rowntree, Attorney General's designee; and Professor Emeritus L. Kinvin Wroth, Reporter.

The meeting was convened virtually on Zoom at 9:10 a.m. by Chairman Keyes.

Chairman Keyes noted that April 22 was the 52nd anniversary of the first Earth Day and that the Vermont Rules of Civil Procedure were initially presented at a June 1970 two-day meeting of the bench and bar to consider Professor Wroth's preliminary draft of the Civil Rules and Reporter's Notes that formed the basis of the Rules of Civil and Appellate Procedure as promulgated effective July 1, 1971, and amended to date. The oak tree then planted has sprouted many branches. Our present task is to keep symmetry among them.

On behalf of the Committee, Chairman Keyes expressed thanks to Eleanor Spottswood for her service as the Attorney General's designee to the Committee and congratulations on her appointment as Solicitor General in the Attorney General's office. He also welcomed Laura Rowntree, newly appointed Chief of the Civil Division, as her successor.

1. Minutes. The draft minutes of the meeting of February 25, 2022, were unanimously approved as previously circulated.

2. Action Items.

A #20-13. Proposed amendments of V.R.C.P. 55, 62, regarding service of default judgments. Sent out for comment on December 13, 2021, with comments due February 14, 2022. Chairman Keyes reported that three comments had been received.

(1) Mr. Dumont to present related amendment of V.R.C.P. 54.

(2) V.R.C.P. 55. Post-judgment service costs. Judge Mello and Messrs. Avildsen and Dumont to report.

In the unavoidable absence of Judge Mello, items 2.A(1) and (2) were deferred until the next meeting.

B. #20-9A. Order eliminating 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) and amending V.R.A.P. 26(d)(1) and 31(a). Recommended for promulgation at meeting of November 19, 2021. To be reconsidered in light of Court's action on parallel amendment to V.R.Cr.P. 45, pending consideration of comments due on February 14, 2022. It was agreed to defer this item until the next meeting.

C. #22-1. Proposed amendment of V.R.C.P. 26(e). Consider further revision of proposed amendment sent out for comment on March 8, with comments due on May 9, 2022. Comments received from Committee members. Reviewed by LCJR on April 14, 2022. It was agreed to defer this item until the next meeting.

D. #22.3. V.R.C.P. 80.11. Should it be made permanent? The Committee considered the results of the survey of the bar reported by Mr. Weimer, showing that the expedited action procedure was not extensively used but was regarded as useful. He felt that suggestions for a change of name were unwarranted. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend that Rule 80.11 be made permanent.

E. Committee consideration of AO 49 provisions that should be made permanent. Request of Supreme Court. Chairman Keyes reported.

(1) Special Eviction and Foreclosure procedures and forms. Supreme Court request to make permanent in the Rules the provisions of AO 49, par 21 and 22 [and the forms], relating to eviction, foreclosure, and mobile home repossession. Chairman Keyes will chair a subcommittee consisting of Mr. Avildsen and Judge Mello to prepare a proposal for consideration at the next meeting.

(2) Remote oral argument in Supreme Court. See item 4.D below. To be considered at next meeting.

(3) Remote judicial bureau proceedings, Rule 80.6. Chairman Keyes to discuss with Presiding Judge Romeo. To be considered at next meeting.

(4) Remote deposition oaths. There are three sub-issues: (a) AO 49, sec. 17.a allowing deposition oaths to be administered remotely; (b) Notarizations remotely, including out of state; (c) pending legislation allowing oaths in some interstate real estate transactions. Mr. Dumont suggested that the Attorney General's office also should be asked to consider the question. Committee members were asked to send suggestions for addressing the issues to Mr. Dumont and Ms. Spero. Chairman Keyes and Mr. Dumont will approach Legislative Counsel concerning possible legislation.

(5) Remote trials and hearings. Mr. Dumont reported that the Remote Trial and Hearing Committee has two subcommittees—policy and practice. The policy subcommittee has circulated internally drafts of V.R.C.P. 43.1 and V.R.F.P. 17 involving remote participation in evidentiary and non-evidentiary hearings that will ultimately be submitted to the Civil Rules Committee. The question of full visibility of a witness on camera is being considered. In discussion, it was noted that the question of remote administration of oaths in court proceedings, now under AO 49, sec. 17b, should also be considered. under V.R.C.P. 43.1.

(6) Other. It was agreed that the prohibition in V.R.C.P. 79.2(d)(5) of the use of “devices”, as defined in V.R.C.P. 79.2(b)(4), by jurors should be reviewed.

Chairman Keyes stated that the preceding list is apparently complete and will stay on the agenda for future action.

3. Status of recommended amendments.

A. Proposed order amending V.R.C.P. 5, 6(a)(4), 29, and 79.1. Electronic Service and Filing.

Chairman Keyes noted that the order, initially prepared by a subcommittee of the Civil Rules Committee, had been sent out for comment on December 13, 2021, with comments due February 14, 2022. That comment draft was reviewed by the Legislative Committee on Judicial Rules (LCJR), on April 14, 2022, with no quorum present. A revision of the December 13 draft, with changes made by subcommittee, and by the full Committee on February 25, 2022, was recommended by the Civil Rules Committee on March 4, 2022,

to the Court for promulgation. That draft order as further revised by the subcommittee was considered by the Court on April 11, 2022. The final revised draft to be considered by the Court was sent to the Civil Rules Committee for information by Chairman Keyes in an email of April 20.

Chairman Keyes reported that the goal was to have a complete package, including V.R.C.P. 5 et al. as sent in his April 20 email, V.R.A.P. 25 (item 3.B below), and conforming amendments of V.R.P.P. 5, ready to be promulgated by the Court in May. The Committee may be asked to approve the final version electronically if action is needed before the Committee's May meeting.

B. Proposed order amending V.R.A.P. 25, and deleting V.R.A.P. 25(a)(2). Professor Wroth reported that the order was sent out for comment on January 10, with comments due on February 14, 2022. No comments were received. Reviewed by LCJR on April 14, 2022. Recommended to the Court on February 25, 2022, for promulgation as circulated.

C. #21-1. Proposed amendment to V.R.C.P. 50(b) (See *Blondin v. Milton Town School District*, 2021 VT 2, 13, n.10). Professor Wroth reported that the order was sent out for comment on October 15, with comments due on December 15, 2021. One comment was received. Recommended on February 25, 2022, for promulgation with one revision. Reviewed by LCJR, April 14, 2022. Promulgated April 18, effective June 20, 2022.

D. Amendments of V.R.S.C.P. 7 and 8 proposed by Civil Division Oversight Committee. Professor Wroth reported that the order was sent out for comment on December 13, 2021, with comments due February 14, 2002. Two comments were received. Recommended on February 25, 2022, for promulgation with revisions. Promulgated April 18, effective June 20, 2022.

E. #20-11. Methods of expediting civil trials. Proposed amendment of V.R.C.P. 68 allowing either party to serve an offer of judgment. Professor Wroth reported that the order was sent out for comment on December 13, 2021, with comments due February 14, 2002. One comment was received. Recommended on February 25, 2022, for promulgation as circulated. Reviewed by LCJR, April 14, 2022. Promulgated April 18, effective June 20, 2022.

4. Status of proposed amendments.

A. V.R.C.P. 79.1. Civil Division Oversight Committee amendment proposal regarding out-of-state lawyers. Proposed amendment sent out for comment on March 8, with comments due on May 9, 2022. Reviewed by LCJR on April 14, 2022. Chairman Keyes reported that no comments had been received to date.

B. #22-2. V.R.C.P. 80.6. Correction of cross-references. Proposed amendment sent out for comment on March 8, with comments due on May 9, 2022. Reviewed by LCJR on April 14, 2022. Chairman Keyes reported that no comments had been received to date, but that a further correction would be considered at the next meeting.

C. V.R.A.P. 33.1 and 33.4. Updating provisions for remote oral argument. Chairman Keyes reported that proposed amendments sent out by the Supreme Court for comment on April 18, with comments due on June 20, 2022, would be considered at a subsequent meeting.

5. Reports

A. #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, as amended, Subcommittee (Ms. Badgewick, Chairman Keyes, and Ms. Spero) had no new report.

B. #14-8. V.R.C.P. 4.1, 4.2, 69, 69.1. Collection and Enforcement of Judgments. Deferred at the February 25 meeting. It was agreed that this item should be further deferred until the next meeting.

6. Other business. There was no other business,

7. Date of next meeting. It was agreed that the next meeting should be held virtually at 9:00 a.m., Friday, May 20, 2020.

There being no further business, the meeting was adjourned at 10:40 a.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter