

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE
Minutes of Meeting
June 17, 2022

The meeting was called to order at 9:05 a.m. virtually on Zoom by Allan R. Keyes, Chair, with the following Committee members present: Eric Avildsen, Bonnie Badgewick, Anne Damone, James Dumont, Eileen Blackwood, Hon. Robert Mello; Hon. David Barra, Navah Spero, and Gregory Weimer. Also present were Hon. Harold Eaton; Supreme Court liaison; Laura Rowntree, Attorney General's designee; and Professor Emeritus L. Kinvin Wroth, Reporter.

1. Minutes. The draft minutes of the meeting of May 20, 2022, were unanimously approved as previously circulated, with the deletion of a repetitive sentence concerning convening of the meeting.

2. Action Items.

A. #20-13. Proposed amendments of V.R.C.P. 55, 62, regarding service of default judgments. The Committee considered the question of how to amend V.R.C.P. 62(b) to make it consistent with V.R.C.P. 55(d), discussed at the May 20 meeting. Chairman Keyes had circulated a sample amendment to Rule 62 without the cross-reference to the methods of mail delivery in Rule 4(f) that required the signature of an addressee or an agent of an addressee. In discussion it was agreed that restricted mail service can be valid whenever the receipt is not signed, regardless of whether the recipient refuses or was not found, provided the judgment is mailed to the last known address that was not returned as undeliverable. First class mail when the receipt is not signed should be tried before publication. Judge Mello suggested an affidavit, not a return of service, should be required.

With these modifications, Rule 62(b) would provide in effect that service by mail requiring the signature of an addressee or an agent of an addressee is deemed complete when the mail is delivered and the receipt is signed or, if the recipient does not sign the receipt, when a copy of the judgment is sent by first-class mail, provided that an affidavit of service sets forth the unsuccessful efforts made to obtain personal service and attaches either a signed receipt or states that, upon notice that no receipt had been signed, plaintiff sent a copy of the judgment to the recipient by ordinary first class mail to the last address of the recipient known to the affiant from which mail was not returned as undeliverable.

Mr. Dumont agreed to prepare for the next meeting a final draft of the amendments to V.R.C.P. 55, 62, and 80.1 regarding service of default judgments, and an amendment of V.R.C.P. 4(f) to make it consistent with those amendments.

B. #22-2. V.R.C.P. 80.6. Correction of erroneous and obsolete references. Proposed amendment sent out for comment on March 8, with comments due on May 9, 2022. Reviewed by LCJR on April 14, 2022. This item was deferred pending consideration of further comments from Judge Romeo that had just been received.

C. Committee consideration of AO 49 provisions that should be made permanent. Request of Supreme Court.

(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.

The Committee considered V.R.C.P. 9.2 and 9.3 proposed in the June 11 report of the subcommittee (Mr. Avildsen, Judge Mello, Chairman Keyes, chair) as presented in promulgation format prepared and distributed by Professor Wroth on June 16. Chairman Keyes stated that the subcommittee's hope was that a full proposed order, with Reporter's Notes to be prepared by Professor Wroth, could be approved by the Supreme Court at its July 11 administrative meeting to be sent out for comment in time to be promulgated and take effect before AO 49 expires. Chairman Keyes then proceeded to review and explain the provisions of proposed Rules 9.2 and 9.3. On motion duly made and seconded, after discussion, it was voted unanimously to send the present draft of Rules 9.2 and 9.3, with Reporter's Notes, to the Court to be sent out for comment.

(2) Remote oral argument in Supreme Court. The Committee considered the Supreme Court's proposed amendments of V.R.A.P. 33.1 and V.R.A.P. 33.4 sent out for comment on April 18, with comments to be sent to Emily Wetherell by June 20, 2022. Chairman Keyes reported that he had assembled and sent to Ms. Wetherell Committee members' comments reflecting agreement with his draft. He noted that the proposed amendments did not address the question whether oral argument was required in every case.

(3) Remote judicial bureau proceedings under Rule 80.6. Chairman Keyes reported that a process needs to be developed to provide for remote Judicial Bureau proceedings and perhaps other issues, and that he will continue discussions with Judicial Bureau Presiding Judge Romeo. See item 2.B above.

(4) Remote deposition oaths: (a) AO 49, sec. 17a, allowing remote administration (including possible influence on witness not apparent on camera); (b) remote notarization, including out-of-state; (c) pending legislation concerning oaths in interstate real estate transactions. Mr. Dumont reported that recent legislation on oaths may require changes in V.R.C.P. 30 to become effective after AO 49 expires, Ms. Spero and he agreed to report on the issues at the next meeting.

(5) Remote trials and hearings. Mr. Dumont reported that the Remote Trials and Hearings Committee would distribute a report soon, proposing a revision of V.R.C.P. 43.1 with variations for other bodies of Rules. The V.R.C.P. 43.1 proposal would be sent to the Civil Rules Committee for final action. Chairman Keyes noted that the effect on other Rules would have to be considered in any basic revision of V.R.C.P. 43.1.

(6) Other. Chairman Keyes noted the need for parallel action by other Rules Committees on consideration of provisions for use of "devices" as defined in Rule 79.2(b)(4) by jurors as regulated in Rule 79.2(c)(3) and prohibited in Rule 79.2(d)(5).

D. #22-5. Amend V.R.C.P. 16.3 and AO 39 to conform to current mediation practice.
Proposal of Judge Toor, June 9, 2022. Chairman Keyes reported that he had asked Ms. Badgewick and Mr. Weimer to consider and report on this matter. Ms. Badgewick suggested that in view of the Committee's recent recommendation and the December 2021 promulgation of

amendments to V.R.C.P. 16.3, Judge Toor should be asked to provide further information on why amendments were now needed. The proposed AO 39 amendments would be appropriate if the Rule amendments were adopted. Mr. Weimer noted that the amendments seem intended to enhance the mediator's role, and that he would also like to know more about the purpose of the changes. Mr. Dumont suggested that in-person appearance should always be provided for. Ms. Badgewick and Mr. Weimer will review the matter further and report at the next meeting.

3. Status of recommended amendments.

A. #22-1. Recommended amendment of V.R.C.P 26(e). Professor Wroth reported that the proposed amendment as revised at the May 20 meeting had been sent to the Court on June 2 but was not received in time to be considered at the Court's June 6 administrative meeting. The next administrative meeting is scheduled for July 11.

B. Professor Wroth also reported that the Committee's recommendation for the revision of Appendix A to AO 49, par. 21 is now on the Forms website. See [Appendix-A-Cares-Act-Civil-Division-Temporary-Forms.pdf \(vermontjudiciary.org\)](#).

4. Status of proposed amendments.

A. V.R.C.P. 79.1. Civil Division Oversight Committee amendment proposal regarding out-of-state lawyers. A proposed amendment was sent out for comment on March 8, with comments due on May 9, 2022. Chairman Keyes reported that the Probate and Family Rules Committees have not yet met to consider the proposal.

B. V.R.A.P. 33.1 and 33.4. Updating provisions for remote oral argument. Proposed amendments sent out for comment April 18, comments to be sent to Emily Wetherell, Deputy Clerk, by June 20, 2022. Chairman Keyes reported that he had gathered and sent any Committee members' comments to Ms. Wetherell.

5. Suggested amendments for Committee consideration.

A. # 22-3. Reduce number and regularize issuance dates of promulgation orders. Proposal of Lisa_Shelkrot. After brief discussion, it was agreed to put this item on the agenda for the next meeting. Chairman Keyes stated that he would discuss it with Emily Wetherell. Professor Wroth agreed to explore the practice in other states.

B. #22-4. Amendment to provide that an answer to a complaint must repeat each allegation prior to the response. Proposal of Lisa_Shelkrot. Ms. Spero agreed to explore the practice in other states.

C. #22-5. Amendment of V.R.A.P. 3(e) to provide that docketing statements are optional for appellees. Proposal of Solicitor General Eleanor Spottswood. Chairman Keyes stated that it should stay on the agenda, and that he would ask Ms. Asay to explore the issue.

6. 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. Chairman Keyes said that he would follow up with the Subcommittee (Ms. Badgewick, Chairman Keyes, and Ms. Spero) before the next meeting.

B. #14-8. V.R.C.P. 4.1, 4.2, 69, 69.1. Collection and Enforcement of Judgments. Deferred at May 20 meeting. Mr. Avildsen reported that he had reviewed the document and had asked Judge Toor if Oversight would review it. He and Chairman Keyes agreed to follow up on that request.

C. Replacement of members whose terms expire. Chairman Keyes announced that Bridget Asay, a partner in Stris & Maher, Montpelier, and former Solicitor General of Vermont, had been appointed to the Committee to replace Eileen Blackwood, whose term was ending on June 30, 2022.

Chairman Keyes also announced that Eric Avildsen had stated that he intended to retire in September. Chairman Keyes noted the importance of the Vermont Legal Aid voice that Eric had brought to the Committee for so many years, as well as the importance of Eric's simultaneous service on the Civil Division Oversight Committee. He indicated that he would propose a VLA lawyer, or other lawyer with a legal services background to the Court as one of three recommended names and asked Committee members to submit any suggestions to him by July 15.

D. Professor Wroth noted his intention to step down as Reporter after a successor was found, as stated in his June 15 email to the Committee. He reported that Chairman Keyes and he had prepared a job description for the position but that no search process had yet been proposed.

7. Other business. There was no other business.

8. Date of next meeting. It was agreed that the next meeting of the Committee would be held on September 9, 2022.

There being no further business, the meeting was adjourned at 11:35 a.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter