

APPROVED

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE
Minutes of Meeting
March 27, 2015**

The meeting was called to order at 9:15 a.m. in Room 216 Debevoise Hall, Vermont Law School, by William E. Griffin, Chair, with the following Committee members present: Eric Avildsen, Eileen Blackwood, James Dumont, Jean Giddings, Kathleen Hobart, R. Allen Keyes, Karen McAndrew, Hon. Dennis Pearson, Hon. Helen Toor, and Gregory Weimer. Also present were Hon. Harold E. Eaton, Jr, Supreme Court Liaison, and Professor L. Kinvin Wroth, Reporter.

1. Minutes. On motion duly made and seconded, the draft minutes of the meeting of January 30, 2015, were unanimously approved as previously circulated, with the correction of the second date in item 1 to read “2015.”

2. Status of proposed and recommended amendments.

A. Emergency amendments to V.R.S.C.P. 3, 7, 10, 11, and 12. The Committee considered the emergency amendments to V.R.S.C.P. 3, 7, 10, 11, and 12, promulgated by the Court on February 25, effective May 4 (as extended by order of March 25), with comments due on April 27, 2015. The Committee also considered Teri Corsones’ March 23 draft revisions of the amendments, her March 18 e-mail explaining the clerks’ concerns with the amendments, her drafts of a small claims summons and complaint form and certificate of service, and several e-mail comments from individual clerks and others on the amendments.

The Committee considered the March 23 draft revisions.

On motion duly made and seconded, it was voted, ten in favor, one opposed, to add the following at the end of Rule 3(a)(1): “**and provide the clerk with a self-addressed stamped envelope.**”

On motion duly made and seconded, it was voted unanimously to delete the indicated language from Rule 3(a)(4): “**The clerk will assign a docket number to the claim, sign the summons to the defendant, and send the signed summons to the plaintiff by either e-mail or first-class mail as authorized by the plaintiff in the complaint.**”

It was agreed that Rule 3(b)(1) should be revised to read as follows: “**(1) Service by First Class Mail. Within ten days after filing the complaint seven days after receipt of the signed summons bearing the docket number, the plaintiff must fill out and sign the summons form obtained from the Judiciary website or at the clerk’s office and must send the summons and complaint and any attached document, with a the court-approved form and instructions for answering the complaint to the defendant by first class mail, with a copy to the court clerk. The**

plaintiff must, at the same time file the applicable certificate of service, which is available on the Judiciary website or at the clerk's office, with the clerk.

It was agreed that Rule 3(b)(2)(C) should be revised to read as follows: “(C) The return of service from the sheriff or other authorized person who served it must be filed by the plaintiff with the court clerk within 60 days ~~after the complaint is filed from the date on which the plaintiff mailed the summons and complaint.~~ This time limit may be extended by the court if an extension is requested in writing by the plaintiff.”

No other revisions of amended Rule 3 and Ms. Corsones' proposed revisions of it were suggested.

On motion duly made and seconded, it was voted, ten in favor, one opposed, that Rule 7(b)(1) and (2) should be revised to read as follows:

(1) Upon receiving a motion for a financial disclosure hearing, the court clerk will set a date and time for hearing. ~~The judgment creditor will obtain from the clerk the date and time and will incorporate them in a notice of hearing form obtained from the Judiciary website or at the clerk's office. The form will advise and will send a notice of hearing to the judgment debtor advising the debtor to appear at the hearing to disclose his or her ability to pay the overdue judgment or installment and to bring with him or her a completed financial statement on the form supplied with the notice of hearing.~~

(2) The ~~judgment creditor must clerk will~~ serve on the judgment debtor and all other parties ~~by first class mail~~ the notice of hearing and the list of exemptions appearing in Form 34 of the Vermont Rules of Civil Procedure, ~~with a copy to and file the applicable certificate of service, which is available on the Judiciary website and at the clerk's office, with~~ the court clerk.

It was noted that former Rule 7(c) used both “judge” and “court” with the same meaning, and it was agreed that the amended rules should use one or the other word consistently.

No other revisions of amended Rule 7, or revisions of amended Rules 10 and 12, and Ms. Corsones' proposed revisions of Rules 7, 10, and 12 were suggested except correction of a typographical error in the revised language of Rule 10(a)(4).

Professor Wroth agreed to review Ms. Corsones' new forms for consistency with the revisions to the amendments proposed above.

The Committee then discussed the difficulties reported by the clerks in preparing for the emergency amendments in time for the extended May 4 emergency date. Problems raised included development of new forms and procedures, revision of the Small Claims Handbook and instructions to accommodate them, placement of new forms and instructional material on the website, training of court personnel in the new system, and educating lawyers and litigants about the new practices. The effective date of May 4 appears to allow insufficient time both to reflect on and appropriately react to further comments or revision proposals that may be submitted by

the April 27 end of the comment period and to allow full preparation and training for court personnel and litigants. It was suggested that a July 1 effective date would be more realistic in light of the time needed to accomplish these steps.

It was moved and seconded to convey these concerns to the Court in a formal letter from the Committee. After further discussion, Justice Eaton agreed to convey the Committee's concerns to the Court and Professor Wroth noted that the concerns would be summarized in the minutes of the meeting.

Professor Wroth undertook to send the Court informally a redraft of the emergency amendments incorporating Ms. Corsones' revisions as modified by the Committee at the present meeting with the qualification that the draft was a work in progress in light of the fact that the comment period remained open. He would thereafter send to the Committee further comments and proposed further appropriate revisions of the amendments based on them for e-mail consideration. At the end of the comment period, he would prepare a final draft of proposed revisions of the emergency amendments for consideration by the Committee at a phone conference meeting to be held at 12:00 noon on Tuesday, April 28, with the goal of formally transmitting final recommended revisions of the emergency amendments to the Court prior to the May 4 effective date.

No vote was taken on the pending motion.

B. Revised draft of Vermont Bar Association's proposed V.R.C.P. 80.11. The Committee considered the Vermont Bar Association's revised draft of proposed V.R.C.P. 80.11—the expedited actions rule—together with VBA committee chair Gary Franklin's memorandum explaining the VBA's actions on the previous draft and a redlined version of the changes. On motion duly made and seconded, there being no further discussion, it was voted unanimously to recommend to the Court that the revised draft be sent out for comment after being put in proper form by Professor Wroth with revised Reporter's Notes.

C. Comments on previously proposed amendments to V.R.C.P. 5(d), (h), Form 29. Professor Wroth agreed to prepare a revised draft for the next meeting.

In view of the time, the remainder of the agenda was deferred until the next meeting.

3. Date of next meetings. The next meeting of the Committee is scheduled to be held at Vermont Law School on Friday, June 12, 2015. Professor Wroth agreed to circulate possible dates for a further meeting to be scheduled in July.

There being no further business, the meeting was adjourned at 12:00 noon.

Respectfully submitted,

L. Kinvin Wroth, Reporter