

The Problem With Legal Processes for *pro se* Parties

Vermonters for a Clean Environment, January 31, 2020

Dear Committee on Natural Resources, Fish & Wildlife,

As you discuss the idea of on-the-record proceedings at District Commissions, or doing away with District Commissions in favor of a Professional/Citizen Board, VCE offers these observations based on our experience assisting *pro se* parties in participation at the Public Utility Commission.

Two documents are included for your reference.

1. Vermont Rules of Civil Procedure Table of Contents
2. PUC Ruling on Depositions and Discovery for *pro se* parties

Discussion

1. The VRCP Problem. Except for the current District Commission process, the proposals you are considering, and the current Environmental Court process, will all require following the Vermont Rules of Civil Procedure (VRCP). The PUC uses the VRCP and also has its own rules. Attorneys say that there are some conflicts between the PUC's rules and the VRCP.

Citizens who have intervened *pro se* at the PUC have found their participation can be severely negatively affected by the requirement to follow the PUC rules and VRCP, and the impossibility of learning them while also understanding the PUC's basic process and the proposal the citizens are attempting to respond to.

Learning the VRCP is what lawyers do. Any process that uses the VRCP requires a lawyer. Non-attorneys cannot and should not be expected to learn the VRCP.

As an example, VCE has been in the PUC hearing room sitting next to a *pro se* party who attempts to ask a question of a witness. The developer's attorney responds by citing a VRCP Rule by number. The *pro se* party is unfamiliar with the rule and does not know how to respond.

Citizens may give up numerous rights when they attempt to participate *pro se* in legal proceedings without an attorney. A *pro se* party may not understand when it is necessary to state an "objection" in order to preserve an issue for appeal. Legal proceedings require attorneys.

2. The Discovery and Deposition Problem. The PUC decision submitted with this memo is the full PUC Commission's response to the request by *pro se* parties to quash depositions by a litigious applicant. The last sentence on p. 4 says:

"Finally, the law favors open discovery, and factfinders are discouraged from placing limits on that discovery."

The PUC and Courts cannot place limits on discovery or protect *pro se* parties from abusive attorneys who demand they appear for depositions. Turning the District Commission process into a legal process will encounter the same problems citizens now experience at Environmental Court and at the PUC and will discourage citizen participation.

Act 250 also has Rules: <https://nrb.vermont.gov/sites/nrb/files/documents/2015%20Adopted%20Rules.pdf>